IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Sanchez v. Bao,*
2024 BCSC 1482

Date: 20240814
Docket: S242625
Registry: Vancouver

Between:

Andro Sanchez

Petitioner

And

Yan Hong Bao

Respondent

Before: The Honourable Madam Justice W.A. Baker

On judicial review from: An order of the Residential Tenancy Branch, dated April 15, 2024 (File No. 910147406)

Reasons for Judgment

The Petitioner, appearing in person:	Andro Sanchez
Appearing as Representatives for Yan Hong Bao:	H. Li H. In
Place and Date of Hearing:	Vancouver, B.C. July 31, 2024
Place and Date of Judgment:	Vancouver, B.C. August 14, 2024

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[1] Mr. Sanchez brings this petition for judicial review of a review of a decision of Arbitrator Nazareth dated April15, 2024, under the *Residential Tenancy Act*, S.B.C. 2002, c. 78, (the "*Act*") upholding his landlord's notice to end tenancy, making an order for possession of the rental unit, and issuing a monetary award to the landlord of $13,300.

[2] The landlord's notice to end tenancy was based on Mr. Sanchez's failure to pay rent over three months.

[3] Mr. Sanchez alleges the decision was patently unreasonable, and the hearing was procedurally unfair.

[4] No response was received from the Director of Residential Tenancy, although counsel for the Director provided the record of the hearing.

[5] An agent for the landlord appeared at the Petition hearing.

<u>What is the appropriate standard of review</u>

[6] The appropriate standard of review of an arbitrator's decision under the *Act* has been determined many times by this court, and is grounded in sections 5.1 and 84.1 of the *Act* and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "ATA"). Questions of fact, law and discretion are only open to review if such decisions are patently unreasonable: *Campbell v. The Bloom Group*, 2023 BCCA 84 [*Campbell*] at para 11-14. Questions of procedural fairness, however, must be decided "having regard to whether, in all of the circumstances, the tribunal acted fairly": *Campbell* at para. 14.

[7] Under the ATA, a decision is patently unreasonable if there is no evidence to support the findings, or the reasoning in the decision is clearly irrational or so flawed that no amount of curial deference can justify letting it stand: *Yee v Montie*, 2016 BCCA 256 at para 21-22; *Pacific Newspaper Group Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 2000*, 2014 BCCA 496 at paras. 39-44 (citing *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52).

[8] The importance of the reasons for decision is underscored in *Pereira v. British Columbia (Labour Relations Board)*, 2023 BCCA 165, where the court confirmed the role of the reviewing court in assessing the line of analysis set out by the decision maker:

> [93] As explained in *Team Transport Services Ltd. v. Unifor, Local No. VCTA*, 2021 BCCA 211 (at paras. 28–29), the patent unreasonableness standard is a deferential standard:
>
> > Patent unreasonableness is the standard that is most highly deferential to the decision maker. There are many descriptions of the standard. The explanation found in *Victoria Times Colonist v. Communications, Energy and Paperworkers*, 2008 BCSC 109 (aff'd *Victoria Times Colonist, a Division of Canwest Mediaworks Publications Inc. v. Communications, Energy and Paperworkers Union of Canada, Local 25-G*, 2009 BCCA 229) is useful:
> >
> > > [65] When reviewing for patent unreasonableness, the court is not to ask itself whether it is persuaded by the tribunal's rationale for its decision; it is to merely ask whether, assessing the decision as a whole, there is any rational or tenable line of analysis supporting the decision such that the decision is not clearly irrational or, expressed in the *Ryan* [*Law Society of New Brunswick v. Ryan*, 2003 SCC 20] formulation, whether the decision is so flawed that no amount of curial deference can justify letting it stand. If the decision is not clearly irrational or otherwise flawed to the extreme degree described in *Ryan*, it cannot be said to be patently unreasonable. This is so regardless of whether the court agrees with the tribunal's conclusion or finds the analysis persuasive. Even if there are aspects of the reasoning which the court considers flawed or unreasonable, so long as they do not affect the reasonableness of the decision taken as a whole, the decision is not patently unreasonable.
> >
> > In other words, the standard is at the most deferential end of the reasonableness standard …
> >
> > [Emphasis added.]

Facts relevant to this judicial review

[9] Mr. Sanchez submits that he had a long standing arrangement with the landlord, who was based in China, whereby Mr. Sanchez would pay certain expenses, including property taxes, on behalf of the landlord, and then would holdback an equivalent amount of rent in compensation for the expenditures.

