

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Najaripour v. Brightside Community Homes*,
2023 BCSC 2032

Date: 20231121
Docket: S228720
Registry: Vancouver

Between:

Theodora Neyereh Najaripour

Petitioner

And

Brightside Community Homes

Respondent

Before: The Honourable Justice MacNaughton

On judicial review from: An order of the Residential Tenancy Branch, dated October 17, 2022

Reasons for Judgment

Representative for the Petitioner:

G. Magdalena

Counsel for the Respondent:

P. Onyema

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 6, 2023

Place and Date of Judgment:

Vancouver, B.C.
November 21, 2023

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Overview

[1] This is a judicial review of an October 17, 2022 decision by a Residential Tenancy Branch arbitrator that dismissed Theodora Neyereh Najaripour’s application to set aside a Notice to End Tenancy, granted an order for possession of the unit in which Ms. Najaripour resided, and awarded a monetary amount of \$11,840 to the landlord (the “2022 RTB Decision”).

[2] In the reasons I will refer to the Residential Tenancy Branch as the “RTB” and to the “Arbitrator”.

[3] Ms. Najaripour was represented by her son and power of attorney, Gavrieal Magdalena, at this judicial review, before the Arbitrator, and on the reconsideration application discussed below. I explained to Mr. Magdalena that a judicial review is not an appeal.

[4] Brightside Community Homes Foundation (“Brightside” and the “Landlord”), responded to the petition and participated in the hearing. The Director of the RTB provided written submissions, but did not otherwise participate in the judicial review.

[5] Neither party requested a transcript of the RTB proceeding.

The Parties and Background

The Parties to the Tenancy Dispute

[6] Brightside is a non-profit society incorporated under the laws of British Columbia. It owns and operates subsidized rental units pursuant to agreements it has with Canada Mortgage and Housing Corporation, BC Housing Management Commission, and other agencies that contribute to the rent of tenants residing in Brightside’s buildings.

[7] Brightside is the owner and landlord of a rental unit located at 104 - 2085 West 5th Avenue, Vancouver, British Columbia (the “Unit”).

[8] On October 7, 2009, Brightside (then known as HFBC Housing Foundation) signed a month-to-month tenancy agreement with Ms. Najaripour for the Unit starting October 15, 2009 (the “Tenancy Agreement”).

The Tenancy Agreement Terms and History of Rent Paid

[9] Pursuant to the terms of the Tenancy Agreement, the initial economic rent for the Unit was \$1,300 per month. Rent was due on the first day of every month. There was a difference between the economic rent and the rent Ms. Najaripour paid because Ms. Najaripour’s rent was subsidized.

[10] The Tenancy Agreement outlines the recurring obligation on Ms. Najaripour to disclose specific financial information to the Landlord for the purposes of assessing her entitlement to a subsidy and sets out the possible outcome for failing to provide the required financial information. The relevant parts of the Tenancy Agreement provide as follows on page 1:

- The contribution which the Tenant will pay each month towards the rent for the [Unit] is related to the Tenant’s income, among other factors...
- The provisions in the *Residential Tenancy Act* (the “Act”) relating to changes to the rent do not apply to this tenancy agreement or to the Landlord.
- Without limiting the Landlord’s rights, the Tenant acknowledges and agrees that if the total gross income and/or total assets of all occupants in the [Unit] exceed any maximum threshold which is set by the Landlord or any governmental agency with which the Landlord deals or if the Tenant no longer qualifies for subsidized housing for any reason, then the Landlord may immediately increase the Tenant’s monthly rent contribution to 100% of the full economic rent for the [Unit] or may terminate the tenancy, in the Landlord’s discretion...
- The Tenant must provide complete and truthful annual income and asset information and supporting documents to the Landlord for every occupant of the [Unit], as and when the Landlord requests.
- Failure by the Tenant to fully and promptly cooperate in making a declaration or any misrepresentation by omission or commission, is an important breach of the tenancy agreement and shall be cause for termination of this Tenancy.

