

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fraser v. 1392383 B.C. Ltd.*,
2025 BCSC 1669

Date: 20250828
Docket: S255310
Registry: New Westminster

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Janet Fraser

Petitioner

And

1392383 B.C. Ltd.

Respondent

Before: The Honourable Madam Justice Sukstorf

On judicial review from: Orders of the Residential Tenancy Branch dated June 18,
2024, and August 27, 2024.

Reasons for Judgment

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Place and Dates of Hearing:

Port Coquitlam, B.C.
March 14 and June 10, 2025

Place and Date of Judgment:

New Westminster, B.C.
August 28, 2025

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OVERVIEW

[1] This is a petition for judicial review filed by Ms. Janet Fraser, a 73-year-old tenant who has resided in the same rental unit for over 20 years. She challenges two decisions of the Residential Tenancy Branch (“RTB”) that upheld a Four Month Notice to End Tenancy.

[2] The petitioner, Ms. Fraser, lives in an eight-unit rental complex (the “building”). She lives with her partner, Jerry, who is 69 years old, deaf, and suffers from stage 4 cancer and multiple sclerosis. Having occupied the unit for over 20 years, she pays just \$780 per month, which is significantly below-market rent. Ms. Fraser believes that her rent is the lowest in the building. Losing this long-standing, affordable housing would cause severe hardship for both Ms. Fraser and her partner, Jerry.

[3] In October 2023, the building was sold to new owners, the numbered company 1392383 B.C. Ltd. (the “Landlord”). The corporate Landlord is the respondent in this case.

[4] Shortly after the purchase, the Landlord served Ms. Fraser with a Notice to End Tenancy for Demolition and Conversion of the Rental Unit (the “First Notice”). The First Notice was subsequently cancelled due to a misspelling of the Landlord’s name.

[5] In February 2024, the Landlord served Ms. Fraser with a second Four Month Notice to End Tenancy for Demolition and Conversion of the Rental Unit (the “Second Notice”). The Landlord asserted that it intended to convert the rental unit for use by a caretaker. Ms. Fraser contested the notice at the RTB but was unsuccessful. On June 18, 2024, the RTB granted the Landlord an Order of Possession (the “Underlying Decision”).

[6] In response, Ms. Fraser requested a review consideration, which was granted, but was ultimately unsuccessful. On August 27, 2024, the RTB upheld the

underlying decision and ordered Ms. Fraser to vacate the unit by September 30, 2024 (the “Review Decision”).

[7] Ms. Fraser filed this petition on September 26, 2024. Ms. Fraser asserts that the Underlying Decision was both patently unreasonable and procedurally unfair. She especially challenges the legitimacy and good faith of the Second Notice. She also asserts that the Review Decision was patently unreasonable.

[8] At the heart of this case is whether the RTB’s decisions were procedurally fair and whether the arbitrator’s acceptance of the landlord’s good faith was patently unreasonable. Ms. Fraser contends that she was denied a meaningful opportunity to present her case and that the arbitrator failed to properly assess the evidence and explain the basis for the conclusions reached.

[9] Because more than 60 days passed between the RTB’s Underlying Decision and the filing of this petition, Ms. Fraser first seeks an extension of time under s. 57(2) of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA] to challenge that decision. She argues that the delay occurred because she pursued the internal Review Consideration process available under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA], which resulted in the Review Decision. The Review Decision was issued within the statutory timeframe and is properly before the court.

[10] For the reasons that follow, I find that both the Underlying Decision and the Review Decision must be set aside. The arbitrator failed to assess the landlord’s good faith meaningfully, did not engage with key contradictory evidence, and relied on untested and unexplained affidavit evidence in reaching their conclusion. The arbitrator also failed to address relevant statutory preconditions, specifically, whether the necessary permits had been obtained, and did not consider reasonable alternatives before accepting that the tenancy must end. These combined errors make the decisions patently unreasonable.

ISSUES

[11] In coming to my findings, I examined the following issues:

- a) Should the Court grant an extension of time under s. 57(2) of the *ATA* to allow judicial review of the Underlying Decision?
- b) Was the arbitrator's Underlying Decision patently unreasonable?
- c) Was the process leading to the Underlying Decision procedurally unfair?
- d) Was the arbitrator's Review Decision patently unreasonable?

FACTS

[12] The Landlord purchased the building, on June 22, 2023, and provided notice to the tenants advising them of the sale on June 23, 2023.

[13] In October 2023, the Landlord served Ms. Fraser with the First Notice. In an affidavit, Ms. Fraser stated that when she received the First Notice, she believed the Landlord was not acting in good faith. Still, she attempted to negotiate a rent increase with the Landlord in exchange for dropping the eviction. The Landlord's agent refused, stating that he could rent the unit for \$1,500-\$2,000 more than she was paying. Ms. Fraser, with the help of a friend, successfully disputed the First Notice, and the notice was cancelled.

[14] In January 2024, a major water leak caused minor damage to several units in the building and significant damage to Unit #1 and Unit #7. Unit #7 is Ms. Fraser's unit. Her unit was particularly affected and sustained extensive water damage that resulted in a large hole in the ceiling. As of the date of this petition, the hole remains and is covered only by a tarp.

[15] According to Ms. Fraser's sworn evidence, she learned that around January 2024, the Landlord had submitted, and subsequently cancelled, an application to the RTB that sought vacant possession of both Unit #7 and Unit #1 to undertake renovations.

[16] This assertion is supported by contemporaneous correspondence from January 2024 in which the Landlord's contractor and property manager advised

Ms. Fraser that the unit would be uninhabitable and urged her to vacate to allow restoration work to be carried out. Further, during a subsequent RTB hearing, the Landlord acknowledged having considered such an application, although confirmed that none was ultimately pursued.

[17] On February 20, 2024, the RTB cancelled the First Notice because the Landlord's legal name, a numbered company, was misspelled, with one digit missing.

[18] On February 29, 2024, nine days after the First Notice was cancelled, the Landlord issued a second Four Month Notice to End Tenancy for Demolition or Conversion of a Rental Unit (the "Second Notice"). It was substantially similar to the first, except it corrected the Landlord's information and included revised dates.

