

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Fakeley v. CH 2 Holdings Ltd.*,
2026 BCSC 128

Date: 20260128
Docket: S260444
Registry: New Westminster

Between:

Shaylene Fakeley (Bedborough)

Petitioner

And

CH 2 Holdings Ltd., CH 3 Holdings Ltd. and CH 4 Holdings Ltd.

Respondents

Before: The Honourable Justice Bantourakis

Reasons for Judgment

Appearing on her own behalf:

S. Fakeley

Counsel for the Respondents:

A. Colpitts

Place and Date of Hearing:

New Westminster, B.C.
January 13, 2026

Place and Date of Judgment:

New Westminster, B.C.
January 28, 2026

[1] For about ten years, Ms. Bedborough has rented a large property in South Surrey. It is her home. She also boards horses there for income. Unfortunately, a cheque Ms. Bedborough gave her landlord for July 2025 rent was not honoured due to insufficient funds. The next cheque Ms. Bedborough gave her landlord also failed to clear.

[2] When the landlord gave Ms. Bedborough notice of its intention to end her tenancy for non-payment of rent, she did not pay her rent or file an application for dispute resolution with the Residential Tenancy Branch (“RTB”) within five days of the notice. Where a tenant who receives such a notice does not pay the amount owing or file an application with the RTB within five days, they are presumed to accept the end of the tenancy pursuant to s. 46(5)(a) of the *Residential Tenancy Act*, SBC 2002, c. 78 [RTA]. On this basis, the RTB granted the landlord an Order of Possession.

[3] The narrow issue on Ms. Bedborough’s petition for judicial review of the RTB’s decision is whether evidence of an earlier rent cheque Ms. Bedborough had given the landlord ought to have been considered. As evidence of that earlier cheque was not before the RTB, the petition turns largely on whether evidence in that regard should be admitted on judicial review and, if yes, whether it provides a basis for setting aside the RTB’s decision.

BACKGROUND

[4] I will not canvass the history between Ms. Bedborough and the landlord in any detail. The landlord maintained before the RTB that Ms. Bedborough had a history of non-payment of rent, which Ms. Bedborough disputed. The record also suggests that the landlord’s longer-term plans for the property involve developing it.

[5] Ms. Bedborough’s monthly rent was \$1,325. Both before and after the current landlord acquired the property, she paid by cheque. To do so, Ms. Bedborough gave several months of post-dated cheques to the landlord in advance, which the landlord would then cash as rent came due.

[6] In the first half of 2025, the landlord credited Ms. Bedborough for amounts she had spent on repairs to the property. As a result of that rental credit, Ms. Bedborough's June 2025 rent was covered in full. There was a remaining rental credit after that, which was applied to the rent for July 2025. After application of the remaining rental credit, the parties agree that Ms. Bedborough owed \$947.50 in rent for July. Ms. Bedborough gave the landlord a cheque for that amount cashable around the beginning of the month. However, when the landlord tried to cash it, it was returned for insufficient funds. Ms. Bedborough gave the landlord another cheque for the same amount around July 5 or 6, 2025, but it also bounced.

[7] On July 9, 2025, the landlord gave Ms. Bedborough ten days notice of its intention to end her tenancy for non-payment of rent, pursuant to s. 46(1) of the *RTA* (the "Notice"). I have already mentioned that Ms. Bedborough then had five days to either pay the rent or file an application for dispute resolution with the RTB, failing which she would be presumed to accept the end of the tenancy (the "Five-Day Period"): *RTA*, s. 46(5)(a). She did not do either of those things.

[8] On July 25, 2025, the landlord applied to the RTB for an Order of Possession under s. 55(2) of the *RTA*. Ms. Bedborough responded, submitting evidence for the RTB's consideration and appearing at the RTB hearing. She explained that after the first two cheques were returned for insufficient funds, she attempted to pay by cheque again on July 15, 2025 and then again on July 18, 2025, but those cheques were never cashed. After some apparent confusion around paying by e-transfer, Ms. Bedborough paid the July rent by e-transfer on August 6, 2025.