[11] Clause 48 of the Tenancy Agreement provides that the Landlord has the right to terminate the tenancy where the Tenant:

(b) fails to fully and correctly provide any income, asset or occupant information. The Tenant has been selected for tenancy on basis of the number of Tenants and Occupants and the Tenant's and Occupant's income and assets. Any change in the number of Tenants or Occupants or in the Tenants or Occupant's income or assets is material and of great importance to the decision to continue or terminate tenancy. It is a condition of this agreement that in the event of a change in the number of Tenants or Occupants in the Premises or the Tenant's or Occupants income or assets the [Landlord] shall have the right to terminate this Tenancy Agreement. The Tenant agrees to notify the [Landlord] promptly of any change in the number of Tenants or Occupants in the Premises and in the Tenant's or Occupant's income or assets. The Tenant agrees from time to time as required by the Landlord, on a form provided by the Landlord, to declare the number of Tenants and Occupants in the Premises and their names, ages, gross incomes and assets. Proof of income and assets must be provided with the declaration. The declaration and information provided with the declaration shall be part of this Tenancy Agreement and the information contained in the declaration and provided with the declaration shall be material to this Tenancy Agreement; any misinterpretation by omission or commission shall be cause for termination of the tenancy. Failure by the Tenant to make a declaration as required by the Landlord or to provide or cause to be provided such as us requested by the Landlord shall be cause for termination of the Tenancy Agreement and/or the termination of the subsidy. The Tenant will then be required to pay the full economic rent.

[12] In 2018, after an assessment, Brightside set her base rent at \$779. In addition, she paid \$34 for cable.

[13] On April 21, 2021, Brightside wrote to Ms. Najaripour requesting her income information pursuant to Clause 48(b) of the Tenancy Agreement. In particular, as it relates to this judicial review, it sought her bank statements. The information was required by May 15, 2021. Brightside informed Ms. Najaripour that a failure to provide the information would be a breach of the Tenancy Agreement and would result in her rent being increased to the economic or market rent of \$1,553, effective June 1, 2021.

[14] Ms. Najaripour responded through her agent and son, Mr. Magdalena. On her behalf, he refused to provide a bank statement on the basis that her account was a joint account and that the information could not be shared. This was the first time that Mr. Magdalena raised the joint account as an issue. In the past, shared bank account information was provided to satisfy the income assessment requirement.

[15] Because Ms. Najaripour did not provide the requested information by the deadline of May 15, 2021, her rent was adjusted to reflect the \$1,553 market rent. The Landlord sent Ms. Najaripour a letter dated May 31, 2022, advising her that because she failed to provide the necessary documents she lost her subsidy and that market rent applied effective June 1, 2021. Ms. Najaripour did not pay the market rent; instead she continued to pay her previously subsidized rental amount.

[16] On August 3, 2021, Mr. Magdalena provided Ms. Najaripour's income tax notices of assessment for 2019 and 2020 to Brightside.

[17] On September 16, 2021, by registered mail, the Landlord served Ms. Najaripour with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "2021 Notice"). The notice indicated that Ms. Najaripour had failed to pay rent in the amount of \$2,332 due September 1, 2021.

[18] On September 29, 2021, Ms. Najaripour applied to the RTB disputing the "rent increase" and seeking to cancel the 2021 Notice. The hearing proceeded by telephone.

[19] On February 10, 2022, the RTB issued a decision dismissing Ms. Najaripour's application as it related to the rent increase. However, the RTB cancelled the 2021 Notice on the basis that the Landlord did not provide sufficient evidence about the market rent it claimed. The Tenancy Agreement referred to market rent of \$1,300 per month. The arbitrator found that the Landlord failed to show that the rent indicated on the 2021 Notice was correct. The arbitrator also found that the Landlord may have waived its right to act on the 2021 Notice. The RTB decision did not prevent the Landlord from issuing Ms. Najaripour a Notice to End Tenancy in the future.

The 2022 RTB Decision

[20] On May 31, 2022, Brightside sent Ms. Najaripour another letter requesting that she provide the required income information by a deadline of June 15, 2022 and notifying her that she was in breach of the Tenancy Agreement and in arrears of rent

for failing to pay market rent for the Unit. Brightside informed Ms. Najaripour that failure to pay market rent would result in them issuing a 10 Day Notice to End Tenancy.

