

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *The Owners, Strata Plan NW 1874 v.
Welsh,*
2025 BCSC 1794

Date: 20250915
Docket: S247475
Registry: Vancouver

Between:

The Owners, Strata Plan NW 1874

Petitioner

And

**Damien Welsh, Sheena Welsh
Sheena Welsh her in personal capacity as Executrix
of the Estate of Margarita Mary Welsh
Director, Residential Tenancy Branch**

Respondents

Before: The Honourable Justice Latimer

On judicial review from: Orders of the Residential Tenancy Branch dated September
6, 2024 and September 12, 2024

Reasons for Judgment

In Chambers

Counsel for the Petitioner:

P.J. Dougan

No further appearances

Place and Date of Hearing:

Vancouver, B.C.
July 30, 2025

Place and Date of Judgment:

Vancouver, B.C.
September 15, 2025

Table of Contents

INTRODUCTION 3

ISSUES..... 6

PRELIMINARY ISSUE: STYLE OF CAUSE 6

STANDARD OF REVIEW..... 7

**WAS THE ORIGINAL ARBITRATOR’S STATUTORY INTERPRETATION
PATENTLY UNREASONABLE?..... 8**

**WAS THE REVIEW DECISION PATENTLY UNREASONABLE FOR FAILING TO
CONCLUDE THAT S.W. MADE FALSE CLAIMS? 13**

**WAS THE STRATA AFFORDED PROCEDURAL FAIRNESS BY THE ORIGINAL
ARBITRATOR? 16**

COSTS 18

Introduction

[1] The petitioner (“Strata”) applies for judicial review from a decision of the Residential Tenancy Branch (“RTB”) arbitrator made under the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA].

[2] On May 23, 2024, the Strata served a One-Month Notice to End Tenancy for Cause (“One-Month Notice”) to the respondent, Damien Welsh (“D.W.”) who resides in a strata unit in White Rock (“Unit”). The One-Month Notice was issued pursuant to s. 138 of the *Strata Property Act*, S.B.C. 1998, c. 43 [SPA] and s. 47 of the RTA. The One-Month Notice was sent by registered mail and deemed to be served on May 28, 2024.

[3] The One-Month Notice stated that D.W. had consistently violated the Strata’s bylaws by smoking in their Unit and in their patio area which seriously interfered with other occupants’ use and enjoyment of their units and common property. The One-Month Notice alleged that repeated letters and fines for these violations had been levied against the Unit.

[4] D.W. did not file a notice of dispute in respect of the One-Month Notice.

[5] On June 18, 2024, the Strata applied to the RTB for a hearing for an order of possession pursuant to ss. 47 and 55 of the RTA.

[6] On or about August 1, 2024, the RTB convened a hearing of this matter. The Strata alleged that it was necessary for them to send the One-Month Notice because the Unit’s owner, Sheena Welsh (“S.W.”), who is also D.W.’s sibling, had been unwilling or unable to deal with the issues set out in the One-Month Notice.

[7] In a decision dated August 1, 2024 (“Interim Decision”), Arbitrator Akow (“Original Arbitrator”) outlined some preliminary concerns:

D.W. did not attend and [agents for the Strata] acknowledged when asked that they are not sure if a tenancy agreement under the Act is in place between D.W. and S.W. Further to this, there is a family relationship between the owner and Tenant. As a result, I have concerns about whether a tenancy

agreement or licence to occupy to which the *Act* applies exists between D.W. and S.W.

[8] The Original Arbitrator adjourned the proceeding to September 5, 2024, and ordered that the Strata serve S.W. with various materials. The Original Arbitrator further ordered that all parties were entitled to serve on each other additional evidence provided they did so in compliance with the timelines set out in the RTB's Rules of Procedure [*RTB Rules*]. The Original Arbitrator further ordered that the adjournment was not an opportunity for the Strata to amend the application for dispute resolution, nor to submit a new application for dispute resolution to be joined with this one, nor for D.W. to submit an application for dispute resolution to be crossed.

[9] On September 5, 2024, the RTB convened a hearing on the merits ("Merits Hearing"). At the Merits Hearing, S.W. attended and gave evidence that:

- a) S.W. is not the owner of the Unit. S.W. and D.W. are siblings. Their mother, who died in 2010, was the owner of the Unit and S.W. is the sole executor of the late mother's estate. Probate had not yet completed.
- b) D.W. is named as a beneficiary in the late mother's will ("Will").
- c) No tenancy agreement ever existed between D.W. and the late mother. D.W. has challenges and lived with the late mother until she died. After the late mother died, D.W. continued residing in the Unit.
- d) No tenancy agreement exists between D.W. and S.W. as executor of the late mother's estate.

