# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Osama v. Jiang,* 2025 BCCA 427

Date: 20251203
Docket: CA50820

Between:

**Mohammad Osama**

Appellant
(Plaintiff)

And

**Xiao Ying Jang**

Respondent
(Defendant)

Before: The Honourable Mr. Justice Harris
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Edelmann

On appeal from: An order of the Supreme Court of British Columbia, dated June 12, 2025 (*Osama v. Jiang*, 2025 BCSC 1079, Vancouver Docket S244470).

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| Counsel for the Appellant: | M. Nied |
| Counsel for the Respondent: | S. Turner<br>D.M. Robert |
| Place and Date of Hearing: | Vancouver, British Columbia<br>September 15, 2025 |
| Place and Date of Judgment with Written Reasons to follow: | Vancouver, British Columbia<br>September 15, 2025 |
| Place and Date of Written Reasons: | Vancouver, British Columbia<br>December 3, 2025 |

***Summary:***

*The appellant leased a residential property from the respondent in order to operate a daycare. The respondent sought to terminate the tenancy under s. 49(3) of the Residential Tenancy Act so that her son could live in the residence. The appellant disputed the validity of the termination, alleging that the respondent's son did not intend to "occupy" the residence within the meaning of s. 49(3) because the unit was set to undergo three months of renovations before anyone moved in. He says that the lease could only be terminated under s. 49.2, which sets out the process for terminating a lease in order to complete renovations. The appellant also alleged that any intent to occupy was motivated by a desire to avoid the empty homes tax and was therefore not in good faith. The trial judge concluded that the lease was validly terminated.*

*Held: Appeal dismissed. Not all renovations will fall under the scope of s. 49.2. In this case, the trial judge found that the nature of the renovations and the time projected to complete them made the planned delay in occupancy reasonable. She also found that the respondent's son had a good faith intention to occupy the property and make it his primary residence. Those findings are entitled to deference on appeal.*

**Reasons for Judgment of the Court:**

## Overview

[1] This is an appeal of a trial decision addressing the termination of a lease for residential premises that were being used as a daycare. At the hearing of the appeal, we dismissed the appeal with reasons to follow. These are our reasons.

## Background

[2] In July 2017, the appellant leased a residential property in Vancouver from the respondent for the purpose of operating a daycare. The lease incorporated certain provisions of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*], including that the respondent could only terminate the tenancy for reasons permitted under the *RTA* and in the manner set out in the *RTA.*

[3] In late June 2024, the respondent delivered a two-month notice to end the tenancy, purporting to terminate the lease effective September 1, 2024. The notice relied on s. 49(3) of the *RTA* which allows a landlord to terminate a lease if the landlord or a close family member of theirs intends in good faith to occupy the rental unit. The reason given by the respondent for terminating the tenancy was that the property would be occupied by her son.

[4] The appellant disputed the validity of the termination by way of an action seeking declarations that the notice was void and that the lease remained valid. The appellant alleged that the respondent's son did not intend to "occupy" the residence within the meaning of s. 49(3), in part because he was a visitor to Canada and also because there were going to be three months of renovations before he moved in. The appellant argued that, even setting aside the son's status in Canada, the lease could only be terminated under s. 49.2 of the *RTA*, which directly addresses evictions for renovations. The appellant also argued that any intent to occupy was motivated by a desire to avoid paying the empty homes tax on the residence and was therefore not in good faith.

[5] The trial judge concluded that the respondent had validly terminated the lease and ordered the appellant to vacate the property within 60 days of the date of her decision.

## Issues

[6] The appellant alleges that the trial judge erred in:

1. Concluding that s. 49(3) of the *RTA* overrides s. 49.2 of the *RTA* where there is an intention to renovate the rental unit.

2. Applying the wrong legal test to the requirement that the landlord or their family must intend to occupy the rental unit for at least 12 months.

3. Imposing a requirement of "dishonest motive" into the interpretation of s. 49(3) of the *RTA.*

[7] We address each ground of appeal in turn.