[21] On June 6, 2022, Brightside sent Ms. Najaripour a letter informing her that she was required to pay total rent arrears of \$10,946 by June 13, 2023, failing which, Brightside would issue a 10 Day Notice to End Tenancy.

[22] On June 15, 2022, by registered mail, Brightside served Ms. Najaripour with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “2022 Notice”). On August 30, 2022, Brightside advised Mr. Magdalena, by email, that Ms. Najaripour remained in arrears of rent. Ms. Najaripour continued to pay the subsidized rent amount, at times, from June 2021 to May 2022.

[23] On June 21, 2022, Ms. Najaripour applied to the RTB for dispute resolution and requested the cancellation of the 2022 Notice and to recover the filing fee on the basis that the 2022 Notice had been issued on false pretences as Ms. Najaripour had paid rent.

[24] The RTB held a telephone hearing on October 7, 2022 (the “Hearing”). Mr. Magdalena represented Ms. Najaripour at the Hearing. Brightside appeared through its agent, Silvia Romo, and counsel, Samantha Douglas. Both parties filed evidence in advance of the Hearing and were given an opportunity to present their case. Mr. Magdalena called two witnesses, Simon Cyrenian, being Ms. Najaripour’s caregiver, and Harriet Hughes, being her friend. Brightside did not call any witnesses.

[25] The Landlord’s representative submitted that the only issue it had with the financial documentation provided by Ms. Najaripour was that it did not include her bank statements. Mr. Magdalena told the Landlord that Ms. Najaripour does not have a bank account but did not provide proof of this fact. In the past, Ms. Najaripour provided statements from a joint account for which she was one of the named account holders. Mr. Magdalena submitted that Ms. Najaripour previously provided

the Landlord with evidence that her name had been removed from that bank account. He believed that information had been provided to the Landlord, by mail, in 2017 or 2018.

[26] Brightside provided the following documentary evidence:

- a) that Ms. Najaripour previously provided bank statements;
- b) that Ms. Najaripour provided Brightside with a cheque dated May 2022 on which an account holder’s name had been blacked out;
- c) of the date on which Ms. Najaripour failed to provide the required information for the calculation of a rent subsidy;
- d) of the date on which Brightside notified Ms. Najaripour that, due to the failure to provide the requested information, she no longer qualified for a rent subsidy; and
- e) of the date on which Brightside notified Ms. Najaripour that the economic or market rent changed to \$1,553 and required her to pay that amount.

[27] In the 2022 RTB Decision, the Arbitrator found that Ms. Najaripour had failed to provide Brightside with the required income information in order for it to assess whether she qualified for a rent subsidy and that, as a result, she lost her entitlement to subsidized rent and market rent was payable for the Unit.

[28] The Arbitrator concluded that Ms. Najaripour could not withhold \$740 per month from July 2021 to June 2022 and that Brightside’s evidence supported the eviction of Ms. Najaripour. The Arbitrator issued a monetary order requiring Ms. Najaripour to pay \$11,840 to the Landlord for arrears of rent. The rent arrears were set out in a table in the 2022 RTB Decision as follows:

DATE	RENT AMOUNT	AMOUNT PAID	AMOUNT OWING	AMOUNT ORDERED
June 1, 2021	\$1,553.00	NIL	\$1,553.00	NIL
July 1, 2021	\$1,553.00	\$813.00	\$740	\$740

