IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kellner v. Entre Nous Femmes Housing Society,* 2025 BCSC 2036

Date: 20250904
Docket: S253689
Registry: Vancouver

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

Between:

Natalie Kellner

Petitioner

And

Entre Nous Femmes Housing Society

Respondent

Before: The Honourable Justice Hoffman

On judicial review from: A decision of the Residential Tenancy Branch, dated April 17, 2025.

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing in person:	N. Kellner
Counsel for the Respondent:	S. Douglas
Place and Date of Trial/Hearing:	Vancouver, B.C. September 4, 2025
Place and Date of Judgment:	Vancouver, B.C. September 4, 2025

[1] **THE COURT:** These are my reasons for judgment. If a transcript of these reasons is ordered, I reserve the right to edit them for clarity and to correct any typographical errors.

[2] This is an application to judicially review a decision of the Residential Tenancy Branch ("RTB") dated April 17, 2025, which upheld a notice to end tenancy respecting an apartment unit in Surrey occupied by the petitioner.

[3] The petitioner is the tenant and lives in the rental unit. Her rent is subsidized by B.C. Housing. The petitioner's landlord is the respondent, Entre Nous Femmes Society. The petitioner moved into the rental unit in 2009 and has lived in there for almost 16 years. The rental unit has two bedrooms. The petitioner has two children: the daughter is currently 12 and her son is 17 years old.

[4] The petitioner, in her petition, sets out that she suffers from complex post-traumatic stress disorder (PTSD) from long-term sexual and psychological abuse and violence. She also suffers from manic depressive disorder, anxiety disorder, obsessive–compulsive disorder (OCD), and a mild borderline personality disorder from the abuse.

[5] With respect to the tenancy, the petitioner signed a tenancy agreement on November 1, 2009. That tenancy agreement at s. 17(d) provided that the landlord has selected the tenant partially on the basis of the number of residents in the tenant's household, and the tenant agreed that the only persons named at the beginning of the tenancy agreement have the right to live as residents in the rental unit during the term of the tenancy, unless the landlord otherwise consents in writing. The tenant agreed to notify the landlord promptly of any change in the residents in the rental unit. Accordingly, the number of residents is a material term of the tenancy agreement. That provision allows for the landlord to end the tenancy if the tenant fails to report a change in the number of tenants in the rental unit, the number of residents in the rental unit is unreasonable, or the number or family makeup of the residents violates the landlord's operating agreement with the federal or provincial government.

[6] The respondent says that in or around 2017, they became aware that neither child of the petitioner was occupying the unit. As a result, they sent a letter to the petitioner on April 23, 2018, to confirm a change in the occupancy due to the

fact that the children were no longer resided in the unit. The respondent advised the petitioner that she was over-housed, as provided by the Canada Mortgage and Housing Corporation (CMHC) National Occupancy Standard. The petitioner was further advised that it was the respondent's policy that the over-housed petitioner be required to apply for a transfer through the B.C. Housing Registry and, within six months from October 31, 2018, either find alternative housing or provide proof that the she was actively working towards having her children returned to her care 51 percent of the time.

[7] Further correspondence was exchanged between the parties. The petitioner was asked to provide confirmation, but the respondent says that confirmation was not provided that either of the petitioner's children were living with the petitioner for more than 51 percent of parenting time.

[8] As of 2020, the respondent was informed by the petitioner that the petitioner's daughter was the only child occupying the unit.

[9] I have also been directed to evidence that on January 10, 2025, the Ministry of Children and Family Development removed the petitioner's daughter from the petitioner's care and there were criminal charges in relation to that incident, and there is currently a condition in place that the petitioner is not to have any contact with her daughter, and therefore the daughter is not living in the unit.

[10] On January 28, 2025, the respondent served the petitioner with a two-month notice to end tenancy because the petitioner no longer qualified for a subsidized rental. The basis for ending the tenancy set out in the notice was that the petitioner would no longer have her children living in the two-bedroom unit and a letter had been sent previously in April 2018, advising that the petitioner was over-housed. The petitioner filed a notice of dispute with the RTB on February 11, 2025.

[11] There were then two subsequent hearings at which this dispute notice was dealt with. The first hearing was on March 17, 2025. Both parties attended via teleconference, and the petitioner had an advocate present to assist her in this hearing. The petitioner raised at that time that she needed more time in order to provide evidence, and it was specifically discussed at that hearing that evidence of whether or not the son was occupying the unit was particularly relevant to the

reason for the notice to end tenancy. The tenant's advocate stated that a two- to three-week adjournment would provide them with the opportunity to gather the evidence.

[12] The arbitrator adjourned the hearing to April 17, 2025, and set out deadlines by which evidence was to be provided by the parties.

[13] The petitioner did not attend the second hearing. At the hearing before me, the petitioner has explained that she was unable to attend at that time due to her mental health condition. She has provided the court with a letter from a psychiatrist that she obtained after the April 17 hearing before the RTB. That letter is not part of the record that was before the arbitrator. The petitioner submits before this Court that she was not in any state to attend the April 17 hearing.

