

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Raju v. Red Door Housing Society*,
2025 BCCA 121

Date: 20250401
Docket: CA50535

Between:

Rita Raju

Appellant
(Petitioner)

And

Red Door Housing Society

Respondent
(Respondent)

Before: The Honourable Mr. Justice Butler
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
March 14, 2025 (*Raju v. Red Door Housing Society*, 2025 BCSC 556,
Vancouver Docket S246820).

Oral Reasons for Judgment

The Appellant, appearing in person:

R. Raju

Counsel for the Respondent:

D. Fetterly

Place and Date of Hearing:

Vancouver, British Columbia
April 1, 2025

Place and Date of Judgment:

Vancouver, British Columbia
April 1, 2025

Summary:

The appellant applies for a stay of an order of possession issued by a Residential Tenancy Branch arbitrator. Held: Application dismissed. The appellant failed to demonstrate the appeal has any merit. Accordingly, it is unnecessary to address irreparable harm or balance of convenience.

[1] **BUTLER J.A.:** The applicant, Ms. Raju, applies for a stay of an order of possession issued by a Residential Tenancy Branch (“RTB”) arbitrator on September 26, 2024 (the “RTB Decision”).

[2] Ms. Raju entered into a residential tenancy agreement with Red Door Housing Society (“Red Door”) on March 1, 2011 for a rental unit located in Burnaby (the “Unit”). On September 5, 2024, Red Door served an expedited notice to end tenancy on Ms. Raju, citing urgent repairs needed for the ceiling, which was sagging and risked collapsing. Red Door also applied for an early end to tenancy and an order of possession under s. 56 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA].

[3] An RTB arbitrator heard Red Door’s application on September 17, 2024. At the hearing, a representative of Red Door gave evidence the Unit was inspected on July 15, 2024 and August 29, 2024. It was noted that the sagging was worse than on previous inspections and that the ceiling was being propped up with a piece of wood. At the second inspection, photographs were taken of the sagging ceiling. On August 30, 2024, Red Door notified Ms. Raju that it was going to re-inspect the Unit on September 3, 2024. However, on September 3, Ms. Raju refused entry to several representatives of Red Door as well as a contractor. The same contractor viewed photos of the ceiling of the Unit, and provided written evidence there were serious structural risks which would require extensive repairs, and that such repairs could only be performed safely if the Unit was cleared.

[4] Ms. Raju testified the ceiling in the Unit has been sagging for over a decade, but asserted that it was not falling and therefore was not in need of emergency repairs. She stated she had the right to refuse the September 3, 2024 inspection because it was only a few days after another inspection, and Red Door could only

legally perform inspections every 30 days. Finally, she explained that she did not want to provide access to Red Door’s contractor because he was unqualified to do repair work.

[5] In reasons, issued September 26, 2024, the RTB arbitrator concluded Red Door had met the onus of showing that Ms. Raju had “put the landlord’s property at significant risk” and that it would be unreasonable or unfair to wait for a one month notice to end tenancy to take effect: *RTA*, ss. 56(2)(a)(iii), 56(2)(b). He found that the sagging ceiling posed serious potential risks which required further investigation and repair, and that Ms. Raju’s refusal to allow entry into the Unit was based on misconceptions which were unsupported by the *RTA*. He held that these refusals “put [Red Door’s] property at significant risk, warranting an end to this tenancy”. Accordingly, the RTB arbitrator issued an order of possession effective 14 days after service.

[6] On September 28, 2024, Ms. Raju applied for a review of the RTB Decision under s. 79 of the *RTA*. Her application was denied by the RTB on October 1, 2024.

[7] Ms. Raju then commenced a petition seeking judicial review of the RTB Decision on October 3, 2024. She was granted a number of interim stays of possession until the judicial review was determined on March 14, 2025, when the chambers judge heard and dismissed Ms. Raju’s petition in chambers: *Raju v. Red Door Housing Society*, 2025 BCSC 556 (“Chambers Decision”). The judge concluded that the RTB Decision was not patently unreasonable, as the arbitrator’s findings were supported by the evidence, including photographs and testimony: Chambers Decision at para. 17. The chambers judge found there was no basis to interfere with the arbitrator’s assessment of the evidence, including his decision to prefer Red Door’s evidence over Ms. Raju’s where they conflicted, as this assessment was owed significant deference: Chambers Decision at para. 18.

[8] On March 14, 2025, the same day the Chambers Decision was issued, Ms. Raju filed an appeal of the related order in this Court.

[9] I note that Ms. Raju also filed an urgent stay application on March 17, 2025, but that application was never heard, as the parties agreed to delay enforcement of the order of possession until this application was heard.

Legal Framework

[10] In Ms. Raju’s notice of application, she seeks an order for a “stay of proceedings for the order of possession by Justice Hamilton on March 14, 2025”. As the only order made by Justice Hamilton on March 14, 2025 was to dismiss Ms. Raju’s petition for judicial review, I understand that what Ms. Raju really seeks is a stay of the order of possession issued by the RTB arbitrator on September 26, 2024 and I approach this application under that assumption.