### Intention to Renovate

[8] As noted above, the notice to end the appellant's tenancy was given pursuant to s. 49(3) of the *RTA*:

> **Landlord's notice: landlord's use of property**
>
> **49** (3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

[9] The trial judge heard testimony from several witnesses, including the respondent's son, Mr. Xiong. She found that Mr. Xiong had a genuine intention to move into the residence with his family. However, prior to moving in, the respondent and her son intended to undertake some renovations, which the trial judge described in the following terms:

> [25] Mr. Xiong was not going to move into the Residence immediately after the end of the plaintiff's tenancy. He planned to first complete some repairs and renovations, which were expected to take about three months. There is no question about the scope of the renovations—Mr. Xiong obtained a written quote from a contractor that specifies the work to be done. In summary, the

> quote was for inspection, maintenance, and repair of various items, replacement of baseboards and flooring, interior and exterior painting, full refurbishment of two bathrooms, replacement of appliances and fixtures, and various exterior repairs and improvements.

[10] The appellant alleges that the trial judge erred in finding that an eviction could be justified under s. 49(3) in the circumstances. He argues that any eviction in this case would need to occur under s. 49.2, which directly addresses evictions for the purpose of renovations:

> **Director's orders: renovations or repairs**
>
> **49.2**(1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]* and any prescribed conditions, restrictions or prohibitions, a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:
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> (a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;
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> (b) the renovations or repairs require the rental unit to be vacant;
>
> (c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;
>
> (d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

[11] The appellant says that the respondent was required to obtain an order under s. 49.2. In the circumstances of this case, it is unclear how an order from the director would have been available, as it appears to be common ground that the agreement was a commercial lease that incorporated the *RTA* by reference. The director's jurisdiction is limited to residential tenancies as defined in the *RTA*. In any event, we are not persuaded that the trial judge erred in her interpretation of the *RTA*.

[12] Statutory interpretation requires that the words of a statute be read in their entire context, in their grammatical and ordinary sense, harmoniously with the scheme of the statute and its objects and purposes: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21, 1998 CanLII 837; *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at para. 26.

[13] As pointed out by the respondent, had the Legislature wanted to capture all renovations within the scope of s. 49.2, it could have done so. Instead, only renovations to prolong or sustain the use of the rental unit are captured by the section. There is nothing in the legislative history or the wording of the statute to suggest that the Legislature intended to require that a landlord who wishes to renovate a rental unit for their own occupation or that of a close family member must proceed by way of a s. 49.2 notice instead of a s. 49(3) notice. We note that the interpretation being put forward by the appellant could also have significant implications for purchasers who might wish to renovate before occupying a residence: see e.g., *Heitner v. Dowling*, 2025 BCCA 339. Such renovations may well be reasonable without meeting the criteria set out in s. 49.2.

[14] Section 49(3) of the *RTA* must be read in the context of the statute as a whole. If the landlord or their family member does not actually occupy the residence after terminating a lease under s. 49(3), the landlord will be required to pay the tenant 12 times the monthly rent unless they can satisfy the conditions set out in s. 51(2) or satisfy the director there were extenuating circumstances (s. 51(3)). The conditions in s. 51(2) are framed in terms of a reasonable period:

> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;
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> (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:
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> (i) if a period is not prescribed under subparagraph (ii), 12 months;
>
> (ii) a prescribed period, which prescribed period must be at least 6 months.
>
> [Emphasis added.]