[10] In 2023, Mr. Sanchez says the landlord wanted to increase revenue from the unit, and Mr. Sanchez suggested he could construct a basement suite in the home,

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which could be rented out for additional revenue. Mr. Sanchez says that he prepared a budget and the landlord agreed that Mr. Sanchez could do the work and deduct expenses from his rent.

[11] Mr. Sanchez began doing the work in the fall of 2023, and withheld rent in December 2023, January 2024 and February 2024, to compensate him for the expenses he had incurred in doing the renovations.

[12] On March 18, 2024, the landlord hired a local management company to deliver a 10 Day Notice to end tenancy for non-payment of rent in the amount of $12,000. Mr. Sanchez immediately filed a dispute with the Residential Tenancy Branch (RTB).

[13] The landlord also filed a dispute with the RTB regarding the tenant's non-payment of rent.

[14] The hearing on April 15, 2024 was held to address Mr. Sanchez's dispute. A hearing was scheduled on April 30, 2024 to address the landlord's dispute regarding non-payment of rent.

[15] In the materials Mr. Sanchez filed in response to the landlord's dispute, Mr. Sanchez included an email which appears to support his position, where the landlord states "The cost of your basement is deducted from the rent".

[16] Mr. Sanchez obtained a copy of the recording of the proceedings held on April 15, 2024. He did not obtain a certified transcription of the recording, because he could not afford it. He prepared his own transcription of portions of the transcript. He advised that he included the time stamp for the relevant passages, and listened to the recorded multiple times to ensure it was accurate. The respondent did not take issue with the accuracy of the recording. While it is not ideal, given no objection was taken by the respondent, and given Mr. Sanchez was self represented and I accept that he could not afford a certified translation, I am prepared to accept his translation as accurate.

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[17] At the hearing on April 15, 2024, the arbitrator asked Mr. Sanchez whether he had any documents to support his position. Mr. Sanchez advised that he was looking through his emails trying to find the email where the landlord agreed to the deduction. The arbitrator repeatedly told Mr. Sanchez that the hearing could only last one hour, and he was running out of time.

[18] The following exchange then occurred between the arbitrator and Mr. Sanchez:

> 1:05:27 The Arbitrator: You do have a hearing on the 30th, so but this tenancy unfortunately has to end now and I have to give this landlord an order for possession…okay?
>
> Mr. Sanchez: Ah, so the hearing on the 30th will proceed?
>
> The Arbitrator: Yes it will be there, yeah. You will have to call in and if you are going to discuss your.. your.. remember put in proper evidence. You're going to discuss your monetary claim and the landlord will discuss their monetary claim, then you will maybe be successful in getting some money for the work you've done.
>
> Mr. Sanchez: Okay
>
> The Arbitrator: Alright, so now having said that tenant…
>
> Ms. Sanchez: Ah, I have something to add when they said it was unexpected and the work is not done […]
>
> 1:06:43 The Arbitrator: Well we're past all that. You can talk about that in your next hearing, right. I am only dealing with the notice to end tenancy. That's all…alright.

[19] After the decision, dated on April 15, 2024, the same day as the hearing, the landlord withdrew their dispute and there was no further hearing on April 30, 2024. The landlord's representative on this petition confirmed that, after they got the decision of the arbitrator on April 15, 2024 they got everything they were looking for in their own dispute, including the monetary judgment, and so there was no need to proceed with their dispute.

<u>The decision under review</u>

[20] In the decision under review, the arbitrator set out the background and evidence in six short paragraphs. The arbitrator in brief referred to the dispute between the parties about the renovation expenses and whether they could be deducted from the rent. The arbitrator summarized the evidence as follows:

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> The parties had different versions of what transpired between them regarding the renovations and the associated costs. The tenant stated that in the past, the landlord requested him to cover the property taxes and withhold this amount from the rent. The tenant also added that in the past he completed repairs around the house and withheld the costs from rent.
>
> Based on this practice, the tenant understood that he could withhold rent for the cost of the materials he purchased for the renovation. The landlord stated that receipts were provided, but the work done did not match the materials purchased and refused to compensate the tenant. The tenant went ahead and withheld rent for the months of December 2023, January and February 2024. The landlord stated the tenant paid $2,400.00 as rent for March 2024 and $2,300.00 for April 2024.
>
> The tenant agreed that the total amount of rent withheld by him was $13,300.00.

[21] In the section of the decision titled “Analysis”, the arbitrator stated the requirement under s. 46 of the *Act* that a tenant receiving a 10 Day Notice must pay the outstanding rent or file a notice of dispute. The arbitrator confirmed the date the 10 Day Notice was served, and the date the notice of dispute was filed.

