COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Lamarche v. 447185 B.C. Ltd.,*
2025 BCCA 148

Date: 20250508
Docket: CA49828

Between:

Serge Noël Joseph Lamarche

Appellant
(Petitioner)

And

447185 B.C. Ltd. and Reginald Janzen, Administrator for 447185 B.C. Ltd.

Respondent
(Respondent)

Before: The Honourable Mr. Justice Willcock
The Honourable Justice Donegan
The Honourable Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated April 2, 2024 (*Lamarche v. 447185 B.C. Ltd.*, 2024 BCSC 675, Golden Docket S6617).

Counsel for the Appellant (via videoconference):	L.A. McCarthy
Counsel for the Respondents (via videoconference):	A.M. Beal
Place and Date of Hearing:	Vancouver, British Columbia March 25, 2025
Place and Date of Judgment:	Vancouver, British Columbia May 8, 2025

Written Reasons by:
The Honourable Justice Riley

Concurred in by:
The Honourable Mr. Justice Willcock
The Honourable Justice Donegan

Summary:

Mr. Lamarche appeals from the dismissal of his petition for judicial review from a decision of the Residential Tenancy Branch ("RTB"), which in turn dismissed his application to cancel a one-month notice to end tenancy for cause. On appeal, Mr. Lamarche argues that the chambers judge erred in refusing to admit new evidence, that the RTB proceedings were procedurally unfair, and that the RTB arbitrator's decision was patently unreasonable.

HELD: appeal dismissed.

(1) The affidavit evidence of both parties describing the manner in which the RTB hearing proceeded is relevant and admissible to assess Mr. Lamarche's procedural fairness arguments. The admission of the balance of the new evidence — tendered in an effort to attack the arbitrator's factual findings and conclusions — would take the court beyond its limited supervisory function on judicial review. (2) The manner in which the hearing was conducted was not procedurally unfair. The arbitrator's reasons, read together with the record, demonstrate that both parties were given ample opportunity to present evidence and argue their cases. Nor is there any merit in Mr. Lamarche's reasonable apprehension of bias claim. (3) The arbitrator's decision is not patently unreasonable. He found that Mr. Lamarche had not complied with the terms of a prior RTB order, which gave the respondents a basis for issuing a valid notice to end tenancy for cause. On the evidence before the arbitrator, this conclusion was neither irrational nor evidently against reason.

Reasons for Judgment of the Honourable Justice Riley:

Introduction

[1] This appeal arises from a tenancy dispute at a mobile home park. The appellant, Mr. Lamarche, appeals from the dismissal of his petition for judicial review seeking to set aside the decision of a Residential Tenancy Branch ("RTB") dispute resolution arbitrator, which in turn dismissed his application to cancel a one-month notice to end tenancy for cause. Mr. Lamarche contends that: (i) the chambers judge erred in failing to give effect to his arguments that the RTB hearing was procedurally unfair because he was prevented from arguing his case, and because the RTB arbitrator was biased; (ii) the chambers judge erred in failing to consider new or additional evidence that was not before the RTB arbitrator; and (iii) the RTB decision was patently unreasonable.

[2] For the reasons that follow, I would dismiss the appeal.

Factual Background and Procedural History

[3] In 2019, Mr. Lamarche acquired a mobile home, and then entered into a tenancy agreement for the rental of a site at a mobile home park owned and operated by the respondent 447185 B.C. Ltd., through its principal Mr. Janzen.

[4] In 2020, the parties had a tenancy dispute. Mr. Janzen served Mr. Lamarche with a one-month notice to end tenancy for cause, taking the position that Mr. Lamarche's mobile home was in disrepair, and his yard was not presentable.

[5] Mr. Lamarche applied to the RTB for dispute resolution.

[6] At the RTB hearing on 21 August 2020, the parties reached a settlement, the terms of which were then set out in a ruling made by RTB arbitrator I. Borba. Among other things, Mr. Lamarche was required to: (i) complete renovations to his mobile home's deck and siding; (ii) remove buckets from the roof of his mobile home; and (iii) remove car parts from his yard or cover them with tarps. The deadline for the completion of this work was 31 December 2020.[1]

[7] On 16 October 2021, Mr. Janzen served Mr. Lamarche with a second one-month notice to end tenancy for cause, this time taking the position that Mr. Lamarche had failed to comply with the terms of the settlement order. In particular, he alleged that Mr. Lamarche: (i) failed to complete the renovations by putting proper siding on his mobile home; (ii) replaced the buckets on the roof with other buckets and pallets; and (iii) failed to remove or cover up the car parts in his yard.