[19] The Second Notice stated that the eviction was issued so that the Landlord could "convert the rental unit for use by a caretaker," but also stated that painting and cleanup were the only tasks required for the conversion.

[20] Ms. Fraser contests the legitimacy of this statement and argues that both the property manager and the renovation company advised her that she would need to vacate the unit for at least three months to accommodate proper repairs from the water damage.

[21] On March 19, 2024, Ms. Fraser filed a Dispute Resolution Application to contest the Second Notice. A hearing was scheduled for April 19, 2024. The Landlord did not attend the hearing. As a result, the RTB cancelled the Second Notice and granted Ms. Fraser a monetary order to recover the filing fee (the "April Decision").

[22] On May 15, 2024, the Landlord filed a Review Consideration Application. The Landlord sought to overturn the April Decision on the basis that it had not received notice of the hearing date. A review hearing was granted and was conducted on June 13, 2024.

[23] Before the hearing, Ms. Fraser submitted two additional evidence packages: one included new material related to other alleged bad faith evictions, the other incorporated the original evidence that had been submitted with her Notice of Dispute. This evidence had already been sent to the Landlord by registered mail.

The June 2024 Hearings and Underlying Decision

[24] The transcript from the June 2024 hearing indicates that the arbitrator confirmed the June 2024 hearing would proceed, *de novo*, as a new hearing.

[25] At the hearing, the Landlord's agent, Mr. Khela, and the Landlord's legal counsel appeared. The Landlord's representatives submitted an affidavit and an employment agreement that indicated a designated caretaker would occupy Unit #7 after Ms. Fraser's departure. The Landlord also asserted that only Unit #7 was available and suitable for the designated purpose.

[26] Ms. Fraser disputed the Landlord's claim that only Unit #7 was available for caretaker use. She testified that four other units in the building were vacant and therefore could have been used for this purpose. To support her position, she produced three eviction notices that had been issued to other tenants in the same building only months earlier, each citing "family use" as the reason for ending the tenancy.

[27] Two of those notices listed the landlord as Harman Basutta, who does not appear on the corporate registry for the numbered company that owns the building. Ms. Fraser asserted that the notices were later deemed invalid, as a numbered company cannot issue evictions for family use, and such evictions are not permitted in buildings with more than five units. A third notice, which also cites family use, listed a different individual, Harpreet Khela, as the landlord. Ms. Fraser argues that this evidence, in combination with her own notice, shows a pattern of bad-faith evictions whereby the Landlord was targeting tenants who pay below-market rent.

[28] In response, the Landlord asserted that only Unit #7 was fit for occupation by a caretaker. He noted that the other habitable units in the building were already

occupied by the landlord's family members or agents and that the other vacant units were not currently habitable due to the water damage.

[29] The Landlord also said that Unit #7's location and configuration were particularly well-suited to the operational needs of an on-site caretaker because the unit was located at the rear of the building and had direct exterior access. The Landlord also stated that a caretaker's presence in that location would enhance security, facilitate a prompt response to maintenance issues, and help prevent future incidents, such as the January 2024 water leak, which caused significant damage.

[30] During the June 2024 hearing, Ms. Fraser questioned the Landlord's agent about the status of other vacant units in the building. She states that his answers on this point were evasive. He claimed he planned to combine Units #1 and #3 by opening the wall between them for his use, but he did not give a clear answer about what was transpiring with Unit #2. He also said that his parents would eventually occupy Unit #4, though he provided no supporting evidence.

[31] Regarding the claim that Unit #7 was needed for a live-in caretaker, the Landlord's agent stated that the Landlord intended to retain the current property management company while also appointing an on-site caretaker. However, the property management company's representative testified that, in their experience, they had never managed a building that also had a live-in caretaker.

[32] The Landlord also confirmed that all the residential units in the building are the same size and layout and consist of two bedrooms and one bathroom. This evidence is relevant to the petitioner's argument that alternative units were available and similarly suited for either a caretaker's use or for Ms. Fraser to be relocated into.

[33] On June 18, 2024, Arbitrator Hedrich issued the Underlying Decision, which dismissed the tenant's application and granted the Landlord an order of vacant possession. In coming to this conclusion, the arbitrator assessed the evidence and concluded:

Although it may not seem fair to the tenant or the tenant's Advocate, the law permits landlord to end a tenancy in certain situations. Considering the evidence in the testimony, I am satisfied that the landlord has established good faith to accomplish the stated purpose for ending the tenancy.

[34] Ultimately, the Underlying Decision, issued on June 18, 2024:

- a) Set aside the April 19, 2024, decision and dismissed Ms. Fraser's application in its entirety, without leave to reapply; and
- b) Granted the Landlord an order of possession, effective July 31, 2024, at 1:00 p.m.

The Internal Review Consideration and Review Decision

[35] On June 24, 2024, Ms. Fraser requested a Review of the Underlying Decision on the following grounds:

- a) new and relevant evidence that was not available at the time of the previous hearing;
- b) false information or fraud;
- c) procedural error; and
- d) additional time required to file the Review Consideration Application.

[36] I note that the Review Consideration process is a mechanism that is internal to the RTB, and that a review will only be granted if the applicant can show that one of the grounds enumerated in s. 79(2) of the *RTA* is present.

[37] On June 28, 2024, the application was granted on the grounds of new and relevant evidence and of fraud. The Underlying Decision and corresponding orders were therefore suspended, pending review.

[38] The review hearing commenced on July 31, 2024, but was unable to be completed and was subsequently adjourned. As a result, on August 1, 2024,

Arbitrator Hedrich issued an interim decision adjourning the hearing to August 21, 2024. The review hearing resumed on August 21, 2024.

[39] At the two hearings, the arbitrator, who also heard and authored the Underlying Decision, declined to review any evidence related to the alleged procedural issue.