[10] In a decision dated September 6, 2024, ("Merits Decision"), the Original Arbitrator concluded that they did not have jurisdiction to hear and decide the application. In particular, the Original Arbitrator found that a party cannot seek remedy at the RTB under s. 138 of the *SPA* and s. 47 of the *RTA*, in the absence of a tenancy agreement, to which the *RTA* applies. The Original Arbitrator concluded that the Strata had failed to prove who the owner of the Unit is, and that the Strata

failed to demonstrate the existence of a tenancy agreement or licence to occupy the Unit, between D.W. and the owner of the Unit. The Original Arbitrator was further concerned that D.W. may have an ownership interest in the Unit.

[11] The Strata sought a review of the Merits Decision at the RTB pursuant to s. 79 of the *RTA*. The two grounds advanced by the Strata were that the Merits Decision was obtained by fraud and that the Original Arbitrator had no jurisdiction for the issue determined.

[12] In a decision dated September 12, 2024 (“Review Decision”), Arbitrator Doyon (“Review Arbitrator”) dismissed the Strata’s application for a review consideration of the Merits Decision. The Review Arbitrator found that the Strata had not demonstrated that S.W. intentionally provided any false information or false evidence at the Merits Hearing. In particular, the Strata had not submitted documents to prove who the owner of the Unit is, nor had the Strata submitted documents to prove that S.W. was in contravention of the Will. Additionally, the Review Arbitrator found that the Strata had also not sufficiently demonstrated that the Original Arbitrator accepted jurisdiction over a matter they should not have.

[13] On this judicial review, the Strata argues that:

- a) The RTB’s interpretation of the *RTA* was patently unreasonable;
- b) The Review Decision is patently unreasonable because it did not find that S.W. made false claims. In particular, S.W.’s claim that the Unit had not gone through probate and that the estate owned the Unit;
- c) The Original Arbitrator did not afford the Strata procedural fairness because they dismissed arguments related to an implied tenancy, failed to consider essential evidence regarding S.W.’s ownership status, and showed a clear disposition to rule against the Strata; and
- d) The Strata abandons its claim for costs.

[14] The Director of the RTB (“Director”) filed a response to petition taking no position on the orders sought, except opposing any order of costs being made against it which, as noted, was abandoned at the hearing. It asks that the style of cause be amended to reflect that the Director, Residential Tenancy Branch is the entity with statutory authority to resolve disputes under the *RTA*.

[15] The other respondents did not file any response to petition, nor did they appear at the hearing, although they were duly served.

Issues

[16] The following issues are before me for determination:

- a) Should the style of cause be amended?
- b) What is the standard of review?
- c) Was the Original Arbitrator’s statutory interpretation patently unreasonable?
- d) Was the Review Decision patently unreasonable?
- e) Was the Strata afforded procedural fairness?

Preliminary Issue: Style of Cause

[17] The Director requests that the style of cause be amended to replace the “Residential Tenancy Branch” with “Director, Residential Tenancy Branch” as the former is not a legal entity or decision-maker, whereas the Director is, pursuant to the *RTA*. Under s. 9.1 of the *RTA* the Director delegates authority to arbitrators to resolve disputes.

[18] I order the amendment to the style of cause as sought.

Standard of Review

[19] The issues raised in this petition are to be reviewed on a standard of patent unreasonableness: see s. 5.1 of the *RTA* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA].

[20] While s. 58(2)(a) of the *ATA* makes clear that the standard of patent unreasonableness applies to “a finding of fact or law or an exercise of discretion”, the *ATA* defines patent unreasonableness only with respect to discretionary decisions (see s. 58(3)), not decisions of fact or law. In this case the petitioner’s challenges on judicial review involve both questions of fact and law. Accordingly, the common law guides the meaning of patently unreasonable to be applied in this case.

