COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Forever v. Hsu,*
2025 BCCA 154

Date: 20250507
Docket: CA50197

Between:

Liana Forever

Appellant
(Petitioner)

And

Yu Yin Hsu

Respondent
(Respondent)

Before: The Honourable Mr. Justice Groberman
The Honourable Justice Fleming
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated September 11, 2024 (*Forever v. Hsu*, Vancouver Docket S241579).

Oral Reasons for Judgment

The Appellant, appearing in person:	L. Forever
Counsel for the Respondent:	K. Yang
Place and Date of Hearing:	Vancouver, British Columbia May 6, 2025
Place and Date of Judgment:	Vancouver, British Columbia May 7, 2025

Summary:

A Residential Tenancy Arbitrator upheld the landlord's notice to the tenant to terminate the tenancy grounded on having an unreasonable number of occupants of the rental unit. The tenant sought judicial review, arguing that the arbitrator's finding that there were at least six people occupying the unit and that that was an unreasonable number were patently unreasonable. Her petition was dismissed by a Supreme Court judge. On appeal, held: Appeal dismissed. The findings were open to the arbitrator on the evidence, and his decision was not patently unreasonable.

[1] **GROBERMAN J.A.**: The appellant challenged a decision of a Residential Tenancy Arbitrator that upheld a notice to end her residential tenancy for cause. The stated cause for the termination of the tenancy was that there was an unreasonable number of occupants in the rental unit. Section 47(1)(c) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 establishes that as a proper basis for terminating a residential tenancy. The appellant's judicial review petition was dismissed in the Supreme Court and she now appeals.

[2] The petition in this matter succinctly sets out the legal grounds and factual basis for challenging the arbitrator's decision. It contends that the arbitrator made patently unreasonable findings of fact in concluding that there were at least six people living in the appellant's rental unit, and that there were only four people living in another unit of the building above her unit. It also contends that the arbitrator reached a patently unreasonable conclusion in finding that the number of occupants was "unreasonable" as that term is used in the statute.

[3] On appeal, the appellant raises several issues that are not included in the petition; many are spurious—such as the suggestion that the arbitrator's "failure to disclose his credentials" and "failure to state an oath or affirmation of independence" amounted to "procedural misconduct". She also raises new issues concerning the timing and nature of the hearing before the arbitrator. As these issues were not included in the judicial review petition, the chambers judge refused to entertain them. As he explained, a party cannot generally expand their challenge to an administrative decision at the hearing of the judicial review petition.

[4] The only issues properly before this Court are whether the arbitrator's findings of fact with respect to the occupancy of the unit were patently unreasonable, and whether his assessment that "an unreasonable number of people occupied the premises" was patently unreasonable.

[5] Arbitrators are appointed under s. 9(2) of the *Residential Tenancy Act*, and have the powers of the director of the residential tenancy branch delegated to them. The definition of "director" in the statute includes such arbitrators. Section 84.1 of the statute is a strong privative clause. In its terms, it precludes courts from interfering with orders by the director.

[6] Section 5.1(1)(h) of the *Act* provides that s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 applies to judicial review. Section 58(2)(a) of that statute establishes that findings of fact or law like the ones challenged in the petition are reviewable on a "patently unreasonable" standard.

[7] In *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10, at paras. 119–131, this Court reviewed the jurisprudence describing that standard. Citing *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211, *West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 and cases referred to in those authorities, it reaffirmed that the patently unreasonable standard is the most deferential standard in administrative law. Only decisions that are "openly, clearly, evidently unreasonable" will fail to pass the standard; a patently unreasonable finding is one that "almost borders on the absurd".

[8] The current judicial review proceeding is the second one arising from the landlord's notice to terminate the tenancy. The appellant was successful in the first petition. In oral reasons for judgment given by Justice A. Ross on October 27, 2023 (Supreme Court Vancouver Docket S236035), the matter was remitted to the tribunal on the basis that the arbitrator had acted patently unreasonably in not accepting evidence as to the occupancy of the suite above the appellant's suite, and also in finding that the volume of belongings in the unit suggested that more than six

people resided there. No appeal was taken from that judgment. While I am not fully convinced that the judge correctly applied the patently unreasonable standard in coming to his conclusions, I accept that the decision is binding on the parties to this appeal and had to be respected by the arbitrator on the rehearing.

[9] On the rehearing, the arbitrator found that there were only four people living in the upstairs rental unit. In contrast, he found that there were at least six people living in the appellant's unit. He made those findings based on the evidence before him, his findings of credibility, and inferences from the number and placement of beds in the unit, including the fact that there were beds in rooms that were not intended as bedrooms.

[10] The chambers judge in the Supreme Court dismissed the application for judicial review.

[11] The appellant contends that the arbitrator's recital of the evidence is erroneous. She has not, however, established that is the case. Nothing in the record demonstrates an error. While I appreciate that, in her oral submissions, the appellant says that the arbitrator got the facts wrong or was misled by the landlord, those submissions do not amount to evidence. The findings of the arbitrator appear to have been open to him on the evidence; they were not patently unreasonable.

[12] The question of whether six or more persons constituted unreasonable occupancy of the unit was one for the arbitrator, who is, pursuant to s. 58(1) of the *Administrative Tribunals Act*, considered to be an "expert tribunal" relative to the courts. The arbitrator gave cogent reasons for his conclusion that the occupancy was unreasonable. This Court is not in a position to second-guess that assessment, particularly given the deferential standard of review that we are required to apply.

[13] While I appreciate that the appellant does not agree with either the arbitrator's factual findings or his conclusion that the occupancy was unreasonable, she has not established that his findings or conclusions were patently unreasonable.

[14] Accordingly, I would dismiss the appeal.

[15] **FLEMING J.A.**: I agree.

[16] **EDELMANN J.A.**: I agree.

[17] **GROBERMAN J.A.**: The appeal is dismissed.

[Discussion with parties re: costs assessed summarily]

[18] **GROBERMAN J.A.**: I am going to suggest that the costs be dealt with in writing to the Registrar directed to our attention because I do not think it is fair to the appellant to respond on the spot.

[Discussion with parties re: dispensing with the appellant's signature as to form of order]

[19] **GROBERMAN J.A.**: In order for the order to be entered promptly, I am directing counsel for the respondent to provide the appellant with a copy of the draft order and ask that she sign it to indicate her agreement as to the form of the order. If the appellant signs the order and returns it, the order will be entered in the ordinary course. If the appellant refuses to sign the order and indicates why she is refusing to sign it, counsel for the respondent may submit the order without the appellant's signature with a copy of her reasons for not signing and I will look at the order and determine whether it should be entered. I will put a deadline on this—counsel for the respondent will provide the draft order to the appellant and she will have seven days to return it to counsel signed or with her reasons for not signing it, and then thereafter counsel may submit the order for entry.

"The Honourable Mr. Justice Groberman"