[40] At the review hearings, Ms. Fraser advanced an argument that her eviction notice was not issued in good faith and was part of a larger scheme to remove lower-paying tenants from the building. She testified about the availability of other units and her observations of the renovations. She also presented additional evidence, which highlighted inconsistencies in the Landlord's evidence.

[41] Ms. Fraser primarily focused on the fact that the Landlord had misrepresented the nature and extent of renovations being undertaken. She highlighted that while the landlord stated that he intended to connect Units #1 and #3, no such connection had been completed, and, in fact, the wall that would allegedly be knocked down to connect the units had recently been repaired.

[42] The Review Decision also noted that Ms. Fraser testified to the following inconsistency:

The Notice to end the tenancy was issued on February 23, 2024 and the tenant was to vacate on July 1, 2024 and the new caretaker's contract was signed on March 23, 2024 to commence those duties on July 1, 2024. However, there are 3 months of work to be done, so the caretaker wouldn't be able to move in until October 1, 2024 at the earliest.

[43] In response, the Landlord stated that he intended to connect Units #1 and #3 but had not done so because no permits had been obtained. He explained that, following the flood, the insurance company required all damaged units to be repaired at the same time, which necessitated rebuilding the wall between Units #1 and #3. He added that his long-term plan was to remove the wall and install a door to connect the units. At the same time, however, the Landlord acknowledged that no renovations had begun on Units #2, #3, and #4, even though they too were

damaged in the flood. This further underscored the inconsistency in the Landlord's account of the timing and scope of the repairs.

[44] Notwithstanding the many points raised by Ms. Fraser, on August 27, 2024, the arbitrator issued the Review Decision, which dismissed Ms. Fraser's review request but varied the effective date of the vacancy to September 30, 2024.

[45] Ultimately, the arbitrator found that while Ms. Fraser had adduced new information that "may have had an effect on the final Decision of June 18, 2024", the arbitrator was "not satisfied that it has an effect, or that the tenant has established that the Decision of June 18, 2024 was obtained by fraud."

[46] On September 26, 2024, Ms. Fraser filed a Petition for Judicial Review, challenging both the Underlying Decision and the Review Decision. An Amended Petition was filed on January 21, 2025.

[47] Ms. Fraser argues that the Underlying Decision was both patently unreasonable and procedurally unfair. She also argues that the Review Decision is patently unreasonable. Specifically, she asserts that the arbitrator erred in law by failing to assess the credibility of the landlord's affidavit evidence, by accepting that the Landlord provided the notice in good faith, by improperly dismissing her concerns about procedural fairness, and by not providing sufficient reasons.

[48] The petition was filed more than 60 days after the Underlying Decision, which was published on June 18, 2024. The petitioner seeks an extension of time in accordance with s. 57(2) of the *ATA*.

[49] I note that, as of the date of this proceeding, Ms. Fraser remained in the rental unit. Ms. Fraser indicated to the court that she has no place else to go.

[50] To their credit, the Landlord has not taken steps to enforce the Order of Possession. Instead, the parties reached an informal agreement that Ms. Fraser could remain in the unit until the outcome of this judicial review is determined.

STANDARD OF REVIEW

[51] Section 84.1 of the *RTA* grants the director of residential tenancies exclusive and final jurisdiction to inquire into, hear, and determine all matters and questions of fact, law, and discretion arising from a dispute resolution proceeding or review. Section 84.1(2) suggests that orders made under this exclusive jurisdiction are not subject to review or question in any court; however, s. 5.1 of the *RTA* incorporates s. 58 of the *ATA*.

[52] Accordingly, in accordance with s. 58 of the *ATA*, because the RTB is protected by a privity clause, the court maintains the ability to judicially review RTB decisions, on the standard of review articulated in s. 58 of the *ATA*: *Kohli v. Van Essen*, 2023 BCSC 1710 at para. 31; *Qi v. Hill*, 2024 BCSC 1845 at para. 27.

[53] Section 58(2)(a) states that findings of fact or law, or exercises of discretion by the expert tribunal regarding matters within their exclusive jurisdiction under a privative clause are only reviewable on the standard of patent unreasonableness.

[54] Under s. 58(2)(b) of the *ATA*, questions about the application of standard common law rules of natural justice and procedural fairness must be determined by considering whether, in all the circumstances, the tribunal acted fairly.

[55] All other matters which are not identified in either s. 58(2)(a) or 58(2)(b), are reviewed on the standard of correctness.

[56] For those grounds of judicial review which relate to the arbitrator's findings of fact, law, or mixed fact and law, the petitioner bears the onus of showing that the findings are patently unreasonable.

[57] A decision is patently unreasonable if it is clearly irrational or evidently not in accordance with reason: *Yee v. Montie*, 2016 BCCA 256 at para. 22, citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52.

[58] Pursuant to *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*], when conducting a judicial review, the court is required to focus

on the reasons given by the tribunal, and not engage in its own “treasure hunt for error”: *Vavilov* at paras. 84, 91, and 102.

[59] It is therefore not open to the court to second-guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. Stated slightly differently, a decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz v. Sundher*, 2009 BCCA 92 at para. 39, citing *Speckling v. British Columbia (Workers’ Compensation Board)*, 2005 BCCA 80 at para. 37.

[60] Further, as the Court of Appeal confirmed in *Aarti Investments Ltd. v. Baumann*, 2019 BCCA 165 [*Aarti*], an RTB decision will be patently unreasonable if it fails to address the statutory criteria in the *RTA* when determining whether a landlord may terminate a tenancy to conduct repairs or renovations:

[26] In my opinion, [*Allman v. Amacon Property Management Services Inc.*, 2006 BCSC 725] is authority for the simple proposition an RTB decision is patently unreasonable if it does not address the criteria established in the *RTA* when determining whether a landlord may evict a tenant to do repairs or renovate.

[61] It is also well-established that decisions reached through an unfair process cannot stand. In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699 (S.C.C.) at para. 22, the Supreme Court of Canada outlined the flexible nature of procedural fairness, which must be tailored to the context of the specific decision and the rights affected.