[8] Mr. Lamarche again applied to the RTB for dispute resolution, seeking to cancel the notice to end tenancy. He took the position that: (i) the prior dispute had been settled; (ii) he had completed the work required per the settlement terms; and (iii) the respondents were harassing and intimidating him.

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[1] Under s. 57.2 of the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, the terms of the settlement as recorded by Arbitrator Borba had the status of an RTB decision or order. Non-compliance with such an order can be a basis to end a tenancy for cause under s. 40(k).

[9] The hearing of Mr. Lamarche's dispute resolution application took place on 28 February 2022, by telephone. Both parties gave testimony and presented evidence, including photographs and video evidence showing the state of Mr. Lamarche's mobile home. On the same day, RTB arbitrator E. Takayanagi gave a decision finding that Mr. Lamarche failed to comply with the terms of the settlement order. He dismissed Mr. Lamarche's application to cancel the notice to end tenancy, and issued an order for possession in favour of the respondents. The following passage from the arbitrator's reasons summarizes the basis for his decision:

> I do not find the tenant's characterization of the landlord as "whining" to be reasonable or supported in the evidence. I find that the landlord has noted clear, unreasonable deficiencies that are in breach of the earlier terms of settlement. I find the issues noted by the landlord to be reasonable, cogent and in breach of the requirements for repairs and renovations agreed to by the parties. I find the tenant's submissions that they have performed all required work in accordance with the earlier agreement to not be supported in the materials and an unreasonable interpretation of the minimal work that can be seen in the evidence.

[10] On 2 March 2022, Mr. Lamarche applied for a reconsideration of Arbitrator Takayanagi's decision based on "new evidence". The proposed new evidence was a "[l]etter stating that the mobile home siding was complete and the deck was complete", although the letter itself was not included with Mr. Lamarche's application. Mr. Lamarche asserted that he was "waiting for the new evidence". He further asserted that the arbitrator had "misinterpreted" the photographic evidence and "made errors, as evidenced in his reasons".

[11] On 4 March 2022, RTB arbitrator M. Lee dismissed the reconsideration application, noting that Mr. Lamarche did not actually provide any new evidence in his application and reasoning that the application was more in the nature of an attempt to re-argue the case.

[12] On 5 March 2022, Mr. Lamarche applied for a correction of Arbitrator Takayanagi's decision. Mr. Lamarche asserted that Mr. Janzen "lied in his testimony" at the RTB hearing on 28 February 2022, such that the resulting RTB decision was a "grave miscarriage of justice". On 7 March 2022, Arbitrator

Takayanagi dismissed the application, finding that the request did not pertain to either a typographical, grammatical, or other type of error, or an obvious error or inadvertent omission in his original order.

[13] On 18 March 2022, Mr. Lamarche filed a petition for judicial review in Supreme Court, seeking to set aside Arbitrator Takayanagi's decision. In his statement of legal grounds, Mr. Lamarche asserted that Arbitrator Takayanagi's decision was "patently unreasonable" because there was no evidence to support it, and the arbitrator did not consider Mr. Lamarche's argument about the length of time between his completion of the work under the settlement order and Mr. Janzen's issuance of the notice to end tenancy. Mr. Lamarche also argued that the hearing was procedurally unfair because it was "cut short" and he was unable to fully present his case and because the arbitrator was biased.

[14] On 2 April 2024, following a hearing that took place over two days in the preceding month, the chambers judge gave oral reasons for judgment dismissing Mr. Lamarche's petition for judicial review, indexed at 2024 BCSC 675.

[15] On 25 April 2024, Mr. Lamarche filed his notice of appeal in this Court. He later filed an amended notice of appeal, particularizing his grounds of appeal.

Grounds of Appeal

[16] Mr. Lamarche's appeal raises two issues relating to the scope of the record on judicial review:

a) Issue #1: the chambers judge erred in law by breaching substantive fairness in disregarding Mr. Lamarche's new evidence (ground (c) in the appellant's factum); and

b) Issue #2: the chambers judge erred in law in failing to exercise her "inherent jurisdiction" to "promote substantive fairness" when she declined to consider a 2013 report prepared by the Community Legal Assistance

Society (“CLAS”), with respect to the fairness of RTB proceedings (appellant’s factum ground (d)).

[17] Mr. Lamarche also raises two issues relating to procedural fairness:

c) Issue #3: the chambers judge erred in law in finding that the arbitrator had not breached general procedural fairness (appellant’s factum ground (a)); and

d) Issue #4: the chambers judge erred in failing to find a reasonable apprehension of bias arising from Arbitrator Takayanagi’s conduct (appellant’s factum ground (b)).