[14] The arbitrator has discretion under the rules to continue in the absence of a party and in the absence of evidence provided by a party, and the arbitrator did so and issued a decision upholding the notice to end the tenancy.

[15] As is typical in these matters, the RTB has not appeared at this hearing, but filed a response to the petition in which it points out that a party can apply for a review consideration on the basis that they were unable to attend the hearing because of circumstances that could not be anticipated or beyond the parties' control.

[16] The petitioner did apply to the RTB after the April 17 hearing for a correction. That application for a correction was dismissed on the basis that the request for a correction was based on arguments that the decision was incorrect or the petitioner’s disagreement with the decision. That application was made under s. 78 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78, rather than s. 79. Section 79 allows a party to apply for a reconsideration of a decision on the basis that the party was unable to attend a hearing for reasons beyond that party's control.

[17] In administrative matters, generally speaking, a party must exhaust the internal remedies provided for within the tribunal's rules before coming to this Court to seek a judicial review. Therefore, I find that this judicial review is premature and that Ms. Kellner has the ability to apply for a reconsideration under s. 79 of the *Residential Tenancy Act* but has failed to do so.

[18] Accordingly, I am going to direct that Ms. Kellner be given a reasonable amount of time to make this application. I am going to suggest three weeks, but I will hear from both parties as to whether or not that is sufficient. I intend to stay the writ of possession for the period of time I determine is reasonable to allow for the application for a reconsideration to take place. If the reconsideration is not applied for within that period of time, either party may contact the court through Supreme Court Scheduling to request my decision on the merits of the judicial review application.

[19] Okay. Ms. Kellner, I gather that you might have some questions as to what I have decided.

[QUESTIONS RE TRANSCRIPTION OF HEARING AND WHAT NEEDS TO BE DONE TO APPLY FOR A RECONSIDERATION.]

[20] THE COURT: Okay, is three weeks enough time for you to make an application for a reconsideration?

[SUBMISSIONS RE REASONABLE TIME TO MAKE RECONSIDERATION APPLICATION].

[21] THE COURT: So, I am going to give you three weeks

[22] NATALIE KELLNER: Sure.

[23] THE COURT: -- because I do not think it is an onerous thing to do.

[24] NATALIE KELLNER: Okay, yeah. I appreciate that.

[25] THE COURT: Ms. Douglas, you might have some questions about the stay. I am going to stay the order of possession for another three weeks to allow this to occur. I assume that if the application is made, then the RTB will not act on the order of possession while the reconsideration is under consideration.

[26] CNSL S. DOUGLAS: Yes. I mean, we could put in the term of the order that the stay remains in effect until an application to court. As I understand it, I would have to come back and

[27] THE COURT: Yes.

[28] CNSL S. DOUGLAS: -- apply anyway, so

[29] THE COURT: Okay.

[30] CNSL S. DOUGLAS: -- it could be presented that way.

[31] THE COURT: So sorry, so what should the order say in that regard?

[32] CNSL S. DOUGLAS: The order of possession granted by the Residential Tenancy Branch will be stayed until such further application of either party.

[33] THE COURT: Okay.

[34] CNSL S. DOUGLAS: Upon do we have to provide can we provide short notice at that point?

[35] THE COURT: What do you propose in terms of notice?

[36] CNSL S. DOUGLAS: I mean, I would propose 48 hours' notice, because we will probably have to speak to the Residential Tenancy Branch, confirm that nothing has been completed, at which point we will know for sure that we can apply.

[37] THE COURT: I guess the difficulty is, is that I am not ruling on the substance of the judicial review, because

[38] CNSL S. DOUGLAS: Yes.

[39] THE COURT: -- it is premature, and so Ms. Kellner would still have the right to proceed with that judicial review if she does not proceed with the reconsideration.

[40] CNSL S. DOUGLAS: I see.

[41] THE COURT: But if she proceeds with the reconsideration and that is denied

[42] CNSL S. DOUGLAS: Yes.

[43] THE COURT: -- then I think that she would have to judicially review that.

[44] CNSL S. DOUGLAS: Okay.

[45] THE COURT: Rather than the initial decision.

[46] CNSL S. DOUGLAS: Okay.

[47] THE COURT: Or that would have to be included in a judicial review.

[48] CNSL S. DOUGLAS: So we will be reconvening for the hearing that was done today, essentially, with an added component potentially, if she submits the reconsideration application.

[49] THE COURT: And it is denied.

[50] CNSL S. DOUGLAS: Right.

[51] THE COURT: Yes.

[52] CNSL S. DOUGLAS: Okay, understood.

[53] THE COURT: And I will remain seized of the application.

[54] CNSL S. DOUGLAS: Okay.

[55] THE COURT: So that you do not have to re-educate another judge.

[56] CNSL S. DOUGLAS: Yes. Okay, thank you, Justice.

"Hoffman J."