[62] Procedural fairness is variable and depends on the statutory, institutional, and social context in which the decision is made. The participatory rights contained within the duty of procedural fairness are designed to ensure that administrative decisions are fair, transparent, and permit affected parties to fully present their views and evidence: *Baker* at para. 22.

[63] Several factors determine the content of the duty of fairness, including:

- a) The nature of the decision being made and the process followed in making it;
- b) The statutory scheme under which the decision is made;
- c) The importance of the decision to those affected;
- d) The legitimate expectations of the parties involved; and
- e) The choice of procedure made by the agency itself.

[64] Firstly, I must determine which decision is properly the subject of judicial review. On this point, I am guided by the remarks of Justice MacNaughton in *Najaripour v Brightside Community Homes*, 2023 BCSC 2032:

[50] There has been some controversy about whether, when a statutory scheme provides for an internal review procedure, it is the original or the review decision that is the proper subject of the judicial review.

[51] In *Sereda v. Ni*, 2014 BCCA 248, the Court followed *United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung*, 2011 BCCA 527, and determined that the review decision was the subject of the judicial review but that the original decision should form part of the record and “inform” the inquiry on judicial review: at para. 26.

[52] In *Martin v. Barnett*, 2015 BCSC 426, Justice Burke reviewed the law in this area and concluded that in two subsequent decisions, being *Yellow Cab Co. v. British Columbia (Passenger Transportation Board)*, 2014 BCCA 329 and *Fraser Health Authority v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2014 BCCA 499, the Court of Appeal clarified the law and concluded that when an internal review decision does not address the merits of the underlying decision, the original decision should be the subject of the judicial review: at para. 44. Justice Sewell followed Burke J.’s reasoning in *Ndachena v. Nguyen*, 2018 BCSC 1468: at paras. 34–37.

[65] *Najaripour* was subsequently endorsed in *Schuld v Li*, 2025 BCSC 681:

[20] In this case, as in *Najaripour*, the Adjudicator in the Review Decision did not review the merits of the Decision. As in *Najaripour*, the scope of the Review Decision was largely whether new evidence should be admitted and whether fraud occurred. While the Adjudicator in the Review Decision did reference the factual findings in the Decision in passing, this was done in the context of suggesting that the Tenant was improperly attempting to “reargue” the case on reconsideration and not in an attempt to address the legal import of those factual findings on the merits.

[21] Therefore, in my view, it is the Decision that is the subject of the judicial review, although I will also address the merits of the Review Decision in these reasons.

[66] In summary, *Najaripour* confirms that where an internal review decision does not address the merits of the underlying decision but is limited to issues such as fraud or the admission of new evidence, it is appropriately the original decision that is the subject of judicial review. This approach was recently endorsed in *Schuld*, where the review decision was similarly confined to collateral matters and not the merits. The exact circumstances arise here: the Review Decision was primarily about whether new evidence should be admitted and whether fraud occurred, and it did not address the merits of the Underlying Decision, or the concerns raised by Ms. Fraser in relation to procedural unfairness.

[67] Accordingly, the Underlying Decision is the proper subject of this judicial review, on the standard of review articulated in s. 58 of the *ATA*.

RELEVANT STATUTORY PROVISIONS

[68] Part 4 of the *RTA* addresses how to end a tenancy. In accordance with s. 49(6), a landlord may end a tenancy for a rental unit if the landlord has all the necessary permits and approvals required by law and intends, in good faith, to convert the rental unit for use by a caretaker, manager, or superintendent of the residential property.

[69] As explained by the Court of Appeal in *Aarti*, once a tenant disputes a s. 49(6) notice, the matter proceeds under Part 5 of the *RTA*, with an arbitrator making a binding decision subject only to an internal review process (at para. 13).

[70] If an arbitrator, acting under the authority of the Director, determines that a notice to end tenancy was not issued in good faith, the statute provides broad remedial authority. Section 68(2)(b) of the *RTA* permits the Director to set aside a notice that does not comply with the Act, including where it was issued in bad faith, or to modify the notice to reflect a lawful and reasonable outcome. Where a notice is set aside, the tenancy continues as though the notice had never been given.

[71] On judicial review, this Court does not determine good faith afresh but asks whether the arbitrator reasonably applied the correct legal test. In *Aarti*, the Court of Appeal clarified that the test for “good faith” in s. 49 of the *RTA* requires more than accepting a landlord’s stated intention at face value. The inquiry the arbitrator must undertake has two elements: (1) whether the landlord genuinely intends to occupy the unit (or otherwise use it for the stated statutory purpose); and (2) whether that intention is free of any ulterior or improper motive. An arbitrator must therefore not only identify the issue of good faith but must also grapple with the tenant’s evidence of an ulterior motive and make findings on that evidence (*Aarti*, at para. 39).

[72] In applying this test, the Court of Appeal in *Aarti* emphasized that “good faith” requires an honest and genuine intention to follow through with the stated purpose, unaccompanied by any dishonest or ulterior motive.

[73] Whether the honest motive is primary or secondary is immaterial; any improper motive may invalidate the notice: *Aarti* at paras. 37–39. Thus, even where a landlord may genuinely and honestly intend to appoint a caretaker, if the choice to situate the caretaker in a particular unit is influenced by the ulterior goal of displacing a long-term tenant paying below-market rent, the notice cannot be said to have been issued in good faith.

[74] On judicial review, the Court must be satisfied that the arbitrator considered whether the landlord’s intention reflected a genuine and honest commitment to convert the unit for the stated purpose.

[75] The Court of Appeal in *Aarti* also clarified that where bad faith is alleged, the burden lies with the landlord to establish that the notice was issued in good faith (at para. 39). An arbitrator’s failure to apply that onus correctly, or to shift the burden onto the tenant, amounts to legal error.

[76] The modern approach to statutory interpretation, as articulated in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (S.C.C.), requires that statutory provisions be interpreted harmoniously with the scheme and object of the

overarching Act. The *RTA* forms part of the suite of legislative instruments that “support and protect the rights of both landlords and tenants, ensuring that all tenancy business is conducted properly and fairly.”¹

[77] The *RTA* applies uniformly to both private-market and subsidized tenancies, establishing consistent standards of conduct and dispute resolution. Notably, it provides statutory protections for tenants that would not otherwise be enforceable at common law. As such, it is remedial legislation, designed to safeguard tenants against unlawful evictions and to promote fairness in the landlord-tenant relationship.