August 1, 2021	\$1 553.00	\$813.00	\$740	\$740
September 1, 2021	\$1,553.00	\$813.00	\$740	\$740
October 1, 2021	\$1,553.00	\$813.00	\$740	\$740
November 1, 2021	\$1 553.00	\$813.00	\$740	\$740
December 1, 2022	\$1 553.00	\$813.00	\$740	\$740
January 1, 2022	\$1,553.00	\$813.00	\$740	\$740
February 1, 2022	\$1 553.00	\$813.00	\$740	\$740
March 1, 2022	\$1,553.00	\$813.00	\$740	\$740
April 1, 2022	\$1,553.00	\$813.00	\$740	\$740
May 1, 2022	\$1,553.00	\$813.00	\$740	\$740
June 1, 2022	\$1,553.00	\$813.00	\$740	\$740
July 1, 2022	\$1,553.00	\$813.00	\$740	\$740
August 1, 2022	\$1,553.00	\$813.00	\$740	\$740
September 1, 2022	\$1,553.00	\$813.00	\$740	\$740
October 1, 2022	\$1,553.00	\$813.00	\$740	\$740
TOTAL	\$26,401	\$13,008	\$13,393	\$11,840

[29] In the Arbitrator's reasons, at page 6, she set out the requirement in s. 26 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA], that tenants must pay rent when due and the right of a landlord to end a tenancy in the face of a failure to pay rent. The Arbitrator set out six circumstances in which a tenant is not required to pay rent. None of the exceptions applied.

[30] The Arbitrator considered whether Brightside was entitled to change Ms. Najaripour's rent from subsidized rent to market rent as of July 1, 2021. At page 9 of their reasons, the Arbitrator concluded:

- a) Ms. Najaripour agreed to an initial economic rent for the Unit but that economic rent was subject to change from time to time by the Landlord;
- b) Pursuant to the Tenancy Agreement, Ms. Najaripour's contribution to her rent is related to her income;
- c) Pursuant to s. 2 of the *Residential Tenancy Regulation*, B.C. Reg. 477/2003, the Landlord is exempt from the sections of the RTA relating to rent increases and Ms. Najaripour acknowledged that those provisions did not apply;
- d) Ms. Najaripour agreed that if she no longer qualified for subsidized housing, for any reason, the Landlord could require her to pay the full economic rent for the Unit; and

- e) Ms. Najaripour could not take issue with these terms being applied and upheld.

[31] The Arbitrator also concluded that Ms. Najaripour had been properly notified of the rent change from the subsidized amount to the economic rent and that the reason for that change was her failure to provide the required income documents to the Landlord.

[32] The Arbitrator wrote at pages 9–10:

An issue arose ... about whether [Ms. Najaripour] had provided the required bank account information to the Landlord. ... The issue was the Tenant providing a bank statement or proof they no longer have a bank account. In my view, it is not within my purview to decide whether [Ms. Najaripour] provided the Landlord the documents [it] required to determine eligibility for a rent subsidy. However, even if this is within my purview, I am satisfied [Ms. Najaripour] did not provide the Landlord bank statements or proof [she] no longer has a bank account. [Mr. Magdalena] tried to prove during the hearing that the Tenant no longer has a bank account, which is not the issue.

The issue is whether [Ms. Najaripour] provided the required information to the Landlord when requested. The Landlord has submitted documentary evidence ... to support their position. There is no documentary evidence before me showing [Ms. Najaripour] provided the Landlord their bank statements or proof they no longer have a bank account. In the circumstances, I am satisfied the Tenant did not provide the required documentation to the Landlord to obtain a rent subsidy.

[33] On the procedural unfairness issue, the Arbitrator found at page 4 of their reasons:

During the hearing, [Mr. Magdalena] sought to call the witnesses a second time to provide evidence about whether the Tenant has a bank account. I told [Mr. Magdalena] I would not hear the witnesses on this issue. This issue relates to the argument of [Mr. Magdalena] that the Tenant provided the necessary financial documentation to the Landlord despite the Landlord's position otherwise. As explained to the parties during the hearing, the issue of whether the Tenant has a bank account is not the issue before me. The issue is whether the necessary financial documentation was provided to the Landlord which is a different issue from whether the Tenant does or does not have a bank account.

The Review Consideration Decision

[34] On October 20, 2022, Ms. Najaripour applied for a review consideration of the 2022 RTB Decision. She based her application on two grounds: 1) the existence of new and relevant evidence; and 2) the Director’s decision or order was obtained by fraud.

