IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Nekoi-Panah v. Mohajerrey,* 2026 BCSC 119

Date: 20260127
Docket: S253337
Registry: Vancouver

Between:

Davood Nekoi-Panah

Petitioner

And

Bahador Mohajerrey

Respondent

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Petitioner:	L. Smeets
The Respondent, appearing in person:	B. Mohajerrey
Place and Date of Hearing:	Vancouver, B.C. December 19, 2025
Place and Date of Judgment:	Vancouver, B.C. January 27, 2026

Table of Contents

INTRODUCTION **3**
FACTUAL BACKGROUND **3**
THE DECISIONS OF THE RTB **4**
The January 24, 2025 Hearing (the Interim Decision) 4
The February 18, 2025 Hearing (the Merits Decision) 4
The Review Decision 6
THE STANDARD OF REVIEW **8**
ISSUES **9**
THE NON-ATTENDANCE OF THE LANDLORD AT THE HEARING **10**
THE EVIDENCE OF THE LANDLORD'S USE OF THE PROPERTY **12**
CONCLUSION **14**

Introduction

[1] The petitioner landlord, Davood Nekoi-Panah, seeks judicial review of a decision dated March 5, 2025, by an arbitrator of the Residential Tenancy Branch ("RTB") awarding to the respondent tenant, Bahador Mohajerrey, 12 months of rent plus a $100 filing fee (the "Merits Decision"). The petitioner also seeks judicial review of a decision dated March 18, 2025 (the "Review Decision"), which dismissed the petitioner's application for a review consideration of the Merits Decision.

[2] The landlord did not attend the hearing on February 18, 2025, which led to the Merits Decision. The landlord sought a review of the Merits Decision on the basis that he was unable to attend the original hearing due to circumstances beyond his control, as he was out of the country and had a medical emergency. The arbitrator in the Review Decision found the evidence submitted by the landlord insufficient to prove his non-attendance was beyond his control and could not have been anticipated. Further, the arbitrator in the Review Decision found the additional evidence submitted by the landlord was not new evidence that was not available earlier and would not have affected the outcome. The landlord's application for review was dismissed.

[3] The landlord seeks judicial review, arguing he was denied procedural fairness and the reasons of the arbitrator in both the Merits Decision and the Review Decision are patently unreasonable.

Factual Background

[4] The tenant began renting from the petitioner on August 1, 2022. The rental unit was in the lower level at 602 St. Andrews Road, West Vancouver. The rent was initially $3,100 a month and increased to $3,208 a month at the end of the tenancy.

[5] On March 8, 2024, the landlord served on the tenant a two month notice to end tenancy for landlord's use, with a move out date of May 7, 2024. The tenant asked if he could stay until the end of June so his children can complete their school year but the landlord refused that request. The tenant found a new place so he advised the

landlord on March 17 that he would move out by March 31, 2024. The tenant vacated the residence by March 31, 2024.

The Decisions of the RTB

[6] The tenant filed for dispute resolution pursuant to ss. 49, 51 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*], arguing the landlord did not accomplish the stated purpose of the notice to end tenancy—i.e. the landlord did not occupy the rental unit for six months as required pursuant to the legislation at that time.

The January 24, 2025 Hearing (the Interim Decision)

[7] A hearing was scheduled for January 24, 2025. It was scheduled as a conference call at 11:00 a.m. The tenant attended with an interpreter; no one attended on behalf of the landlord.

[8] At the outset, the tenant requested an adjournment of the hearing, as he had made last-minute travel plans out of the country due to a death in his family. The arbitrator considered R. 7.9 of the RTB Rules of Procedure setting out considerations for the granting of adjournments. The arbitrator found the tenant's request for an adjournment was not due to an intentional act or neglect but was due to circumstances beyond his control. As the landlord did not attend the hearing, the arbitrator found an adjournment would provide both parties a fair opportunity to be heard and would not be prejudicial to either party. The tenant's request for an adjournment was granted by a decision of the arbitrator on January 28, 2025 (the "Interim Decision"), and the matter reset for February 18, 2025 at 1:00 p.m.