[78] In summary, the question on judicial review is not whether the landlord acted in good faith, but whether the arbitrator reasonably applied the correct legal tests and engaged with the tenant’s evidence. It is against this framework that I now assess the arbitrator’s reasons.

POSITIONS OF THE PARTIES

Ms. Fraser’s Position

[79] Ms. Fraser requests that the court judicially review both the Underlying Decision and the Review Decision. She requests that the court set aside both decisions as well as their corresponding orders of possession. She also seeks an extension of time under s. 57(2) of the *ATA*, costs, and any other relief the court deems.

[80] Concerning the Underlying Decision, Ms. Fraser claims that the decision was both patently unreasonable and procedurally unfair.

[81] Specifically, she contends that the arbitrator failed to meaningfully assess whether other suitable units were available for the caretaker’s use. She also asserts that the arbitrator improperly accepted the Landlord’s Affidavit and Employment

¹ “Tenancy laws and regulations,” *Government of British Columbia*, online: Government of British Columbia <https://www2.gov.bc.ca/gov/content/housing-tenancy/residential-tenancies/calculators-and-resources/tenancy-laws-rules>.

Agreement at face value, notwithstanding those earlier communications and the actions of the Landlord, which contradicted the Landlord's evidence.

[82] Consequently, Ms. Fraser asserts that the arbitrator failed to properly, and clearly, interpret and apply the legal test for good faith. In Ms. Fraser's view, the failure to correctly apply the test, and the failure to provide adequate reasons which clearly explain how the arbitrator applied their findings of fact to the legal test for good faith, rendered the decision patently unreasonable.

[83] Ms. Fraser further submits that the June 18, 2024, hearing was procedurally unfair in three key respects:

- a) she was not allowed to cross-examine the witness whose affidavit formed a central part of the arbitrator's reasoning;
- b) she was pressured to conclude her submissions prematurely and was not given sufficient time to present her case fully; and
- c) the arbitrator failed to provide adequate reasons for the decision, including insufficient analysis of contradictory evidence and credibility concerns.

[84] Regarding the Review Decision, Ms. Fraser argues that it was patently unreasonable. She submits that the arbitrator failed to consider new evidence properly and did not permit her to respond to the Landlord's submissions. In her view, the review proceeding amounted to a mere affirmation of the original decision, without a genuine reconsideration of the issues considering the new evidence.

[85] Lastly, Ms. Fraser submits that the delay in filing for judicial review was justified given her medical condition, lack of legal representation, and reasonable and good faith efforts to exhaust internal remedies through the RTB review process before filing for judicial review.

Respondent's Position

[86] The Landlord submits that neither the Underlying Decision or the Review Decision contain any reviewable error and, therefore, Ms. Fraser's petition should be dismissed with costs.

[87] The Landlord contends that the arbitrator correctly identified and applied the legal test under s. 49(6)(e) of the *RTA*, properly assessed the issue of good faith, and reached a conclusion supported by the evidentiary record. In the Landlord's view, the arbitrator's reasons, while concise, were intelligible, transparent, and legally sufficient.

[88] The Landlord maintains that Ms. Fraser was afforded a full and fair opportunity to present her case at multiple RTB hearings, where lay agents represented her, submitted written materials, and had the right to request cross-examination of the caretaker or other witnesses. The Landlord asserts that it was Ms. Fraser's decision not to cross-examine witnesses and that any shortcomings in the evidentiary record were caused by Ms. Fraser's strategic choices, not from any procedural unfairness or deficiency in the process.

[89] The Landlord further submits that the Underlying Decision should not be subject to judicial review, as it was already reconsidered through the RTB's internal review process, which culminated in the Review Decision which substantively re-evaluated the evidence and confirmed the outcome of the original hearing. The Landlord asserts that judicial review of the Underlying Decision would therefore be redundant and contrary to the statutory framework.

[90] Even if judicial review of the Underlying Decision is permitted, the Landlord maintains that it was neither patently unreasonable nor procedurally unfair.

[91] The Landlord also opposes Ms. Fraser's request for an extension of time under s. 57(2) of the *ATA* because she has not demonstrated serious grounds for relief, has failed to offer a reasonable explanation for the delay, and has not shown

that granting the extension would avoid prejudice. The Landlord also contends that the delay has caused ongoing uncertainty and increased legal costs.

[92] In sum, the Landlord argues that both RTB decisions were lawful, reasonable, and procedurally fair, and that Ms. Fraser’s petition reflects disagreement with the substantive outcome, which is not a valid ground for judicial intervention.

ANALYSIS

a. Threshold Issue – Extension of Time

[93] Ms. Fraser seeks judicial review of two RTB decisions, both of which were rendered by the same arbitrator. The Underlying Decision was dated June 18, 2024, and the Review Decision was dated August 27, 2024.

[94] Section 57(1) of the *ATA* provides that a judicial review of a final decision must be commenced within 60 days of the date the decision is issued. The Petition for Judicial Review was filed on September 26, 2024.

[95] The petition was filed exactly 30 days after the Review Decision was issued; however, the Underlying Decision was issued more than 90 days before the petition was filed and is therefore outside the 60-day limitation period. As noted, the Underlying Decision is correctly the subject of this judicial review.

[96] In accordance with s. 57(2) of the *ATA*, Ms. Fraser requests an extension of the time limit to file for the review of the Underlying Decision. Section 57(2) allows the court to “extend the time for making the application on terms the court considers proper” if the following three specific conditions are satisfied:

- a) there are serious grounds for relief;
- b) there is a reasonable explanation for the delay; and
- c) no substantial prejudice or hardship will result to a person affected by the delay.

[97] These criteria are conjunctive, and Ms. Fraser must establish all three to justify an extension: *Denton v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2016 BCSC 1219 at para. 6; *Van Dam v. Workers' Compensation Appeal Tribunal*, 2017 BCSC 227 at para. 28.