[22] Without engaging in any analysis regarding the agreement alleged by Mr. Sanchez that permitted him to withhold rent, the arbitrator held:

> The tenant agreed that at the time of the hearing, he owed $13,300.00 in unpaid rent.
>
> For the above reasons, the Tenant’s application for cancellation of the Landlord’s 10 Day Notice to End Tenancy for Unpaid Rent (10 Day Notice) under sections 46 and 55 of the Act is dismissed, without leave to reapply.

[23] The arbitrator then found the landlord was entitled to an order for possession and, pursuant to s. 55(1.1) of the *Act*, the landlord was entitled to a monetary remedy in the amount of the unpaid rent.

Was the decision patently unreasonable?

[24] In answering the question of whether the decision was patently unreasonable, I must consider the decision as a whole. It is a very brief decision. Nevertheless, in setting out the evidence, the arbitrator appears to have engaged in the issue raised by Mr. Sanchez, i.e. the alleged agreement between the parties to alter the tenancy agreement to allow Mr. Sanchez to deduct the renovation costs from the rent. This was the fundamental question before the arbitrator. If the parties had agreed to alter

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the tenancy agreement, as alleged by Mr. Sanchez, then the 10 Day Notice may not be valid. A further analysis may be required to assess whether the amount of rent withheld by Mr. Sanchez corresponded to the renovation costs agreed to by the landlord. But the primary question to be determined on the hearing was whether the evidence disclosed an agreement to vary the tenancy agreement.

[25] Having read the decision in its entirety, I cannot see any rational or tenable line of analysis which addresses this fundamental issue. The arbitrator simply repeated the fact that the tenant had not paid the rent, without addressing the underlying argument as to whether such a withholding accorded with an agreement between the parties.

[26] In the absence of any analysis addressing the fundamental issue in the dispute, I find the decision is so flawed that no amount of curial deference can justify letting it stand. It is patently unreasonable.

<u>Was the hearing procedurally unfair?</u>

[27] Section 55(1.1) of the RTA makes it mandatory for the Director to order payment of the unpaid rent if a 10 Day Notice is upheld. This is undoubtedly the reason the arbitrator made the monetary order they did, although I note that the monetary order made exceeded the unpaid rent set out in the 10 Day Notice.

[28] However, it is clear that the arbitrator led Mr. Sanchez to believe that the monetary claims between the parties would be dealt with at a hearing on April 30, 2024.

[29] The arbitrator knew that there was a second dispute filed, which would address the landlord's claim for unpaid rent. Knowing this, the arbitrator did not alert Mr. Sanchez to the fact that, should the 10 Day Notice be upheld, the *Act* would require an order for unpaid rent – the very issue raised in the second dispute. Instead, the arbitrator reassured Mr. Sanchez that the landlord's claim for unpaid rent would be dealt with at the later hearing and that Mr. Sanchez could address his claim for the costs of the renovation at the same time.

[30] The parties appearing before the RTB were unrepresented, and were not sophisticated. In providing dispute resolution services, the Director is required, pursuant to s. 57.7 of the *Act*, to act in a manner that is "accessible, timely and flexible". It is incumbent on the RTB arbitrators to clearly explain to the parties how the process will unfold. In a situation where there are two disputes filed, and the issues clearly overlap, the arbitrator needs to ensure that the parties understand what is happening in each dispute and, where the issues overlap, consider having the disputes heard together to ensure that there is no prejudice to the parties. The *Act* specifically provides for related disputes to be heard together, pursuant to s. 73.

[31] The RTB appears to have a practice of restricting appeals to one hour. This one hour limit is not set by statute or the Rules of Procedure. In many cases, including this one, the one hour time limit restricts the parties in their ability to fully address the issues in the dispute. I have no doubt that the RTB is under pressure to address the many disputes that come before it. But fairness and justice are not met by mandating unrealistic time limits for the hearing of disputes that may contain subtleties that require longer than one hour to resolve, particularly when dealing with unsophisticated self represented parties.

[32] In this case, Mr. Sanchez had filed key evidence in the second dispute, which he was struggling to find during the course of the hearing. He was not able to locate it and bring it to the attention of Arbitrator Nazareth before he was reassured that all such evidence could be addressed in the second hearing.

[33] The failure of the Director to ensure that the related disputes were heard together, and to ensure that all evidence relating to the issue of unpaid rent filed in both disputes was before the arbitrator on April 15, 2024, coupled with the misleading reassurance by the arbitrator during the hearing, resulted in a hearing which was procedurally unfair to Mr. Sanchez.

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Disposition

[34] The petition for judicial review is allowed. The decision of the RTB dated April 15, 2024, is set aside, and the matter is remitted to the RTB for rehearing.

Costs

[35] I make no order for costs.

"W.A. Baker J."

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