[35] On October 25, 2023, an RTB arbitrator issued a review decision (the “Review Decision”). They dismissed Ms. Najaripour’s application and confirmed the 2022 RTB Decision and orders issued on October 17, 2022. The arbitrator found that Ms. Najaripour did not produce new and relevant evidence and the evidence submitted was more in the nature of an attempt to re-argue matters already decided by the Arbitrator. They also found that the information submitted by Ms. Najaripour and the description of the issues raised by Mr. Magdalena on Ms. Najaripour’s behalf did not demonstrate fraud.

The Correction Decision

[36] On October 20, 2022, Brightside applied for a correction to a math error in the 2022 RTB Decision. It submitted that Ms. Najaripour was credited with an additional \$34 per month towards her rent when, in fact, that amount was paid for utilities. Brightside submitted that the rent credit towards the arrears should have been \$779 instead of \$813. Brightside also indicated that Ms. Najaripour did not pay rent in April or from July to October of 2022 and that her June 2022 cheque had been returned for non-sufficient funds. Brightside calculated Ms. Najaripour’s arrears at \$17,158.

[37] The Arbitrator issued a Correction Decision on November 1, 2022. They corrected certain inadvertent omissions and typographical errors but they declined to adjust the decision or correct math errors. Brightside does not seek judicial review of the Correction Decision.

The Parties’ Positions on this Petition

[38] On October 28, 2022, Ms. Najaripour, represented by Mr. Magdalena, filed a Petition for judicial review. He amended it on March 9, 2023. The petition alleges

that the 2022 RTB Decision is patently unreasonable because of a statement made by the Arbitrator about the relevance of Ms. Najaripour's ownership of a bank account and that the Arbitrator's reasons were inadequate.

[39] In addition, the petition alleges that Ms. Najaripour was denied procedural fairness at the Hearing because she was not permitted to recall her witnesses and not permitted to cross-examine Brightside's agent.

[40] Brightside submits that the Arbitrator's Decision is reasonable as it falls within a range of acceptable outcomes and that the Arbitrator did not err in their reasoning in coming to the decision.

[41] Brightside also submits that the Arbitrator was procedurally fair during the Hearing.

Legal Basis

The Nature of Judicial Review

[42] The role of the court on judicial review is not hear an appeal, to hear new evidence or argument, or to decide or redecide the case. It is to ensure that the statutory decision maker: (a) acted within their jurisdiction by deciding what they were directed to decide by legislation; and (b) did not lose jurisdiction by failing to provide a fair hearing or rendering a decision outside the degree of deference owed by a reviewing court: *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at paras. 25–28.

Standard of Review

[43] Pursuant to ss. 5.1 and 84.1 of the *RTA*, and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA], findings of fact or law, or exercises of discretion by RTB dispute resolution officers in respect of matters within their exclusive jurisdiction are reviewable on a standard of patent unreasonableness.

[44] Section 58(3) of the *ATA* defines patent unreasonableness with respect to discretionary decisions. It provides that a discretionary decision is patently

unreasonable if: the discretion is exercised arbitrarily or in bad faith; is exercised for an improper purpose; is based entirely or predominantly on irrelevant factors; or fails to take statutory requirements into account.

[45] The ATA does not define patent unreasonableness as it applies to a tribunal's factual or legal findings. However, the patent unreasonableness standard has been articulated in a number of decisions of this Court and appellate courts. In particular:

- a) the standard is an onerous one and a decision can only be quashed if there is no rational or tenable line of analysis supporting it (*Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 at para. 65, aff'd 2009 BCCA 229);
- b) a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.*, 2011 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford*, 2011 BCCA 114);
- c) a patently unreasonable decision is one that almost borders on the absurd (*West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 SCC 22 at para. 28); or
- d) a patently unreasonable decision is one that is so flawed that no amount of curial deference can justify letting the decision stand (*Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52).

Procedural Fairness

[46] For procedural fairness issues, the standard is whether, in all the circumstances, the RTB acted fairly: ATA at s. 58(2)(b).

[47] A tribunal has discretion to establish its practices, policies and procedures in the administration of its responsibilities pursuant to the legislation creating it. Rule 7.17 of the *Residential Tenancy Branch Rules of Procedure [RTB Rules]* empowers

the Arbitrator to determine the relevance, necessity, and appropriateness of evidence.