[9] Before the RTB, Ms. Bedborough maintained that she always had sufficient funds in her account to cover the rent, though it appears she did not dispute that the two cheques she submitted in early July had bounced. She submitted a screenshot that she said showed there were sufficient funds in her account at the relevant time. Her position before the RTB essentially was that she had made several attempts to pay the rent owing in July 2025 but that those had been unsuccessful for reasons

beyond her control. She also submitted a note from a doctor that on July 15, 2025, she had started on a new medication that can cause memory issues.

[10] In a decision dated September 15, 2025, the RTB Arbitrator found that the Notice had been served on Ms. Bedborough on July 9, 2025 (she did not dispute this) and that she then had until July 14, 2025, the end of the Five-Day Period, to dispute it or pay the full amount owing. Ms. Bedborough acknowledged that the first two cheques she had submitted for \$947.50 had been returned for insufficient funds and did not suggest she had submitted payment by the July 14, 2025 deadline, referring only to later cheques and attempts at paying by e-transfer. It was common ground that she had not filed any dispute with the RTB by July 14, 2025 either. As a consequence, the RTB Adjudicator concluded that the presumption in s. 46(5)(a) of the *RTA* applied and the landlord was entitled to an Order of Possession under s. 55 of the *RTA*. Within a few days, Ms. Bedborough applied to the RTB for a review consideration but was unsuccessful.

[11] After the RTB made the Order of Possession, Ms. Bedborough contacted the landlord asking that any unused post-dated rent cheques she had previously submitted be returned to her. When she received them, she found among them a \$1,325 cheque for July 2025 (the “Earlier Cheque”). Ms. Bedborough had given the Earlier Cheque to the landlord along with other post-dated cheques some time before receiving the rental credit and before giving the landlord the two cheques for \$947.50 that bounced.

[12] Ms. Bedborough filed another application to the RTB for a review consideration, this time on the basis, among other things, that the landlord had had the Earlier Cheque in its possession at the relevant time. That application was dismissed because it was Ms. Bedborough’s second attempt at having the September 15, 2025 decision internally reviewed whereas the RTB allows only one review.

[13] Ms. Bedborough filed her petition for judicial review on November 4, 2025. She obtained a stay of the Order of Possession which remains in place pending

release of this decision. On this petition, she says she had forgotten about the Earlier Cheque by the time of the events in issue. She says she was only reminded of the Earlier Cheque's existence when she received her post-dated cheques back from the landlord, noting her medical condition can involve memory issues. She emphasizes that a cheque for the full rent amount was in the landlord's possession during the relevant period but the landlord never cashed it and never mentioned it during the RTB process.

DISCUSSION

[14] The legislature has delegated the authority to make decisions like the one that is in issue here to the Director of the RTB, not this Court. Among other things, this means that on judicial review it is not open to the Court to retry the matter or to substitute its own views and assessments for those of the RTB. Rather, the Court's role is supervisory, aiming to ensure that the RTB process was fair and that the RTB Adjudicator acted within the scope of their statutory authority.

[15] Where a discretionary decision or finding of fact by the RTB decision is disputed, the Court will only interfere if the Adjudicator's decision was patently unreasonable; this is a highly deferential standard: *RTA*, s. 84; *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58(2)(a); *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 3–32. Where the fairness of the RTB process is in issue, a different standard applies. In that case, the question must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly: *Administrative Tribunals Act*, s. 58(2); *Campbell v. The Bloom Group*, 2023 BCCA 84, at para. 14; *Li* at para. 33.

[16] A necessary consequence of the Court's role on judicial review as I have described it is that judicial review is generally carried out on the record as it was before RTB, not any new or additional evidence that may have been gathered after the fact: see e.g. *Johal v. Damiano*, 2021 BCCA 197 at para. 40. The question is whether the RTB acted properly given its statutory authority and the information and

evidence before it, not what this Court might do with different information or evidence.