[15] Based on the language in s. 51(2), the trial judge interpreted s. 49(3) to require occupancy within a "reasonable period". She then concluded that the respondent's son would begin occupying the unit within a reasonable period:

> [29] In my view, Mr. Xiong's plan to carry out repairs and renovations before moving in is of no consequence, other than having the potential to become relevant if the work prevents him from occupying the Residence "beginning within a reasonable period after the effective date of the notice" (*RTA* s. 51(2)(a)), in which case the plaintiff may be entitled to compensation under s. 51 of the *RTA*. The *RTA*'s reference to "within a reasonable period" also makes it clear that there is no merit to the plaintiff's submission that s. 49(3) cannot apply if the landlord or close family member do not immediately move into the rental unit because they first perform some renovations or repairs.
>
> [30] I also do not agree with the plaintiff's submission that the planned renovations are "significant" or that three months (the outside estimate for completion) is not a "reasonable period" for Mr. Xiong to delay moving into the Residence. "Reasonable period" is not defined in the *RTA*. It has been held to be "that which is required to accomplish the stated purpose for ending the tenancy and consequently, it will vary depending on the circumstances": *Sefcikova v. Orca Realty*, 2024 BCSC 697 at para. 63.

[16] We are not persuaded that the trial judge erred in interpreting s. 49(3) to require occupancy within a "reasonable period". As noted by the trial judge, the question of whether occupancy will take place within a reasonable period will depend on the circumstances. In this case, the trial judge made a finding that, given the nature of the renovations and the time projected to complete them, the planned delay in occupancy was reasonable. That finding is subject to deference from this Court, and the appellant does not suggest that the trial judge made a palpable or overriding error in making that finding. We would therefore not accede to this ground of appeal.

**Intention to Occupy for 12 Months**

[17] The appellant alleges that the trial judge applied the wrong legal test in relation to the requirement that the landlord or their family intend to occupy and use the rental unit for at least 12 months.

[18] Before the trial judge, the parties agreed that in applying s. 49(3) of the *RTA* to the terms of the lease agreement, there would have to be an intention to occupy the rental unit for at least 12 months, as set out in s. 51(2)(b)(i). In interpreting this requirement, the trial judge referred to the Residential Tenancy Policy Guideline 2A ("RTP Guideline"), which discusses the application of s. 49(3) and, in particular, the meaning of "occupy". The relevant portions of the RTP Guideline cited by the trial judge are the following:

> The rental unit must generally be occupied as living accommodation on an ongoing basis over a consecutive 12-month period (see *Potherat v Slobodian*, 2021 BCSC 1536). This does not mean that the person occupying the unit must physically reside there every day of that 12-month period, that they could not leave the unit for a vacation, or that the unit must be their primary residence (see *Sefcikova v. Orca Realty Inc.*, 2024 BCSC 697).
>
> In general, the occupation of the rental unit must be of a nature that can reasonably justify the tenant losing possession of the rental unit.

[19] The appellant submits that the trial judge erred in treating the RTP Guideline as though it dictated the legal test and in concluding that the test requires only that the "occupation of the rental unit must be of a nature that can reasonably justify the tenant losing possession of the rental unit". He submits that reading the statute in context, the respondent was required to establish that her son intended to "actively use and occupy" the unit over a consecutive 12-month period. His position at trial was that the respondent's son would spend a significant amount of time in China and would therefore not be "occupying" the residence for 12 months.

[20] In our view, it is not necessary in the appeal before us to engage with the precise framing of the test. That is best left for another day, in particular as we are faced with the interpretation of sections of a statute under the exclusive jurisdiction of an administrative tribunal that was not involved in the decision under review.

[21] Reading the trial judge's reasons as a whole, it is clear that she found that the respondent's son intended to have his primary residence in Vancouver. She found that his work was based in Vancouver, his siblings all lived in Vancouver, and two of his children were enrolled in elementary school in Vancouver. She also found no evidence that the respondent's son wanted or intended to live apart from his

children. Given these findings, we are not persuaded that the outcome would have been different even on the appellant's framing of the applicable test. We would therefore not accede to this ground of appeal.