[48] The content of procedural fairness looks at the manner in which a decision-maker went about making their decision. This analysis is done with the recognition that tribunals have broad discretion in the manner in which they fulfill the requirements of procedural fairness: *Seaspan Ferries Corporation v. British Columbia Ferry Services Inc.*, 2013 BCCA 55 at paras. 49, 52 [*Seaspan*]. In *Seaspan*, the Court of Appeal stated:

[52] ... the standard of review applicable to issues of procedural fairness is best described as simply a standard of “fairness”. A tribunal is entitled to choose its own procedures, as long as those procedures are consistent with statutory requirements. On review, the courts will determine whether the procedures that the tribunal adopted conformed with the requirements of procedural fairness. In making that assessment, the courts do not owe deference to the tribunal’s own assessment that its procedures were fair. On the other hand, where a court concludes that the procedures met the requirements of procedural fairness, it will not interfere with the tribunal’s choice of procedures.

Analysis

Which decision is under review?

[49] As a preliminary issue, I must determine whether it is the 2022 RTB decision or the Review Consideration Decision that is subject of this judicial review.

[50] There has been some controversy about whether, when a statutory scheme provides for an internal review procedure, it is the original or the review decision that is the proper subject of the judicial review.

[51] In *Sereda v. Ni*, 2014 BCCA 248, the Court followed *United Steelworkers, Paper and Forestry, Rubber, Manufacturing, Energy Allied Industrial and Service Workers International Union, Local 2009 v. Auyeung*, 2011 BCCA 527, and determined that the review decision was the subject of the judicial review but that the original decision should form part of the record and “inform” the inquiry on judicial review: at para. 26.

[52] In *Martin v. Barnett*, 2015 BCSC 426, Justice Burke reviewed the law in this area and concluded that in two subsequent decisions, being *Yellow Cab Co. v. British Columbia (Passenger Transportation Board)*, 2014 BCCA 329 and *Fraser Health Authority v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2014 BCCA 499, the Court of Appeal clarified the law and concluded that when an internal review decision does not address the merits of the underlying decision, the original decision should be the subject of the judicial review: at para. 44. Justice Sewell followed Burke J.'s reasoning in *Ndachena v. Nguyen*, 2018 BCSC 1468: at paras. 34–37.

[53] In this case, the Review Consideration Decision did not review the merits of the 2022 RTB Decision. The scope of the Review Consideration Decision was whether new evidence should be admitted and whether fraud occurred. Therefore, it is the 2022 RTB Decision that this is the subject of the judicial review. I note that this is what Ms. Najaripour sought in her amended petition.

Is the 2022 RTB Decision patently unreasonable?

[54] When read as a whole, as I am required to do, the Arbitrator's statement that it was not within her purview to decide whether Ms. Najaripour provided Brightside with the documents required to determine her eligibility for a rent subsidy clearly refers to the right of exempt subsidized housing providers to determine the documents they require for an income assessment. In other words, the statement refers to the inability of the Arbitrator to interfere with the substance of Brightside's policy on how they assess whether an individual meets the financial requirements for a subsidy; it does not refer to the Arbitrator's authority to decide whether the banking information was given to the Landlord when requested. The Arbitrator's finding in that regard was not patently unreasonable.

[55] I note that a similar issue was considered in *Hu v. Red Door Housing Society*, 2016 BCSC 1238 [*Hu*]. In that case, the tenant petitioner lost a subsidy after failing provide certain information about household income. The landlord raised the rent to

economic rent and, when the tenant did not pay the increased amount, the Landlord issued a notice to end the tenancy.

[56] In *Hu*, the Court made the following comments:

[8] In July 2015, Red Door began the annual process of reviewing Ms. Hu's income and assets for the upcoming year, and considered the information and documents Ms. Hu had provided to be insufficient to support her income and assets declaration. In the declaration, Ms. Hu indicated that her own income was \$1,050.17 per month, consisting of social assistance, and [her daughter]'s income was \$31.25 per month.

...