[18] Finally, Mr. Lamarche raises two issues relating to the merits of the RTB decision:

e) Issue #5: the chambers judge erred in failing to address his argument about the passage of time between the completion of the work required under the settlement order and the notice to end tenancy (appellant’s factum ground (e)); and

f) Issue #6: the chambers judge erred in law in “failing to recognize the invalidity of the rental agreement” (appellant’s factum ground (f)).

Analysis

Standard of Review

[19] The appeal court’s role is to determine whether the chambers judge identified and correctly applied the appropriate standard of review for the administrative decision in issue. Thus, the appeal court effectively steps into the shoes of the chambers judge, focusing its analysis on the administrative decision: *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at para. 46; *Sunshine Coast (Regional District) v. Vanderhaeghe*, 2024 BCCA 169 at para. 30; *Campbell v. The Bloom Group*, 2023 BCCA 84 at para. 11.

[20] Under the combined operation of the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77 ("*MHPTA*") and the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 ("*ATA*"), the RTB is recognized as an expert tribunal. Consequently, the standard of review for an arbitrator's findings of fact and law, and exercises of discretion is patent unreasonableness: *Campbell* at para. 12. Allegations of procedural unfairness are reviewable on a general "fairness" standard: *Campbell* at para. 14. An administrative decision resulting from a process that is unfair "cannot stand": *Athwal v. Johnson*, 2023 BCCA 460 at para. 23.

Issues #1 and #2: Scope of the Record on Judicial Review

[21] There are significant limits on the reviewing court's authority to consider evidence that was not part of the record before the administrative tribunal: *Air Canada v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at paras. 32–44; *Beaudoin v. British Columbia (Attorney General)*, 2022 BCCA 427 at paras. 180–182. Unconstrained admission of new evidence on judicial review risks usurping the tribunal's role: *Albu v. The University of British Columbia*, 2015 BCCA 41 at para. 36; *Johal v. Damiano*, 2021 BCCA 197 at paras. 40–41.

[22] In relation to issue #1, Mr. Lamarche contends that the chambers judge "erred in law" and "breach[ed]" principles of "substantive fairness" by "disregarding" Mr. Lamarche's "new evidence and affidavits". Stepping into the shoes of the chambers judge, I would admit the parts of Mr. Lamarche's two affidavits that describe what occurred at the hearing before Arbitrator Takayanagi, along with the parts of Mr. Janzen's affidavit setting out his account of the hearing. I would not admit the balance of Mr. Lamarche's affidavit evidence, or any of the attachments, for the reasons that follow.

[23] The portions of Mr. Lamarche's affidavits that describe what occurred at the RTB hearing are relevant to Mr. Lamarche's procedural fairness claims under the reasoning in *Air Canada* at para. 39. At the time of the hearing before Arbitrator Takayanagi, the RTB did not make and retain audio recordings of its proceedings. In

the absence of a recording or transcript of the proceedings, the court may admit evidence from other sources describing the manner in which the hearing proceeded.

[24] The following evidence is admissible for this purpose: paragraph 14 of Mr. Lamarche's first affidavit and paragraphs 26, 30, 32, and 37 of his second affidavit. For the sake of balance, it is also necessary to admit paragraphs 29–33 and 39–42 of Mr. Janzen's affidavit, setting out his recollection of the RTB hearing.

[25] I do not agree with the chambers judge that the entirety of paragraphs 26–37 of Mr. Lamarche's second affidavit are relevant and admissible in relation to the procedural fairness issues. The vast majority of the averments in these paragraphs are argumentative and stray well beyond a factual recounting of the hearing.

[26] The balance of Mr. Lamarche's affidavit evidence, and all of the attachments, speak to the merits of his case concerning the basis for the notice to end tenancy. This material was not part of the record before Arbitrator Takayanagi, and is put forward by Mr. Lamarche in an effort to attack the arbitrator's factual findings and legal conclusions.

[27] The *MHPTA* makes provision for the director to reconsider a decision on various grounds, including where "a party has new and relevant evidence that was not available at the time of the original hearing and that materially affects the decision": s. 72(2)(b). In this case, Mr. Lamarche submitted a reconsideration application. Arbitrator Lee dismissed it, because Mr. Lamarche did not include the proposed new evidence with his application, and because the proposed evidence was being put forward in an attempt to re-argue points considered and rejected by the arbitrator at the original hearing. In Arbitrator Lee's view, the proposed new evidence did not fit within the scope of the director's reconsideration power.