[21] The Court of Appeal recently considered the patently unreasonable standard of review in the context of a residential tenancy dispute in *Shuster v. British Columbia (Residential Tenancy Branch)*, 2024 BCCA 282, where Justice Abrioux held:

[19] A decision is patently unreasonable if there is no rational or tenable line of analysis supporting the decision, or if it “is so clearly flawed that no amount of curial deference may justify letting it stand”: *Maung v. British Columbia (Workers’ Compensation Appeal Tribunal)*, 2023 BCCA 371 at para. 42. By making legal findings inconsistent with mandatory statutory provisions, a tribunal fails to consider the language of its enabling statute, and interprets the statute in a manner that is patently unreasonable: *The College of Physicians and Surgeons of British Columbia v. The Health Professions Review Board*, 2022 BCCA 10 at para. 199.

[22] The primary issue in this case is one of statutory interpretation. The Court of Appeal, in *Shuster*, explained the approach to reviewing a decisionmaker’s statutory interpretation against the standard of patent unreasonableness:

[50] Patent unreasonableness is the standard that is most deferential to the decision maker. If a decision maker’s interpretation is not unreasonable, it is also not patently unreasonable: *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 at paras. 28–29.

[51] In assessing the reasonableness of a tribunal’s statutory interpretation, the reviewing court must first undertake its own statutory interpretation. If the statutory provision at issue is capable of more than one reasonable interpretation, the interpretation of the tribunal, if reasonable, will prevail. However, if the reviewing court determines that there is only one

reasonable interpretation, the interpretation of the tribunal will be unreasonable if it failed to adopt it: *Simon Fraser University v. British Columbia (Assessor of Area #10 – Burnaby)*, 2019 BCCA 93 at para. 55.

[52] It is not for the court on review or appeal to re-weigh evidence or second guess conclusions drawn from the evidence and substitute different findings. A decision will be patently unreasonable only where there is no evidence to support the findings or the decision is “openly, clearly, evidently unreasonable”: *Maung* at para. 42.

[23] A Court interpreting a statutory provision applies the “modern principle” of statutory interpretation, which requires a review of the text, context and purpose of the words used, beginning with their plain or ordinary meaning: see *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 117–118. As recently explained by in *Sayyari v. Provincial Health Authority*, 2023 BCCA 413:

[27] The basic rule of statutory interpretation is that “the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 S.C.R. 27 at para. 21.

[28] The usual first step in interpreting a statute is to examine the text of the provision to determine its plain or ordinary meaning. Ultimately, however, the true meaning of the words being interpreted can only be determined contextually by considering other indicators of legislative meaning—context, purpose, and relevant legal norms: *La Presse Inc. v. Quebec*, 2023 SCC 22 at para. 23; *R. v. Alex*, 2017 SCC 37 at para. 31. Put differently, a court engaged in an exercise of statutory interpretation must not construe a provision in isolation. Instead, individual provisions must be considered in light of the Act as a whole, with each provision informing the meaning to be given to the rest. As the Supreme Court of Canada explained in *British Columbia Human Rights Tribunal v. Schrenk*, 2017 SCC 62 at para. 45, the rule ensures that the statutes are read as coherent legislative pronouncements.

Was the Original Arbitrator’s statutory interpretation patently unreasonable?

[24] For the reasons that follow, I do not find that the Original Arbitrator’s determination that the Strata had failed to establish a tenancy relationship between the owner of the Unit and D.W. to be patently unreasonable.

[25] Looking at the text, context and purpose of s. 138 of the SPA, I am of the view that in the circumstances of this case, it was not patently unreasonable for the

Original Arbitrator to conclude that they lacked jurisdiction to proceed. In my view, s. 138 of the SPA lends itself to the statutory interpretation articulated by the Original Arbitrator.

[26] Section 138 of the SPA provides:

Eviction by strata corporation

138 (1) A repeated or continuing contravention of a reasonable and significant bylaw or rule by a tenant of a residential strata lot that seriously interferes with another person's use and enjoyment of a strata lot, the common property or the common assets is an event that allows the strata corporation to give the tenant a notice terminating the tenancy agreement under section 47 [landlord's notice: cause] of the Residential Tenancy Act.

(2) An eviction under subsection (1) does not affect any rights of the landlord under the tenancy agreement.

[Emphasis added.]

[27] Section 138 makes use of several terms that are defined in s. 1(1) of the SPA, including:

"landlord" means an owner who rents a strata lot to a tenant and a tenant who rents a strata lot to a subtenant, but does not include a leasehold landlord in a leasehold strata plan as defined in section 199;

...