**Good Faith Intention to Occupy the Residence**

[22] At trial, the appellant argued that any intent to occupy the residence was motivated by a desire to avoid paying an empty homes tax and was therefore not in good faith. The respondent did not testify at trial, and the trial judge drew an adverse inference that had she testified, her evidence would have been that she was concerned about the potential for an empty homes tax assessment. The trial judge went on to address the implications of this inference in the following terms:

> [55] … However, I do not infer that avoiding the empty homes tax was the only, or even the primary, motivation for Mr. Xiong's decision to move into the Residence. It is not reasonable to infer that Mr. Xiong would uproot his family and move from China to Vancouver simply to avoid payment of the empty homes tax on the Residence. Rather, my inference is that, having made the decision to move to Vancouver, avoiding the risk of the empty homes tax was at least a contributing motivation to Mr. Xiong moving into the Residence.
>
> [56] Despite that, the plaintiff has not persuaded me that avoiding the empty homes tax was a *dishonest* motive. In my view, there is nothing dishonest in seeking to avoid paying the empty homes tax by bringing oneself into compliance with the applicable bylaw, so long as that is achieved by good faith means. In other words, so long as Mr. Xiong had the intention to occupy the Residence, as I have found he did, there is nothing dishonest in avoiding the empty homes tax by having him do so.

[23] The appellant submits that the trial judge erred by concluding that it was necessary for the plaintiff to establish a "dishonest motive" as opposed to a motive unconnected to the purpose of the lease agreement. The appellant seeks to recast the requirement for a "good faith" intention to occupy in s. 49(3) of the *RTA* in terms of a broader analysis of the landlord's contractual discretion, which the appellant says must be exercised for the purpose for which the discretion was conferred. However, in this case the terms of the agreement explicitly incorporated the *RTA.* The trial judge was therefore properly focused on the grounds for terminating a lease that are set out in the *RTA.*

[24] In any event, framing avoidance of the empty homes tax as a motivation for terminating the lease obscures the fact that merely terminating the lease would not have achieved the respondent's purported goal. The manner in which the respondent intended to avoid the empty homes tax was by having her son occupy the residence. In noting that there was "nothing dishonest in seeking to avoid paying the empty homes tax by bringing oneself into compliance with the applicable bylaw, so long as that is achieved by good faith means", the trial judge was properly focused on the key question under s. 49(3): the good faith intention to occupy.

[25] The trial judge concluded that there was a good faith intention to occupy the residence. A finding of good faith is a finding of fact in the purview of the trial judge, typically based on inferences drawn from the record, and an appeal court will not interfere absent a palpable and overriding error: *2538520 Ontario Ltd. v. Eastern Platinum Limited*, 2020 BCCA 313 at para. 33. We see no basis on which to interfere with the trial judge's finding on this issue.

**Order**

[26] On an appeal, this Court may make any order that the court appealed from could have made, impose reasonable terms and conditions in an order, and make any additional order that it considers just: s. 24(1) of the *Court of Appeal Act*, S.B.C. 2021, c. 6.

[27] Before the trial judge, the appellant sought to delay the eviction by 18 months in order to avoid hastily closing the daycare operation as the closure would have a significant impact on the staff and approximately 20 children and their families who rely on the daycare. The trial judge was not prepared to make an order for that length of time, noting that the appellant knew from the time he opened the daycare that the lease was subject to termination for reasons set out in the *RTA*. The trial judge instead made an order for vacant possession in 60 days.

[28] The delay allowed by the trial judge expired in August but was extended pending the hearing of this appeal. Before this Court, the appellant sought an additional 90 days to notify the affected parents and staff and to make alternative

arrangements. While the appellant ought to have made the relevant arrangements earlier, we accepted that the situation remained uncertain until the resolution of this appeal. Given the significant impact for the staff and families affected, we were of the view that the 60 days granted by the trial judge should run from the date of our decision.

[29] For these reasons, we dismissed the appeal at the hearing and ordered that the appellant would have 60 days to vacate the premises from that date.

"The Honourable Mr. Justice Harris"

"The Honourable Madam Justice DeWitt-Van Oosten"

"The Honourable Justice Edelmann"