The February 18, 2025 Hearing (the Merits Decision)

[9] The tenant and his interpreter called into the hearing at 1:00 p.m. The arbitrator waited until 1:35 p.m. but no one attended for the landlord. Due to the landlord not attending the prior hearing on January 25, 2025, the Interim Decision had been sent by the RTB directly to the landlord together with the notice of dispute resolution with the call in details for the rescheduled hearing.

[10] The arbitrator found the notice of the dispute resolution and the tenant's evidence were served on the landlord in accordance with s. 71(2)(c) of the *RTA*.

[11] The landlord had submitted evidence to the tenant and the RTB in December 2024. The arbitrator found the landlord's evidence was served on the tenant in accordance with s. 71(2)(c) of the *RTA*.

[12] At the hearing, the tenant provided oral evidence. The tenant testified that he started renting from the landlord in August 2022. The tenant provided evidence that the security deposit he paid at the start of the tenancy was not returned to him when he moved out, and he did not receive the one month's free rent he was owed due to the notice to end tenancy. He had brought dispute resolution proceedings with respect to these matters to the RTB in August 2024 and received a monetary order, but the landlord had not made any payment.

[13] The tenant provided evidence that the landlord's realtor had been arranging viewings of the rental unit while the tenant was still residing there. By the time he moved out at the end of March 2024, the tenant saw a "sold" sign on the lawn of the property. The tenant provided evidence that he returned to the rental unit at the end of April 2024 and saw no one occupying the rental unit. The tenant spoke with the woman renting the upper floor and was told she did not know the landlord.

[14] The landlord had submitted evidence prior to the hearing. The landlord submitted a contract for purchase and sale of the property dated March 20, 2024, with a completion date of April 29, 2024. There was an addendum dated April 5, 2024, which reduced the purchase price by $10,000 and provided that the landlord would rent the rental unit from May 1 to September 30, 2024 for $3,500 a month. The landlord provided a letter from his realtor dated December 28, 2024, which stated the landlord had rented the rental unit back from the new purchaser from May 1 to September 30, 2024 for $3,500 a month. The landlord also submitted e-transfer receipts showing five payments of $3,500 a month by the landlord to the purchaser from May to September 2024.

[15] The landlord did not attend the hearing and did not provide any further evidence.

[16] The arbitrator found the evidence submitted by the landlord was not sufficient to establish that the landlord occupied the rental unit from May 1 to September 30, 2024, as stated in the addendum of the sales agreement for the property. In any event, the arbitrator found even if the landlord had moved into the rental unit from May 1 to September 30, that was not six months as required pursuant to the *RTA*. The arbitrator on March 5, 2025 issued a monetary order of $38,596, consisting of 12 months' rent ($38,496) and the filing fee ($100).

The Review Decision

[17] On March 6, 2025, the landlord applied for a review consideration pursuant to s. 79 of the *RTA*.

[18] The landlord sought a review pursuant to s. 79 of the *RTA*, on the grounds that he was unable to attend the hearing due to circumstances that could not have been anticipated and were beyond his control: s. 79(2)(a); that there was new and relevant evidence not available at the time of the hearing that materially affected the decision: s. 79(2)(b); and on the ground that the arbitrator did not determine an issue required to be determined: s. 79(2)(d).

[19] In support of his application for a review, the landlord submitted a doctor's note and four photos taken on April 6, 2024, showing a vehicle in a garage and the interior of the rental unit.