[98] I am satisfied that Ms. Fraser has proven all three conditions.

[99] Ms. Fraser has demonstrated serious grounds for relief. She alleges both procedural and substantive errors, including a failure of the Arbitrator to assess the Landlord's good faith and inadequate reasons. These are not frivolous allegations. I find that Ms. Fraser's petition raises arguable grounds for judicial intervention and serious grounds for relief.

[100] Regarding the reason for the delay, the petitioner is 73 years old. In addition to managing her own health needs, she also cares for her partner, who is deaf and is suffering from stage 4 cancer and other chronic health issues. She was self-represented for much of the proceedings. After exhausting the internal RTB review options, she eventually sought assistance from a community legal clinic. Such legal service providers often operate at capacity, given the overwhelming demand for free services, and therefore experience delays. Such delays are beyond Ms. Fraser's control.

[101] I find that it was not unreasonable for Ms. Fraser to believe that the appropriate course of action following the Underlying Decision was to pursue an internal review, as provided for by the *RTA*. The evidence also suggests that Ms. Fraser did take timely steps to request an internal reconsideration.

[102] In these circumstances, and given her age, health status, and limited legal resources, she should not be prejudiced for attempting to resolve her dispute within the administrative scheme before turning to the courts. There is a reasonable explanation for the delay.

[103] Finally, I am not convinced that any significant prejudice will result for the Landlord if the extension is granted. The Landlord was aware that the matter

remained active, as Ms. Fraser promptly pursued a statutory review. No evidence has been presented to indicate that the delay has hindered the Landlord's ability to respond or that the delay has caused material hardship.

[104] Accordingly, I find that all three criteria under s. 57(2) are met and I exercise my discretion to extend the time for judicial review.

b. Underlying Decision – Patent Unreasonableness

[105] As stated above, the Underlying Decision is the correct subject of judicial review. With respect to the Underlying Decision, Ms. Fraser asserts that the arbitrator failed to correctly state and apply the test for a good faith eviction, and that this error resulted in a patently unreasonable decision. Much of Ms. Fraser's claims related to good faith rest on her assertions that the arbitrator's reasons were inadequate as they insufficiently addressed the issue of good faith.

[106] In accordance with s. 58(2)(a) of the *ATA*, the arbitrator's finding related to the Landlord's good faith may only be interfered with if they are patently unreasonable. As my reasons below will show, I find that the Underlying Decision is patently unreasonable.

[107] Under s. 49(6)(e) of the *RTA*, a landlord may end a tenancy if they have all necessary permits and approvals required by law and intend, in good faith, to convert the unit for use by a caretaker.

[108] As stated above, in applying the good faith standard, the decision-maker must consider both whether the landlord has an honest intention to follow through with the stated purpose of the notice and whether the notice was given for some ulterior purpose. The decision-maker must also avoid an overly narrow approach and must consider the remedial legislative intent of the *RTA*.

[109] In this case, the arbitrator found that the Landlord's actions were undertaken in good faith. After a review of the Underlying Decision, I find that while the arbitrator correctly stated the test for good faith, the arbitrator failed to adequately explain how

the test for good faith was met in these circumstances. In this case, the arbitrator's application of the good faith test was primarily limited to the following remarks:

I have reviewed all of the evidence, and I am satisfied that the tenant has established that a number of attempts have been made to have the tenant vacate the rental unit. However, a good number of those attempts were for repairs. I also accept the testimony of the landlord's agent that the insurance company intends to restore all units at once rather than one at a time. However, that is not the issue; the issue is whether or not the landlord intends in good faith to convert the rental unit and whether or not the previous attempts to end the tenancy put the good faith requirement into question.

I also consider the Employment Agreement between the future caretaker and the landlord company, as well as the sworn Affidavit of the future caretaker. Although the future caretaker did not attend to testify, and therefore was not subject to cross examination, I find the documents speak for themselves.

Although it may not seem fair to the tenant or the tenant's Advocate, the law permits a landlord to end a tenancy in certain situations. Considering the evidence and the testimony, I am satisfied that the landlord has established good faith to accomplish the stated purpose for ending the tenancy.

[110] I note that the arbitrator accepted, on the evidence before them, that the Landlord intended in good faith to employ a live-in caretaker. However, the analysis stopped there. It did not extend to the second element of the test: considering whether the Landlord had an ulterior motive in making that decision, or in designating Ms. Fraser's unit, rather than another available or comparable unit, as the one to be used.

[111] As described in *Aarti*, the good faith inquiry requires the arbitrator to assess both elements: (1) whether the landlord genuinely intended to act on the stated purpose; and (2) whether that intention was free of any dishonest or ulterior motive, whether primary or secondary. The arbitrator's reasons did not address the second element of the good faith inquiry. This omission was material because it left unexplained how the statutory test was applied and whether the possibility of an ulterior motive was considered.

[112] The concern was not abstract. Ms. Fraser advanced evidence that directly raised the possibility of a dishonest or ulterior purpose. She pointed to a pattern of inconsistent and shifting explanations for why she needed to vacate the unit,

including multiple attempts to evict her based on required repairs, followed by the inconsistent assertion, without any intervening change in circumstances, that the unit would instead be used to house a caretaker immediately.

[113] Ms. Fraser provided consistent and contemporaneous evidence, including communications from the Landlord's property manager and contractors, that indicated that Unit #7 was uninhabitable and that Ms. Fraser needed to vacate so that extensive repairs could be carried out.

[114] This justification for eviction was reiterated in multiple communications from the property manager and building contractor. It formed the basis for Ms. Fraser's original understanding that the tenancy would end due to uninhabitability, not conversion. However, shortly thereafter, the Landlord issued the Second Notice, which stated that Ms. Fraser needed to move out so that the unit could be converted for the use of a live-in caretaker.