[28] Mr. Lamarche's petition for judicial review does not challenge Arbitrator Lee's reconsideration decision. If he had sought judicial review of the reconsideration decision, the arbitrator's conclusions of fact and law would only have been

reviewable on the highly deferential standard of patent unreasonableness. I see nothing patently unreasonable in Arbitrator Lee's decision.

[29] The legislature has prescribed the circumstances in which new evidence may be considered in RTB proceedings as set out in s. 72(2)(b) of the *MHPTA*. Against this backdrop, it would be inconsistent with the court's limited supervisory role on judicial review to admit new evidence tendered with a view to attacking the factual and legal findings in an arbitrator's decision. The admission of such evidence "risks usurping the role of the tribunal", thereby "undermining legislative choices": *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at para. 30.

[30] With respect to issue #2, Mr. Lamarche asserts in his factum that the chambers judge erred in law in failing to exercise her "inherent jurisdiction" to "promote substantive fairness" when she declined to consider the CLAS report.

[31] On my reading of the chambers judge's reasons, she did not make a ruling on the admissibility of the CLAS report as evidence. Rather, she appears to have treated it as a secondary legal source, which she did not consider to be particularly helpful or persuasive. The judge reasoned as follows:

> [24] Many of Mr. Lamarche's submissions were generalized critiques of how the RTB goes about its role. In this regard, he referred to and relied upon a 2013 report from the Community Legal Assistance Society ("CLAS") entitled, "On Shaky Ground: Fairness at the Residential Tenancy Branch". That report was, in essence, a critique of the RTB's processes. I am familiar with and have a great deal of respect for the work that CLAS does, but this report is of no assistance to me in deciding the issues before me on this judicial review. General problems with RTB processes over ten years ago tell me nothing about the fairness of the process employed in this case or the reasonableness of the decision rendered.

[32] Stepping into the shoes of the chambers judge, I would endorse her reasoning on this point. The CLAS report is not a source of adjudicative facts in Mr. Lamarche's case. It is a critique of RTB processes in place more than a decade before his case was heard. The report does not tell the court anything about the fairness of the RTB proceedings in Mr. Lamarche's case.

Issues #3 and #4: Procedural Fairness Arguments

[33] With respect to issue #3, Mr. Lamarche argues that the proceedings before Arbitrator Takayanagi were procedurally unfair. Mr. Lamarche says he was "cut off" by Arbitrator Takayanagi, when he ended the hearing without allowing Mr. Lamarche to properly present his evidence and fully argue his case. Mr. Lamarche says his right to advance his case was sacrificed in the interests of expediency.

[34] As the chambers judge pointed out, Rule 8.1 of the RTB's *Rules of Procedure* states that "[t]he arbitrator determines when the hearing has ended". This is a matter within the discretion of the arbitrator, reviewable on a standard of patent unreasonableness. Mr. Lamarche has not shown that the arbitrator's decision to end the hearing was made arbitrarily, in bad faith, for an improper purpose, was based on irrelevant factors, or failed to account for statutory requirements, as contemplated in s. 58(3) of the *ATA*.

[35] Even when considered as an issue of procedural fairness, applying the standard of "fairness" contemplated in s. 58(2)(b) of the *ATA*, I conclude that the manner in which the hearing was conducted was not unfair to Mr. Lamarche. The RTB records included within Ms. Clout's affidavit demonstrate that the arbitrator had before him all of the documentary evidence tendered by both parties. On Mr. Lamarche's own evidence, Arbitrator Takayanagi stated at the hearing that he would consider all of the evidence. His reasons confirm that he did so, although he did not find it necessary to refer to all of it in his reasons. The arbitrator also considered Mr. Lamarche's key arguments and addressed them in his reasons. Mr. Lamarche was not deprived of the opportunity to present his case.

[36] This brings me to issue #4, in which Mr. Lamarche alleges that Arbitrator Takayanagi's conduct gave rise to a reasonable apprehension of bias. The onus of establishing bias rests on the party asserting it: *R. v. S.(R.D.)*, [1997] 3 S.C.R. 484 at para. 114. Where reasonable apprehension of bias is alleged in relation to the decision or actions of an administrative decision maker such as an RTB adjudicator, the question is whether "a reasonably informed bystander could reasonably perceive

bias on the part of [the] adjudicator": *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 S.C.R. 623 at 636. Any inquiry into questions of bias is inherently "context-and fact-specific" and must take into account all of the relevant circumstances: *R. v. Dick*, 2024 BCCA 272 at para. 40.

[37] The chambers judge found that "the concerns raised by Mr. Lamarche do not demonstrate serious grounds on which to base a reasonable apprehension of bias on the part of the arbitrator": at para. 44. I agree with that conclusion and endorse it. I would add that mere disagreement with an arbitrator's findings is not proof of bias: *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at para. 48.