[17] That said, in exceptional cases, new evidence may be admitted on judicial review. This may be appropriate to show a lack of jurisdiction, a denial of natural justice, or to establish that there was no evidence for a material finding: *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at para. 30. In complex cases, new evidence may also exceptionally be admitted for “general background”: *Alfier* at para. 30.

[18] Ms. Bedborough submits that a tenant cannot be said to have failed to pay rent where the landlord already holds payment. She says the Earlier Cheque shows the landlord held payment both before issuing the Notice and during the Five-Day Period that followed. In the circumstances, she says the Arbitrator’s conclusions that the statutory preconditions for the issuance of the Notice were met and that she failed to pay rent within the Five-Day Period after that Notice are factually incorrect. She also submits that the landlord’s failure to disclose the existence of the Earlier Cheque rendered the RTB process unfair, noting she could not have brought the Earlier Cheque to the Adjudicator’s attention because she had forgotten about it.

[19] I have a great deal of sympathy for Ms. Bedborough and the situation she finds herself in. However, I am unable to agree. On the facts of this case, that the landlord held the Earlier Cheque simply does not mean that the landlord held payment for July rent. That being so, Ms. Bedborough has failed to establish the fundamental premise underlying her arguments for the admission of fresh evidence, and on the judicial review proper.

[20] Ms. Bedborough’s cheques for a lesser amount than the Earlier Cheque were returned for insufficient funds. Neither the record before the RTB nor the additional evidence Ms. Bedborough has put forward on judicial review suggests that the Earlier Cheque would nevertheless have cleared at any point up until the expiry of the Five-Day Notice Period.

[21] To that end, the banking screenshot Ms. Bedborough submitted to the RTB lacks detail, but even at its strongest does not provide a basis to conclude there were sufficient funds for the Earlier Cheque to have been honoured. Similarly, Ms. Bedborough has not provided banking documentation that supports her bare assertion that she had written the cheques that bounced from the wrong bank account, but that there were sufficient funds in the account from which she had written the Earlier Cheque.

[22] I also do not accept Ms. Bedborough's submission that the landlord could simply have attempted to cash the Earlier Cheque on its own initiative, either before issuing the Notice to End Tenancy or during the Five-Day Period that followed. Leaving aside whether it would have cleared, the Earlier Cheque was for an amount greater than what Ms. Bedborough actually owed and she had submitted two subsequent cheques for July rent, effectively supplanting the Earlier Cheque. In these circumstances, barring a specific request from Ms. Bedborough, the landlord's failure cash the Earlier Cheque cannot be faulted.

[23] I have considered Ms. Bedborough's evidence of a medication she began taking on July 15, 2025 that may cause memory problems and the role she says this played in forgetting about the Earlier Cheque, and her challenges in getting payment to the landlord. However, the five-day period following the Notice to End Tenancy expired on July 14, 2025, apparently before she began taking that medication.

[24] All this being so, I have concluded that this is not one of those exceptional cases in which evidence that was not before the administrative tribunal should be admitted on judicial review. For largely the same reasons, even if I had, I would not have been persuaded that the RTB process was unfair, or that the Adjudicator's decision was patently unreasonable so as to permit intervention on judicial review.

[25] Accordingly, Ms. Bedborough's petition for judicial review is dismissed. This is a harsh result considering Ms. Bedborough did eventually pay her rent and has lived in and earned income from the premises for many years. However, the statutory presumption in s. 46(5)(a) of the *RTA* is unequivocal and the law is clear that there is

no relief from the forfeiture of the tenancy in these circumstances, despite the tenant subsequently making good on the amount owing: *Ganitano v. Metro Vancouver Housing Corporation*, 2014 BCCA 10 at paras. 41-44. As to the costs of this petition, though they would ordinarily follow the result, I have concluded in the exercise of my discretion that each party should bear its own costs.

[26] At the conclusion of the hearing of the petition for judicial review, the landlord offered to defer enforcement of the Order of Possession for 30 days following issuance of these reasons. Ms. Bedborough will therefore have an additional 30 days from the date of these reasons to give the landlord vacant possession of the premises.

“Bantourakis J.”