[18] After the hearing, the arbitrator concluded that she had no jurisdiction to review the cancellation of Ms. Hu's subsidy. No other basis for cancelling the notice of rent increase having been offered, the arbitrator dismissed Ms. Hu's application. The key portion of the arbitrator's decision on this point reads as follows:

There is nothing in the Act or the Regulation that permits me to examine the landlord's internal policy for determining the value of the rent subsidy provided. As there is no basis for me to interfere with the landlord's internal calculations, the rent increase from \$650.00 to \$1,900.00 is valid.

...

[23] Red Door is exempt from the rent restrictions in sections 41-43 of the Act, and there is no other provision in the Act dealing with the removal of a rent subsidy. The rent increase that resulted from the removal of Ms. Hu's subsidy was, therefore, an increase unrelated to any right, obligation, or prohibition under the Act, and, accordingly, s. 58(1)(a) was not engaged.

[24] Nor was s. 58(1)(b) engaged. Red Door's removal of the subsidy did not involve a right or obligation under the terms of tenancy agreement, as s. 58(1)(b) requires. The tenancy agreement does not purport to deal with Ms. Hu's subsidy.

[25] Since, therefore, nothing in s. 58 provided a basis for Ms. Hu's application concerning the cancellation of her subsidy, sections 58 and 62 did not require the director to accept the application or the arbitrator to determine it.

...

[30] The fundamental difficulty with Ms. Hu's position that the arbitrator was obliged to consider Red Door's policy for determining income (and therefore subsidies) in order to determine whether her rent was "related to" her income, is that, in my view, s. 2 of the Regulation intended issues relating to rent subsidies to be removed from the Act's rent restrictions entirely. In my view, the s. 2 exemption, read in conjunction with the provisions of the Act, does not contemplate inquiries in proceedings under the Act about whether

subsidies in individual cases are granted or removed after a proper consideration of the particular tenant's income.

[57] The Arbitrator then framed the issue as whether Ms. Najaripour “provided the required information to the Landlord when requested.” The Arbitrator clearly found that the issue at the Hearing was whether Ms. Najaripour provided current information about her bank account or proof that she no longer had one, it was *not* to determine whether Ms. Najaripour had a bank account.

[58] There was no dispute that Ms. Najaripour provided her income tax notices of assessment, there was but no evidence that she provided anything further.

[59] The Arbitrator concluded that the Landlord submitted copies of their letters requesting the bank account information but that, in response, Ms. Najaripour did not submit any bank statements or proof that she no longer had a bank account.

[60] Mr. Magdalena submitted it was impossible for Ms. Najaripour to prove the non-existence of a bank account. I do not agree. Ms. Najaripour could have written a letter or provided an affidavit to that effect. Either might have satisfied the Landlord, which, in its correspondence with Mr. Magdalena, invited a discussion to resolve matters. In the event that the Landlord was advised in 2018 that Ms. Najaripour no longer had a bank account, she could have affirmed that her situation had not changed. On the evidence before the Arbitrator, she simply did not respond to multiple requests.

[61] The fact that Ms. Najaripour may have provided the Landlord with information that she did not have a bank account in 2018 did not satisfy the Landlord's request for current information. Her entitlement to a subsidy was reviewable on an ongoing basis, as requested by the Landlord.

[62] The Arbitrator considered the parties' arguments. She examined the prior RTB decision and concluded that it did not prevent Brightside from increasing the rent for the Unit. Brightside was exempt from the rent increase provision of the *RTA*.

[63] Read as a whole, the 2022 RTB Decision is not clearly irrational, does not border on the absurd, and is supported by the evidence. There is a rational line of reasoning to support the Arbitrator's decision.

Were the reasons adequate?

[64] It was not entirely clear whether Mr. Magdalena was pursuing this as an argument in support of a finding that the 2022 RTB Decision was patently unreasonable. To the extent that he intended to argue that the Arbitrator did not refer to every piece of evidence or every argument in arriving at her conclusion, such an argument does not support a finding of patent unreasonableness.