[11] Section 33 of the *Court of Appeal Act*, S.B.C. 2021, c. 6, states:

33 (1) After an appeal or application for leave to appeal is brought, a justice may, on terms and conditions the justice considers appropriate, order a stay of all or part of proceedings, including execution, in the cause or matter from which the appeal is brought.

[12] The applicable test for a stay under s. 33 is the three-part test from *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 177. The applicant must show:

- a) There is some merit to the appeal, in the sense there is a serious question to be determined.
- b) The applicant will suffer irreparable harm if the stay is refused.
- c) On balance, the inconvenience to the applicant if the stay is refused is greater to the inconvenience to the respondent if the stay is granted.

[13] The overriding consideration is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607 at para. 7.

Analysis

[14] The merits threshold is low on an application for a stay. An applicant need only show that she has an arguable case with some merit: *Tanguay v. Bridgewater Bank*, 2012 BCCA 234 at para. 18 (Chambers). Although the threshold is low, I conclude that Ms. Raju cannot meet it.

[15] The difficulty for Ms. Raju is that the order for possession was based on relevant evidence that was accepted by the RTB arbitrator, who provided a rational, reasoned explanation for their decision. The standard applicable to the review of a decision made by an RTB arbitrator is “patent unreasonableness”: *Campbell v. The Bloom Group*, 2023 BCCA 84 at para. 12. This Court has characterized a patently unreasonable decision as one that is “clearly irrational”, “evidently not in accordance with reason”, or “so flawed that no amount of curial deference can justify letting it stand”: *Campbell* at para. 13. Thus, while the merits threshold on this application is low, Ms. Raju must still show that it is at least arguable the chambers judge erred in finding that the RTB Decision was not patently unreasonable.

[16] Ms. Raju argues that the chambers judge erred by dismissing her petition because Red Door did not provide any evidence of harm to any individuals or property before the RTB arbitrator, and therefore there was no probability of risk. She relies on the fact that no damages have occurred in the eight months after the order of possession was issued to support this argument. Ms. Raju also argues the RTB arbitrator did not have the authority to use s. 56(2)(b)(iii) of the *RTA* to enforce the order of possession when Red Door did not use this section as a “reason for eviction in the notice”.

[17] Section 56(2)(b)(iii) of the *RTA* requires a tenant to have “put the landlord’s property at significant risk”. In the RTB Decision, the arbitrator found that Ms. Raju’s failure to allow entry into the Unit, given the evidence regarding the sagging ceiling, put Red Door’s property at significant risk, which was sufficient to meet the requirement in s. 56(2)(b)(iii). As the chambers judge noted, this finding was supported by Red Door’s evidence, which the RTB arbitrator was entitled to prefer

over Ms. Raju's. Evidence of what occurred in the Unit after the arbitrator made his decision cannot serve to undermine his finding after the fact. I therefore see no merit in Ms. Raju's argument that the evidence was insufficient to support the RTB arbitrator's finding.

[18] Ms. Raju's argument that s. 56(2)(b)(iii) was not a "reason for eviction in the notice" from Red Door, and therefore the RTB arbitrator could not rely on it in his decision, is also without merit.

[19] Per s. 56(3) of the *RTA*, Red Door was not required to give Ms. Raju a notice to end tenancy. Section 59(2)(b) of the *RTA* states that an application for dispute resolution, which Red Door was required to serve on Ms. Raju, must "include full particulars of the dispute". While Ms. Raju has not provided evidence of the specific notice of dispute resolution materials she received, the RTB arbitrator noted that at the hearing Ms. Raju "confirmed receipt of [Red Door's] notice of dispute resolution proceeding package and evidence". Ms. Raju's appeal book also includes an exhibit of all the materials received by the RTB from Ms. Raju for the dispute resolution proceeding, including a portion of a written statement from one of Red Door's representatives, dated September 5, 2024, which was provided to both the RTB and to Ms. Raju. The full version of that statement noted that Red Door was "seek[ing] an emergency application for dispute resolution under section 56 as there is a real and present risk to people and property that appears to be quickly getting worse".

[20] In addition, the evidence Ms. Raju provided to the RTB both prior to and during the hearing clearly addressed and responded to Red Door's argument that the sagging ceiling posed a risk to the property. In these circumstances, I see no merit to Ms. Raju's argument that Red Door's failure to include the specific subsection of s. 56 it intended to rely on at the hearing meant the RTB arbitrator had no authority to issue an order under that subsection.

[21] While I appreciate that a denial of a stay places Ms. Raju in a very difficult situation, I see no possibility that Ms. Raju will be able to show that the chambers judge erred in finding that the RTB arbitrator's decision was not patently

unreasonable. In these circumstances, it is not in the interests of justice to grant a stay.

[22] Having concluded that the merits of the appeal are so weak that the appeal has no chance of success, I need not consider the other two branches of the test: whether Ms. Raju has established irreparable harm and the balance of convenience.

[23] The application for a stay of the order of possession is dismissed.

[Discussion with parties re: additional term of the order]

[24] **BUTLER J.A.:** There will be a term in the order providing that Red Door will not rent the Unit before the final determination of this appeal, provided that Ms. Raju pursues her appeal in a reasonably diligent manner, with leave of Red Door to apply to be relieved of that requirement.

“The Honourable Mr. Justice Butler”