[115] The Second Notice claimed that the unit would be ready for caretaker occupancy nearly immediately after Ms. Fraser's departure, on July 1, 2024, despite numerous communications indicating that the repairs would take three months to complete and that no meaningful repair work had begun. The Second Notice also stated that only painting and cleanup would be necessary for conversion.

[116] The Landlord suggests that Ms. Fraser obstructed repairs and that this was the reason for the inconsistent justification for eviction; however, this does not address the core issue, which is whether the Landlord truly intended to convert the unit for caretaker use on July 1, 2024, as stated in the Second Notice.

[117] As noted above in the Facts section, Ms. Fraser produced three other eviction notices that had recently been issued to tenants in the same building, each citing "family use" as the reason for ending the tenancy. Section 49(1) outlines the relevant definitions applicable. Under ss. 49(3) and (4) of the *RTA* and *RTB Policy Guideline 2A* stipulate that only an individual landlord or a family corporation (as defined) may give a ss. 49(3) and (4) 'personal occupancy' notice. The Landlord in this case was a

numbered company, and two of the notices named individuals who were not on the corporate registry.

[118] While these notices were not directly at issue in this proceeding, they were significant because they suggested a broader pattern of questionable eviction practices aimed at removing tenants paying below-market rent. The arbitrator ought to have considered this evidence in assessing the Landlord's credibility, particularly given that the onus rested with the Landlord to establish that the Second Notice was issued in good faith. The failure to do so undermines confidence in the arbitrator's conclusion. As confirmed in *Aarti*, when a tenant raises evidence that calls into question whether a notice was motivated by an ulterior purpose, the arbitrator must grapple with that evidence as part of the good-faith inquiry. As emphasized in *Vavilov* at paras. 126–128, a decision is unreasonable where the reasons fail to meaningfully engage with evidence that directly bears on a central issue.

[119] The Landlord relied on two documents to support the proposition that Unit #7 would be used for a caretaker: an employment agreement with the proposed caretaker, and an affidavit sworn by the proposed caretaker. Neither document referenced the condition of the unit, the repairs underway, or any delay in occupancy.

[120] In contrast, Ms. Fraser provided recent emails and messages from the Landlord's property manager and contractor indicating that Unit #7 was uninhabitable and that repairs would take at least three months. These communications clearly stated that work could not proceed while she was in the unit and, therefore, urged her to vacate the premises.

[121] Even if there were delays in repairs due to Ms. Fraser's presence in the unit, the evidence clearly showed that the contractor needed approximately three months to repair the water damage. However, neither the Second Notice nor the caretaker's contract reflect this requirement to repair the unit on the caretaker's proposed move-in date.

[122] Despite this evidence, the arbitrator did not explain why greater weight was given to the caretaker's affidavit and employment agreement over the petitioner's contemporaneous documentary evidence from the Landlord's own contractor and property manager. These documents were untested, unexplained, and unsupported by oral testimony. The proposed live-in caretaker did not attend the hearing, was not cross-examined, and yet his affidavit appears to have been decisive.

[123] Under the two-element test set out in *Aarti*, the arbitrator was required to reconcile this untested affidavit evidence with undisputed records pointing in the opposite direction. Instead, the Landlord's evidence was accepted at face value, without explanation, even though it was central to the finding of good faith.

[124] The failure to consider relevant and directly conflicting evidence constitutes a serious omission. Adequate reasons require an adjudicator to grapple with the broader factual matrix, weighing the evidence and applying it to the legal test in a way that permits meaningful review. As emphasized in *Aarti*, the second element of the good faith test requires an inquiry into whether the landlord's intention was free of any dishonest or ulterior motive. The arbitrator's reasons did not address that question. Instead, the affidavit and contract were said to "speak for themselves," without engaging with contradictory documentary evidence or assessing whether the evidence suggested an improper purpose. As confirmed in *Vavilov* at paras. 126–128, reasons must do more than summarize evidence and state a conclusion; they must demonstrate how the evidence was assessed and why one version was preferred over another. Because the arbitrator failed to undertake this second part of the test, the decision cannot be said to rest on a meaningful application of the statutory standard.

[125] The hearing transcript further confirms that the petitioner's advocate actively challenged the credibility of the landlord's evidence, questioned the feasibility of caretaker occupancy by July 1, and highlighted the lack of progress in repairs. Ms. Fraser herself testified that a large hole remained in her ceiling—covered only

by plastic—and that no meaningful repairs had occurred since January 2024. The arbitrator provided no findings to reconcile this reality with the landlord’s position.

[126] The reasons do not reconcile how the unit could both require lengthy repairs necessitating vacancy and, simultaneously, be suitable for immediate caretaker occupancy by July 1. This inconsistency, raised by the tenant, was not addressed.

[127] Compounding the doubts about the Landlord’s good faith is the fact that Unit #2, which was in the same building, was unoccupied at the time, had only minor damage, and was identical to Unit #7. There is no explanation as to why this unit could not be used for a caretaker. Nor was there any suggestion as to why Ms. Fraser could not have been relocated to Unit #2 if her unit was the preferred option for the caretaker. Furthermore, there is no evidence to suggest that Ms. Fraser could not have been temporarily moved to Unit #2 while the Landlord repaired Unit #7. I reiterate that no documentation was provided to show that Unit #2 was uninhabitable or otherwise unavailable.

[128] At the hearing, Ms. Fraser’s advocate argued that if the Landlord’s genuine concern was completing repairs, sections 32 and 51.2 of the *RTA* provide a mechanism to support repairs without permanently ending the tenancy, such as offering alternative accommodation or a right to return after repairs. No such offer was made. The Landlord’s demand that she vacate her unit entirely, despite legal alternatives and vacant units, was central to Ms. Fraser’s claim that the Second Notice was not made in good faith, but the arbitrator did not address this issue.

[129] As highlighted earlier, even if the Landlord honestly and genuinely intended to appoint a caretaker, the choice to locate the caretaker in Unit #7, which was occupied by a long-term tenant paying well below market rent, raised the possibility of a mixed motive. As emphasized in *Aarti* at paras. 37–39, good faith requires that the notice be untainted by any dishonest or ulterior purpose, regardless of whether that improper purpose is the primary or secondary reason for ending the tenancy. The arbitrator failed to address whether the Landlord’s decision to designate Unit #7, rather than other vacant or comparable units, reflected such an ulterior motive.