"tenant" means a person who rents all or part of a strata lot, and includes a subtenant but does not include a leasehold tenant in a leasehold strata plan as defined in section 199 or a tenant for life under a registered life estate;

[28] Section 1(1) of the SPA also defines *occupant*:

"occupant" means a person, other than an owner or tenant, who occupies a strata lot;

[Emphasis added.]

[29] Section 138, then, allows a strata corporation, despite the fact that it is not a landlord, to give notice to a tenant terminating a tenancy agreement, if the tenant repeatedly or continuously contravenes a reasonable and significant bylaw or rule that seriously interferes with another person's use and enjoyment of a strata lot: see *Sullivan v. Strata Plan BCS-251*, 2005 BCCA 342, at para. 7.

[30] In view of the defined terms in the *SPA*, s. 138 does not empower a strata corporation, acting pursuant to s. 47 of the *RTA*, to evict owners or occupants.

[31] Rather than provide its own rules for giving notice terminating a tenancy, the *SPA* incorporates by reference s. 47 of the *RTA*.

[32] Section 1 of the *RTA* has several relevant defined terms:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
 - (i) is entitled to possession of the rental unit, and
 - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit;
- (d) a former landlord, when the context requires this;

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services or facilities, but does not include any of the following:

- (a) a security deposit;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*];

"rental unit" means living accommodation rented or intended to be rented to a tenant;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

[33] Although the definition of *landlord* in the *RTA* includes the owner of the rental unit, or another person on their behalf, who permits occupation of the rental unit, the definition only applies if the occupation occurs *under a tenancy agreement*. A tenancy agreement is an agreement between a landlord and a tenant respecting, among other things, possession of living accommodation rented or intended to be rented to the tenant. Thus, this aspect of the definition of *landlord* in the *RTA* is not inconsistent with that found in the *SPA*.

[34] The Strata argues that the Original Arbitrator:

- a) Dismissed the possibility of an implied tenancy without considering the facts, including that D.W. had been residing in the Unit for over ten years with S.W.'s knowledge and consent and could be seen as "paying rent" because his occupancy of the Unit relieved S.W. of various financial burdens;
- b) Put misplaced reliance on Policy Guideline 13 in interpreting *occupant*;
- c) Failed to consider whether the agreement between S.W. and D.W. was a license which is also a tenancy; and
- d) Created a jurisdictional void where no court or tribunal has authority to address the legal relationship between an occupant and a property owner.

[35] I cannot accede to these arguments.

[36] The Original Arbitrator carefully considered the evidence with respect to whether a tenancy, express or implied, existed in this case.

- a) The Original Arbitrator took note, in the Interim Decision, that the landlord's agent candidly acknowledged that they were not sure if a tenancy agreement was in place between D.W. and S.W. It was, in part, for that reason that the Original Arbitrator ordered an adjournment and gave all parties an opportunity to serve additional evidence.

- b) The Strata later attempted to recant that evidence by stating that the landlord's agent did not intend to make the statement, rather that they intended to say they were sure there was a tenancy agreement but that they just did not have a copy of it. The Original Arbitrator rejected that submission noting those statements are not at all similar in their wording or implications.
- c) The Original Arbitrator took note of the long time that D.W. had resided in the Unit, including that he resided with his mother in the Unit until her death in 2010 and had continued to occupy the Unit since then.
- d) The Original Arbitrator considered the evidence of S.W. that no tenancy agreement ever existed between D.W. and the late mother and that no tenancy agreement had ever existed between S.W. and D.W.
- e) The Original Arbitrator rejected the argument that D.W.'s mere occupancy of the Unit, with S.W.'s permission, made them a tenant under the *Act*. The Original Arbitrator had regard to the statutory definitions of tenant, tenancy agreement, rental unit and rent in the *RTA*. The Original Arbitrator further took note of the many circumstances in which a person can occupy property without being a tenant.
- f) The Original Arbitrator rejected that the respondents' failure to disagree with the Strata's characterization of them as "landlord" and "tenant", in correspondence, was evidence that the *Act* applied to them.
- g) The Original Arbitrator rejected that the financial benefits said to flow from D.W.'s occupancy of the Unit, such as avoidance of tax, amounted to "rent". The Original Arbitrator concluded that this argument was rooted in the unsubstantiated belief that a contractual agreement existed between D.W. and the owner/agent of the Unit.

[37] The Original Arbitrator does not mention Policy Guideline 13 in interpreting the term *occupant*. Nor, as I have set out above, is reference to such a policy

necessary to conclude that the Original Arbitrator’s statutory interpretation, including her consideration of occupancy, is not patently unreasonable.