[65] On judicial review, this Court will presume that the adjudicator considered all of the evidence and arguments before them even if not all the evidence and arguments are set out in a decision. In *Ganitano v. Yeung*, 2016 BCSC 2227, Justice Griffin provides a helpful summary of the principles that inform an assessment of the adequacy of reasons, including how they apply in the context of residential tenancy disputes:

[21] The requirement to give written reasons is a facet of the duty of fairness. Analytically, an investigation into the adequacy of reasons may bleed into substantive review. Where reasons are inadequate, it may be difficult for a reviewing court to ascertain a delegate's justification for an outcome; however, where reasons are adequate an arbitral outcome may nevertheless be unreasonable or patently unreasonable.

[22] Reasons allow individuals to know why, how, and on what evidence a decision-maker reaches his or her decision; see D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, updated 2014) at c. 12 at 70.

[23] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, a union sought judicial review on the basis that the arbitrator provided inadequate reasons for the arbitral award. The Court at para. 16 held that "a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". Reasons are adequate, the Court held, if a reviewing court can ascertain the rationale of the decision.

[24] In assessing the adequacy of reasons, context is relevant. In *Christiansen v. Harwood*, 2015 BCSC 1440, Fisher J., at para. 20, held that in the context of residential tenancy disputes the standard of adequacy is lowered because the governing legal regime is relatively straightforward. The

Court reiterated that the overriding test for adequacy is whether a reviewing court is able to understand how and why the decision was made.

[66] Read as a whole, the Arbitrator summarized Ms. Najaripour's and Brightside's positions at page 2 of her decision and at pages 4-6, she summarized the evidence the parties relied on. The arbitrator met the required elements as they relate to a decision, as set out in *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232. Based on the reasons provided by the Arbitrator, I am able to clearly understand how and why the decision was made, satisfying the test set out in *Ganitano*: at para. 24.

[67] The Arbitrator set out the issues she had to decide and reached clear conclusions based on the evidence. There is a rational basis for their decision. I do not find it to be patently unreasonable.

Was the hearing procedurally fair?

[68] I am satisfied that, in all of the circumstances, the RTB acted fairly.

[69] In this case, the Arbitrator allowed Ms. Najaripour to call two witnesses to give evidence. The Arbitrator noted that Ms. Najaripour sought to recall the witnesses to testify about whether or not she had a bank account, but she concluded that their evidence was not necessary and refused to allow them to be recalled. This decision was made on the basis that the issue was *not* whether Ms. Najaripour had a bank account, but whether she provided Brightside with documentary evidence supporting the non-existence of a bank account when asked to do so for the purpose of assessing her eligibility for a subsidy.

[70] As noted earlier in these reasons, Rule 7.17 of the *RTB Rules* gives the Arbitrator the authority to determine the relevance, necessity, and appropriateness of evidence. The Arbitrator considered the documentary evidence provided on the issue of whether Ms. Najaripour had provided the necessary information to Brightside at the relevant time. In all of the circumstances, I find that the decision not to admit further testimony from Ms. Najaripour's friend and caregiver about the

existence of a bank account, on the basis that it was not necessary to decide the issues before her, was not a breach of the duty of fairness owed to Ms. Najaripour.

[71] I do not accept the argument that Ms. Najaripour was denied procedural fairness when she was not permitted to cross examine Brightside’s agent, Silvia Romano. Ms. Romano was not called as a witness; no direct examination took place. I noted that Rule 7.21 of the *RTB Rules* provides that an arbitrator may allow another party to question the other party’s witness with respect to their testimony. This provision is permissive; the opportunity to question the other party’s witness is not as of right. It was within the Arbitrator’s discretion to determine whether there was anything to be gained on the issue of whether the banking information was provided to the Landlord by allowing such questioning. In the circumstances, I do not find the Hearing was unfair on this basis.

Conclusion

[72] The Arbitrator’s decision showed a clear path of reasoning from their assessment of the evidence to their conclusion. A judicial review is not an appeal and is not a rehearing. The 2022 RTB Decision was not patently unreasonable or unfair. As a result, Ms. Najaripour’s amended petition is dismissed. Brightside is entitled to its costs of the petition at scale B.

“MacNaughton J.”