[130] Given the Landlord's obligation under the *RTA* to act in good faith and to pursue reasonable alternatives before terminating a tenancy, particularly one involving a vulnerable, long-term tenant, this omission is notable and warrants further analysis.

[131] The failure to explore the alternatives proposed by Ms. Fraser, coupled with the inconsistent justifications advanced by the Landlord for terminating the tenancy, created a serious issue that the arbitrator was required to address to be satisfied that the notice had been issued in good faith under s. 49(6)(e). By not engaging with these contradictions or assessing their impact on the credibility of the Landlord's stated purpose, the arbitrator failed to demonstrate that the statutory test for good faith had been meaningfully applied.

[132] A further concern arises from the Landlord's own admissions. On the one hand, he claimed that all flood-related repairs had to be carried out simultaneously across the affected units, including Units #1 and #3. On the other hand, he admitted that he planned to combine Units #1 and #3 by removing the wall between them, a structural modification that would have required permits, but also acknowledged that no such permits had been obtained. It is possible that the Landlord intended this final conversion at some later stage, after completing the repairs. However, this issue was never explored, and there were no reasons or exploration on why most of the remediation to the damage had not occurred. No questions were posed to clarify the planned timelines, nor did the arbitrator inquire into whether the statutory requirement under s. 49(6)(e)—that all necessary permits and approvals be in place—had been satisfied.

[133] In sum, the arbitrator's failure to address core contradictions in the evidence, to consider reasonable alternatives, to grapple with the Landlord's own admissions regarding timelines and permitting, and to assess the possibility of mixed motives is not a minor defect but a fundamental shortcoming. This deprived the parties and this Court of the transparency required to meaningfully understand the basis for the arbitrator's findings.

[134] The arbitrator was required under *Vavilov* to grapple with these contradictions in the Landlord's evidence, on the one hand asserting that all units had to be repaired simultaneously, while on the other admitting that no renovations had begun on several units, but failed to provide any reasoning to reconcile them.

[135] As confirmed in *Vavilov* at paras. 126–128, a decision-maker must meaningfully grapple with the central issues raised by the parties and cannot ignore or fail to account for critical evidence. In light of the Landlord's own statements that all repairs and renovations were to be carried out simultaneously, the inconsistency between that position and his plan to later combine Units #1 and #3 was not a matter of speculation. It created a concrete issue that required the arbitrator to clarify the intended timelines and to determine whether the statutory permitting requirement under s. 49(6)(e) had been satisfied.

[136] The *RTA* is a remedial statute designed to promote security of tenure and stability in housing, particularly for long-term tenants and those in vulnerable situations. It also recognizes the legitimate interests of landlords and allows tenancy termination for lawful reasons, including for caretaker use, where the statutory conditions are met. The task of the decision-maker is to balance these interests fairly and in accordance with the law. That balance requires meaningful engagement with both the legal test and the evidence. Where, as here, the decision results in the eviction of a vulnerable, long-term tenant paying below-market rent, the consequences are especially severe. As emphasized in *Baker* at paras. 21–23, the duty of fairness is variable, and its content depends on the importance of the decision to the individual and their circumstances; more is required when the decision has grave consequences for a vulnerable person.

[137] In such circumstances, the duty to provide clear and transparent reasons is heightened because the severe impact of the eviction on a vulnerable tenant should only be imposed after a demonstrable and careful application of the statutory test to the evidence. The arbitrator's reasons do not demonstrate that the required balancing and reasoning took place.

[138] As the foregoing analysis shows, key contradictions and statutory preconditions were left unaddressed. In the absence of meaningful engagement with these issues and the relevant evidence, I find that the Underlying Decision cannot be sustained and is patently unreasonable.

c. Underlying Decision – Procedural Unfairness

[139] Although Ms. Fraser raised several concerns regarding procedural fairness in her submissions, I have addressed most of those concerns in the context of whether the Underlying Decision was patently unreasonable. The adequacy of the arbitrator's reasons, the treatment of conflicting evidence, and the failure to consider statutory preconditions are issues that overlap significantly with the reasonableness analysis. Having concluded that the Underlying Decision is patently unreasonable, it is unnecessary to go on to decide the matter based on procedural fairness.

d. Review Decision – Procedural Unfairness

[140] While I have found that the Underlying Decision is the correct subject of judicial review, I wish to briefly address the Landlord's argument that the Review Decision was a full reconsideration that cured the defects of the Underlying Decision, and, therefore, I should only consider the Review Decision. I reject this submission in its entirety.

[141] The Review Consideration decision did not revisit the adequacy of the arbitrator's reasoning; nor could it have. Review consideration decisions only review decisions on the grounds articulated in s. 79(2) of the *RTA*. These grounds do not include a reassessment of a decision based on patent unreasonableness.

[142] The Review Decision, itself, also states, "I further find this Request for Review to be an attempt to reargue the Decision of June 18, 2024." This indicates that the arbitrator declined to undertake a holistic, substantive, or *de novo* review of the Underlying Decision.

[143] Consequently, I find that the Review Decision reiterated the conclusions found in the Underlying Decision, without resolving the evidentiary inconsistencies or

engaging with the contradictions in the Landlord’s evidence. If I were required to conduct a judicial review of the Review Decision, I would find that the Review Decision fell into the same errors as the Underlying Decision, and is, for the same reasons articulated above, patently unreasonable.

DISPOSITION

[144] Accordingly, I conclude that the Underlying Decision must be set aside for patent unreasonableness. The Review Decision, which failed to correct or address the core deficiencies in the Underlying Decision, is similarly patently unreasonable.

[145] For the reasons stated above, I set aside both decisions and remit the matter to the RTB for a new hearing before a different decision-maker. A new hearing is required to ensure that the statutory criteria under s. 49 are properly applied and that the parties receive a reasoned and transparent decision.

“Sukstorf J.”