[20] With respect to the ground for review due to non-attendance at the hearing, the landlord wrote on his application: "I was out of country and I had medical emergency So, I couldn't attend the hearing on February 18/2025". The landlord submitted a doctor's note on the letterhead "one medical" which read as follows:

> March 6, 2025
> To Whom It May Concern,

> I am writing to confirm that my patient, Davood Nekoi Panah has been under my medical care for ongoing health issues. Due to his medical condition, he was unable to attend his scheduled hearing on February 18, 2025. His health concerns required continued monitoring and rest, which made it medically inadvisable for him to participate in any legal proceedings on that date. Thank you for your understanding.
>
> Sincerely,
>
> Heather Ferguson

[21] The arbitrator noted the landlord had also not attended the January 24, 2025 hearing and provided no explanation for this. The arbitrator found the landlord failed to show an effort to actively participate in these proceedings that predated the February 18, 2025 hearing date. The arbitrator then said this about the doctor's note:

> Furthermore, the Doctor's note submitted by the Landlord is not persuasive as there is no address or phone number in the letterhead, nor is the signatory identified as a medical doctor. Additionally, the contents of the Doctor's note states only that the Landlord has been under medical care for "ongoing health issues" and that he was unable to attend the hearing because "his health concerns required continued monitoring and rest, which made it medically inadvisable for him to participate in any legal proceedings on that date".

[22] The arbitrator found the medical note not sufficient to prove the landlord had a medical emergency which could not have been anticipated. The arbitrator found the note did not prove the landlord was prevented from attending the hearing, as the note only referenced that it was "medically inadvisable" for him to attend. Further, the arbitrator found the landlord did not provide any reason why he did not arrange for someone else to attend the hearing on his behalf. The arbitrator found the landlord did not provide sufficient grounds for a review based on his inability to attend the hearing.

[23] The arbitrator next considered the landlord's application for review based on new and relevant evidence. The landlord provided four photos taken on April 6, 2024, and stated these photos showed that he resided in the rental unit in April 2024, and that he rented from the new purchaser from May to September 2024.

[24] The arbitrator found the four photos were not new evidence, as they were taken on April 6, 2024. These photos were available at the time of the hearing. The arbitrator

found the photos insufficient to prove the landlord lived in the rental unit in April 2024. As such, the arbitrator found the evidence was not new, relevant or would have had an effect on the outcome.

[25] The landlord also applied for a review on the ground that an issue that was required to be determined was not decided. The landlord wrote as follows:

> We moved in the unit from April 1/2024 and I was the owner of the house, so the full period of residency was 6 months but, the arbitrator did not take the month of April to account and mentioned the unit rented for 5 months.

[26] The arbitrator found this was not an issue that was not determined. The arbitrator found the issue of how long the landlord occupied the rental unit was determined at the hearing.

[27] The landlord's application for a review was dismissed.

The Standard of Review

[28] The role of the court on judicial review is to ensure that a statutory decision-maker or tribunal did not overstep its legal authority (*Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 28) and did not fail to provide a fair hearing (*PHS Community Services Society v. Swait*, 2018 BCSC 824 at para. 88). The role of the court on judicial review is not to hear new evidence or argument or to re-decide the case: *PHS Community Services Society* at para. 76.

[29] As the *RTA* contains a privative clause at s. 84.1, the standard of review for a decision of the RTB is the patently unreasonable standard: *RTA*, s. 5.1; *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58 [*ATA*]. Section 58(3) of the *ATA* defines "patently unreasonable" with respect to a discretionary decision as a decision: (a) exercised arbitrarily or in bad faith; (b) exercised for an improper purpose; (c) based entirely or predominantly on irrelevant factors; or (d) that fails to take statutory requirements into account.

[30] As that term applies to questions of fact or law, a patently unreasonable decision has been described in the following way in *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80:

> [37] As the chambers judge noted, a decision is not patently unreasonable because the evidence is insufficient. It is not for the court on judicial review, or for this Court on appeal, to second guess the conclusions drawn from the evidence considered by the Appeal Division and substitute different findings of fact or inferences drawn from those facts. A court on review or appeal cannot reweigh the evidence. Only if there is no evidence to support the findings, or the decision is "openly, clearly, evidently unreasonable", can it be said to be patently unreasonable.
>
> [Emphasis added.]