[38] Despite having been given an opportunity to lead additional evidence following the Interim Decision, the Original Arbitrator held:

I find that the Applicant has not only failed to satisfy me who the owner of the unit in question is, but also that a tenancy agreement or a licence to occupy the rental unit under the *Act* exists between D.W. and owner/agent of the unit.

[39] Thus, their conclusion was that the Strata had failed to prove the existence of an agreement *at all*. The finding did not turn on the nature of the agreement – that is whether it was a licence agreement or a tenancy agreement.

[40] The Original Arbitrator’s conclusion that there was “simply no evidence” of a contractual agreement between D.W. and the owner/agent for use and possession of the Unit, “whether express or implied” was rooted in the evidence. It was not a finding made “without considering the facts”.

[41] It is not for the court on review to re-weigh evidence or second guess conclusions drawn from the evidence and substitute different findings. A decision will be patently unreasonable only where there is no evidence to support the findings, or the decision is “openly, clearly, evidently unreasonable”. That is not the case here.

[42] I also do not accept that the Merits Decision creates a “jurisdictional void”.

[43] Where there is truly outrageous or persistently defiant conduct by owners, the compelled sale of a strata unit is a possible remedy. However, the mechanism for obtaining such relief is not recourse to the RTB. Rather, it is a multi-stage court process: see *The Owners, Strata Plan KAS 1771 v. Flaman*, 2024 BCSC 1242, at paras. 89–95.

Was the Review Decision patently unreasonable for failing to conclude that S.W. made false claims?

[44] In the Petition, the Strata pleads:

53. During the hearing, S.W. falsely claimed that the property had not gone through probate and that the estate owned the property, rather than herself. Probate was granted to S.W. on October 29, 2013, under Vancouver Court File# P132010.

54. In reality, land title records show that S.W. became the legal owner of the property on November 25, 2013, after the probate of the estate. This discrepancy was brought to the adjudicator's attention by the Petitioner's representatives but was ignored in favor of S.W.'s misleading statements. The adjudicator's failure to assess this critical factual issue led to a patently unreasonable decision regarding the status of D.W. and the jurisdiction of the RTB.

[45] A party to a dispute resolution proceeding may apply to the Director for an internal review of the Director's decision or order on one of the grounds specified under s. 79(2) of the *RTA*.

[46] Section 79(2) provides in relevant part:

79 (2) A decision or an order of the director may be reviewed only on one or more of the following grounds:

...

(b) a party has new and relevant evidence that was not available at the time of the original hearing and that materially affects the decision;

(b.1) a party, because of circumstances that could not be anticipated and were beyond the party's control, submitted material evidence after the applicable time period expired but before the original dispute resolution proceeding, and that evidence was not before the director at the original dispute resolution proceeding;

...

(c) a party has evidence that the director's decision or order was obtained by fraud;

(d) in the original dispute resolution proceeding, the director did not determine an issue that the director was required to determine;

[47] If the merits of an alleged error can be considered on an internal review, then a person must first exhaust the internal review process, and then it is the review decision that is the subject of a judicial review, albeit with the original decision forming part of the "contextual matrix": *Martin v. Barnett*, 2015 BCSC 426, at paras. 15–25.

[48] In the Merits Decision, the Original Arbitrator explained why the Strata had not discharged their burden of establishing that a tenancy existed, including because they had not established that S.W. owned the Unit:

Although the Agents for the Applicant stated that S.W. is named as the owner of the property according to the land title registry, they submitted no documentary evidence to substantiate this and S.W. denied that this is the case. While they argued that the letters before me from the strata corporation to S.W. calling them the property owner are sufficient evidence of property ownership, I disagree. There is no evidence before me from the Agents that S.W. ever responded to this correspondence acknowledging ownership and at the hearing, S.W. provided affirmed testimony that to the best of their knowledge they are not personally the owner of the property, their mother's estate is. As a result, I am not even sure with any degree of certainty who the owner of the unit referred to in the Application is.

[Emphasis added.]

[49] As noted above, the Strata availed itself of the opportunity for internal review.

[50] In the Review Decision, the Review Arbitrator explained why the Strata had not demonstrated that S.W. intentionally provided false information at the Merits Hearing:

In the review consideration application, the strata claimed that the Person S.W. lied when they said they are not the owner of the rental property. The strata claimed that Person S.W. is on title. However, the strata has not submitted a copy of a Land Titles search result, or any other document, to confirm Person S.W. is an owner of the rental property.