Issues #5 and #6: Merits of the RTB Decision

[38] Turning to issue #5, Mr. Lamarche contends that the chambers judge erred in failing to address his argument about the passage of time between the completion of the work required under the settlement order and the notice to end tenancy.

[39] The arbitrator's reasons must be assessed functionally and contextually. The passage of time between the work completion deadline under the settlement order and the issuance of the notice to end tenancy was explained on the notice itself. The "Details of the Event(s)" section of the notice included an assertion by Mr. Janzen that, "[w]e gave the tenant ample and additional time to comply with the arbitrators [*sic*] order and he did not comply".

[40] The arbitrator ultimately found that the respondents acted reasonably and justifiably in issuing the notice and rejected Mr. Lamarche's characterization of their position as mere "whining". Nor did the arbitrator accept Mr. Lamarche's submission that the respondents were harassing him. These findings can be taken as a clear rejection of Mr. Lamarche's argument that the notice to end tenancy was invalid due to the amount of time that passed after the work completion deadline.

[41] With regard to issue #6, Mr. Lamarche asserts in his factum that the chambers judge "erred in law" in "failing to recognize the invalidity of the rental agreement". I agree with the respondents that this is a new issue. Mr. Lamarche did

not challenge the validity of the original lease agreement in the RTB proceedings. In fact, his position was that the parties had settled their prior tenancy dispute, and that the renewed effort to evict him was harassment at the hands of the respondents.

[42] On the position advanced by Mr. Lamarche in the original RTB proceeding, the validity of the tenancy agreement was not relevant to the dispute that Arbitrator Takayanagi was called upon to resolve. The focus of the dispute was on whether Mr. Lamarche failed to complete the work required in the settlement terms, such that he was liable to eviction based on a failure to comply with the RTB order. Against that backdrop, I would not consider the arbitrator's decision to be patently unreasonable simply because he did not undertake an independent analysis of the validity of specific terms of the original tenancy agreement.

Additional Issues

[43] I move on to address several strands of argument touched upon though not presented as independent grounds of appeal in Mr. Lamarche's factum, arguments which were more fully developed in counsel's oral submissions.

[44] Mr. Lamarche contends that it was patently unreasonable for the arbitrator to find that the work specified in the settlement order had to be done to a reasonable standard. I disagree. The parties reached a settlement, the terms of which were set out in an RTB decision. Those terms reflected the objective intention of the parties, and the settlement order had the status of a binding RTB decision. Term 2 required Mr. Lamarche to complete renovations to the deck and siding by 31 December 2020.

[45] It is not uncommon to interpret contracts for work or labour to include an implied term for the services to be performed "in a good and workmanlike manner": *Robichaud v. Kaye's Clean Cut Landscaping Inc.*, 2024 NBKB 228 at paras. 22–23; *Viper Concrete 2000 Inc. v. Agon Developments Ltd.*, 2009 ABQB 91 at paras. 30–38; *Centura Building Systems (2013) Ltd. v. 601 Main Partnership*, 2022 BCSC 295 at para. 102. Although these cases are generally concerned with professional contractors, this point arguably goes to the determination of the appropriate standard rather than to the recognition of an objective standard in the first place. In this case,

both the recognition of an implied term and the determination of the relevant standard were matters within the scope of the arbitrator's jurisdiction as a member of an expert tribunal with exclusive responsibility to decide issues of fact and law relating to residential tenancies. In my view, the arbitrator's conclusion that the renovations contemplated in the settlement order had to be done to some reasonable standard of handiwork was not irrational or evidently against reason.

[46] Mr. Lamarche also says the arbitrator erred in determining that the renovations failed to meet the required standard, in the absence of expert evidence about the quality of handiwork generally expected in residential renovation projects. Again, this submission fails to come to grips with the arbitrator's status as a member of an expert tribunal responsible for deciding all issues of fact and law relevant to the determination of residential tenancy disputes. The evidence before the arbitrator included photographs of Mr. Lamarche's mobile home showing, among other things, that: (i) the exterior walls were covered by elastomer on the front and plywood on the sides, and (ii) the buckets on the roof had been replaced with paint cans. Against this backdrop, the arbitrator's finding that Mr. Lamarche failed to complete the renovations contemplated in the settlement order was not patently unreasonable, in the sense of being so flawed that no amount of curial defence could allow it to stand.

Disposition

[47] I would dismiss the appeal.

"The Honourable Justice Riley"

I AGREE:

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Justice Donegan"