[31] The patently unreasonable standard is the most deferential standard of review. The approach to reviewing decisions must not be a "line-by-line treasure hunt for error": *PHS Community Services Society* at para. 45, quoting *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 at para. 54. It applies to findings of fact or law or an exercise of discretion by the RTB. The Court in *Speckling* at para. 33 described a "patently unreasonable" decision as one that is "openly, clearly, evidently unreasonable". The Supreme Court of Canada described a result that is patently unreasonable as one where "the result must almost border on the absurd": *Voice Construction Ltd. v. Construction & General Workers' Union, Local 92*, 2004 SCC 23 at para. 18.

[32] The standard of review applicable to issues of procedural fairness is "best described as simply a standard of 'fairness'": *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc*., 2013 BCCA 55 at para. 52. Issues with procedural fairness are assessed on whether the tribunal acted fairly: *Gichuru v. Law Society of BC*, 2010 BCCA 543 at para. 29. The fairness standard, considered in "all of the circumstances", is set out in s. 58(2)(b) of the *ATA*.

Issues

[33] The landlord argues the arbitrator's finding that he was not unable to attend the hearing due to circumstances that could not have been anticipated and were beyond his control was patently unreasonable. He argues the hearing was procedurally unfair

to him, as he was not able to attend and provide evidence. The landlord argues the Merits Decision ought to be set aside and a new hearing be held, so he can participate.

[34] The landlord also argues the arbitrator's finding that he did not provide sufficient evidence to prove he occupied the rental unit for six months after the tenant vacated is patently unreasonable.

The Non-Attendance of the Landlord at the Hearing

[35] The landlord argues the arbitrator's finding that he was not unable to attend the hearing due to circumstances beyond his control that could not have been anticipated is patently unreasonable. He argues the arbitrator ought to have accepted the medical note as evidence that he was not able to attend due to medical reasons. The landlord argues the arbitrator's finding that the landlord could have arranged for someone else to attend on his behalf is patently unreasonable, as it did not consider that he only had 21 days from the date of the original hearing to the rescheduled date.

[36] I do not find the arbitrator's conclusion that the landlord failed to show he was unable to attend the hearing due to circumstances beyond his control to be patently unreasonable. The arbitrator referred to the medical note, the only evidence provided by the landlord on this issue. The arbitrator found the medical note unpersuasive, with no address or phone number on the letterhead. The arbitrator observed the note was not signed by an individual who identified herself as a medical doctor. These observations are accurate.

[37] Further, the note did not say the landlord was outside of Canada at the time of the hearing or had suffered a medical emergency. The note stated it was "medically unadvisable" for the landlord to participate on the date of the hearing. The arbitrator found the note did not provide an explanation for why the landlord could not have made other arrangements for someone to attend the hearing on his behalf. In my view, these findings were open to the arbitrator on the evidence. The landlord has not shown the arbitrator mis-stated any part of the medical note.

[38] The arbitrator noted the landlord failed to show an effort to participate in the proceedings before the hearing on February 18, 2025. While the landlord argues this conclusion is incorrect, as the landlord had filed documentary evidence in December 2024, the arbitrator noted the landlord had failed to attend an earlier hearing on January 24, 2025. In my view, the non-attendance at the earlier hearing with no explanation supports the arbitrator's finding that the landlord had failed to show an effort to participate in the proceedings before February 18, 2025.

[39] It was up to the arbitrator to decide how much weight to place on the medical note and the findings of fact to be drawn from it. In my view, there is evidence to support the arbitrator's finding that the landlord had not shown he was unable to attend the February 18, 2025 hearing due to circumstances that could not have been anticipated and that were beyond his control. The finding is rational and flows from the evidence. The arbitrator found the note vague and did not go so far as to establish that the landlord had medical reasons that prevented him from attending, which could not have been anticipated. The note said nothing about the seriousness of the medical condition, when it arose, and whether the landlord was capable of instructing someone else to attend the hearing on his behalf. It is unclear what is meant by "medically unadvisable". It can be argued "medically unadvisable" is not the same as medically incapable. The burden was on the landlord to show he was not able to attend due to circumstances beyond his control which could not have been anticipated. The arbitrator's finding that he has not done so is not openly, evidently or clearly wrong. It is entitled to deference.