The strata also claims that Person S.W. is in contravention of the will, which requires the property to be sold. However, the strata has not submitted a copy of the will, or any other document, to support this claim.

I find the strata has not sufficiently demonstrated that Person S.W. intentionally provided false information and evidence at the hearing.

[51] As noted in the Review Decision, the Strata did not provide evidence to substantiate its position about the ownership of the Unit at either the Merits Hearing or at the Review Hearing.

[52] There was, however, evidence that tended in the opposite direction.

[53] It was not patently unreasonable to rely on the available evidence, including the evidence from S.W. that to the best of their knowledge they were not personally the owner of the Unit.

[54] In these circumstances, the Review Decision was not patently unreasonable in its conclusion that the Strata had not sufficiently demonstrated that S.W. intentionally provided false information and evidence at the hearing. To conclude otherwise, as I have been invited to on this hearing, would be to simply substitute different findings of facts or inferences from the evidence led.

[55] In any event, the Merits Decision did not turn on the question of who owned the Unit. As the Original Arbitrator held, they were, “not even sure with any degree of certainty who the owner of [the] unit referred to in the Application is”.

[56] The Merits Decision turned on the finding that there was simply no evidence of any contractual agreement between D.W. and the owner/agent of the Unit. For reasons I have already explained, those findings were not patently unreasonable.

Was the Strata afforded procedural fairness by the Original Arbitrator?

[57] In the Petition, the Strata pleads:

The adjudicator's approach to the issue of tenancy also lacked procedural fairness. By failing to properly assess the evidence regarding S. W.'s ownership and the implications of D.W.'s long-term occupancy, the adjudicator deprived the Petitioner of a fair opportunity to present its case. As seen in the hearing transcript, the adjudicator repeatedly dismissed arguments related to implied tenancy without engaging with the relevant legal framework.

The failure to consider essential evidence regarding S.W.'s ownership status, an argument raised for the first time at the hearing itself, and D.W.'s occupancy resulted in a lack of procedural fairness...

The failure to engage with relevant legal arguments left the Petitioners deprived of their right to an adjudicator who acts fairly. The right of the strata is shown in s.138 of the SPA and should have been adequately considered, but instead, as can be seen from the recordings, the Petitioners were ignored and the adjudicator showed a clear disposition to rule against them.

[58] Questions of procedural fairness must be reviewed on a standard of fairness, as required by s. 58(2)(b) of the ATA.

[59] Claims about whether the Original Arbitrator considered evidence and arguments are properly dealt with under the rubric of patent unreasonableness and have been dismissed above.

[60] With respect to the pleadings about the Original Arbitrator's conduct during the hearing, the Strata has not established that they were denied procedural fairness. Despite reference in the Petition to a transcript and recordings, neither the hearing transcript nor the recording referred to have been produced on this judicial review.

[61] In the absence of any express statutory requirements, administrative bodies are normally under no obligation to make verbatim transcripts or recordings of their proceedings: *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, [1997] 1 S.C.R. 793, 1997 CanLII 386 (S.C.C.), at para. 75.

[62] There is no such express statutory requirement here. Rather, the *RTA* provides that the Director may make rules about disclosing records: s. 57.7.

[63] The Tribunal's record affidavit provides:

As of April 25, 2022, the RTB's teleconference system automatically records each dispute resolution proceeding that takes place by phone. The recording is not included in this affidavit, but a party may request a copy through the RTB by submitting the request form available on our website, or may authorize another person, including a transcription company, to request a copy of the recording. Access to and use of recordings are governed by Rules 6.11 to 6.13 of the RTB's Rules of Procedure. The RTB's policy regarding access to the recordings is set out in Residential Tenancy Policy Guideline #47.

[64] There is nothing in the record before me to explain whether or not the Strata ever made a request for the recording or transcription. Nor did the Strata pursue these issues in oral argument. Beyond a bare assertion in the pleadings, the Strata did not point to any specific evidence that would support such a contention. A lack of procedural fairness has not been shown to exist. In conclusion, I do not consider that any issues of procedural fairness arise with respect to the RTB proceedings, including the conduct of the Merits Hearing.

Costs

[65] Each party will bear their own costs.

“Latimer J.”