[40] As I understand it, the landlord argues the February 18, 2025, hearing was procedurally unfair to him, as it proceeded in his absence. However, the landlord has not shown that his non-attendance was due to circumstances beyond his control that he could not have anticipated. As such, I do not find the February 18, 2025, hearing to be procedurally unfair.

The Evidence of the Landlord's Use of the Property

[41] The landlord argues the arbitrator's finding that he did not occupy the rental unit for six months is patently unreasonable. The landlord argues the documentary evidence he submitted prior to the hearing—the contract of purchase and sale with the addendum, a letter from his realtor, as well as copies of e-transfers of rent to the new purchaser—showed he rented the unit back from the new purchaser from May 1 to September 30, 2024. In March 2025 he submitted photos, taken in April 2024, for the review hearing, which he argues show he did occupy the unit for April 2024 as well. He argues occupation from April 1 to September 30, 2024 is six months and he has fulfilled the stated purpose on the notice to end tenancy.

[42] On the Merits Decision, the arbitrator did not find the evidence provided by the landlord sufficient to show he did in fact occupy the rental unit for six months after the tenant vacated it. The evidence consisted of the contract of purchase and sale, the letter from the realtor and the e-transfer receipts. The arbitrator was not satisfied these documents were sufficient proof of residency.

[43] In my view, the arbitrator's finding that the landlord did not meet his onus of proving he did in fact live in the rental unit after the tenant moved out is not patently unreasonable. The tenant had provided evidence that he returned to the rental unit at the end of April 2024 and observed no one occupying the rental unit. The tenant testified he spoke with a woman renting the upper portion of the residence, who advised she did not know the landlord. It was for the arbitrator to decide what evidence to accept and how much weight it ought to be given. It was for the arbitrator, with expertise in making determinations of residency, to decide if the landlord had proven he did in fact occupy the rental unit. It is noted that the landlord did not present any evidence of utility bills in his name at that address, mail addressed to him at that location, deliveries being made to him at that address, or any identification documents such as a driver's licence or passport with that address. The arbitrator's finding was open to him on the evidence and not patently unreasonable.

[44] It was for the arbitrator to decide if the four photos submitted in March 2025 were new and relevant evidence that was not available at the February 18, 2025, hearing and would have affected the outcome. In my view, the arbitrator's finding that the four photos were not new evidence that was not available earlier is logical, as the photos were taken in April 2024. They existed 10 months before the February 18, 2025, hearing. The landlord could have submitted the photos before the hearing.

[45] The arbitrator's finding that the photos would not have affected the outcome is also rational, as the photos were not compelling evidence of occupancy of the rental unit. Even if the photos provide some evidence that someone may have been living at the property, the photos do not show it was the landlord who was occupying the unit.

[46] I note that even if the landlord was found to have occupied the rental unit from April to September 2024, it is unclear whether that would have fulfilled the stated purpose of the notice to end tenancy. That is, the landlord was no longer an owner of the property as of May 1, 2024. The notice was provided pursuant to s. 49(3) of the *RTA*, that the landlord or a close family member will be occupying the rental unit. The definition of landlord for the purpose of s. 49 is as follows:

> **Landlord's notice: landlord's use of property**
>
> **49 (1)** In this section…
>
> **"landlord"** means
>
> (a) for the purposes of subsection (3), an individual who
>
> (i) at the time of giving the notice, has a reversionary interest in the rental unit exceeding 3 years, and
>
> (ii) holds not less than 1/2 of the full reversionary interest…
>
> (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…
>
> [Emphasis added.]

[47] After the property was sold to the new purchaser on May 1, 2024, it is arguable whether the landlord still qualified as a landlord pursuant to s. 49, as he no longer held

"not less than ½ of the full reversionary interest" in the property. As this issue was not argued before the arbitrator or before this Court, I will say no more about it.

[48] In my view, the arbitrator's finding that the landlord did not prove he occupied the rental unit for six months after the tenant vacated is not patently unreasonable. It is entitled to deference.

Conclusion

[49] The landlord's petition for judicial review is dismissed.

"Chan J."