# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Adamson v. de Best,*
2024 BCSC 1724

Date: 20240822
Docket: S244012
Registry: Vancouver

Between:

**Eurassia Mei-Lin Adamson**

Petitioner

And

**Cary de Best and B.C. Residential Tenancy Branch**

Respondents

Before: The Honourable Madam Justice McDonald

On Judicial Review from: Decision of Arbitrator of the Residential Tenancy Branch dated May 14, 2024

## Oral Reasons for Judgment

In Chambers

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| Appearing on her own behalf: | E. Adamson |
| For the Respondents: | No appearance |
| Place and Date of Hearing: | Vancouver, B.C.<br>August 22, 2024 |
| Place and Date of Judgment: | Vancouver, B.C.<br>August 22, 2024 |

[1] **THE COURT:** In this petition for judicial review, the petitioner seeks to judicially review a decision made by an arbitrator on May 14, 2024, regarding the petitioner's application for dispute resolution.

[2] The petitioner points out that she has vacated the property and she no longer seeks to set aside the order for possession, rather she only seeks to dismiss the decision of the arbitrator.

[3] The petitioner raises issues of procedural fairness and bias, more specifically, she submits the adjudicator did not allow her to make submissions about all matters she wished to address and the adjudicator was biased towards the landlord.

[4] In the decision, the only matter considered was the application to cancel the notice to end tenancy. All other matters were dismissed with leave to reapply. The arbitrator cited jurisdiction to do this under Rule 2.3.

[5] In the decision the arbitrator reviewed all of the evidence and the testimony including the testimony of two other witnesses about disturbances at the rental property allegedly created by the petitioner swearing, screaming and disturbing other tenants and the landlord.

[6] A witness testified about seeing an incident between the petitioner and the landlord in the yard of the rental property and videotaping the incident. On the basis of the disturbances, the landlord served a one-month notice to end tenancy.

[7] The arbitrator also describes the petitioner's position about the incident in the yard of the rental property. The arbitrator notes the landlord had the burden and, after considering both parties' different versions of events, the arbitrator accepted the landlord's version of that particular event. The arbitrator notes that there were two other witnesses called by the landlord who provided "affirmed testimony confirming the landlord's version of events" including the incident in the yard.

[8] The arbitrator found that the witness's testimony concerning the incident in the yard and her credibility was enhanced by the fact that she had apparently taken

video of the incident. The arbitrator notes no additional witnesses for the petitioner were tendered to contradict the landlord's evidence.

[9] The arbitrator describes reasons for finding screaming and swearing in a rental property where there are other occupants to be an unreasonable disturbance to the landlord and the other occupants.

[10] Regarding the yard incident, the arbitrator found that even if the incident occurred for the reasons provided by the petitioner, the petitioner was not just pleading with the landlord, but blocking his path and preventing him from moving around the property.

[11] The petitioner's contention that she had permission to scream and swear was not accepted. The arbitrator concludes the landlord established the cause for issuing the one-month notice and the order for possession was granted.

[12] The petition seeking to set aside a decision of an arbitrator is governed by the provisions of the *Residential Tenancy Act* and the *Administrative Tribunals Act*, including the privative clause in the *Residential Tenancy Act*. Those statutes are clear that the expert findings of an arbitrator of the tribunal are entitled to deference and may only be reviewed on the standard in s. 58 of the *Administrative Tribunals Act*, namely, patent unreasonableness for questions of fact, law or the exercise of discretion and fairness for questions of procedural fairness.

[13] In *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202, the Court of Appeal considers an appeal from a decision of a chambers judge dismissing Ms. Li's judicial review application of an arbitrator's decision dismissing her claims for compensation which alleged the arbitrator's decision was procedurally unfair and discriminatory. Before dismissing the appeal, Justice Winteringham describes the standard of review applicable to allegations of procedural unfairness as follows, paragraph 33:

> [33] . . Where procedural fairness is invoked, s. 58(2)(b) of the *Administrative Tribunals Act* provides that all questions about the application of common law rules of natural justice and procedural fairness must be

> decided having regard to whether, in all of the circumstances, the tribunal acted fairly: [citation omitted]. In *Athwal v. Johnson*, 2023 BCCA 460, this Court considered the applicable standard of review for issues of procedural fairness. Referring to the jurisprudence, Justice Stromberg-Stein summarized the standard of review this way:
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> > [22] The standard of review for questions of procedural fairness was the subject of discussion in *R.N.L. Investments Ltd. v. British Columbia (Agricultural Land Commission)*, [citation omitted], and *Brar v. British Columbia (Securities Commission)*, [citation omitted]. An appellate court will review questions of procedural fairness on the basis of "correctness, sometimes termed 'fairness'": [citation omitted].
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> [34] As stated in *Athwal*, an administrative decision resulting from an unfair process cannot stand. Determining what constitutes "an unfair process" requires a contextual approach that looks to the decision being made and its statutory, institutional, and social context: [citations omitted].

[14] Regarding the matter of bias, "for a reviewing court to entertain an argument of bias in the first instance, the allegation must be so clear and strong that it overrides the compelling concerns" as to the reputation of the tribunal: *Li*, paragraph 50.

[15] The petitioner says she could not attend the hearing in person and instead she had to attend the hearing on the phone. However, there is no indication that she asked to adjourn the hearing due to her inability to attend in person. Further, the decision is clear that the petitioner attended and her submissions were considered.

[16] The petitioner says the decision was obtained by fraud as she had permission to rehearse, including by screaming, while living at the rental unit. However, the arbitrator considered that submission and rejected it for the reasons that were explained.

[17] The petitioner is also concerned that due to her medical issues she could not properly prepare her evidence. However, I note that the hearing was adjourned on April 26, 2024, as the petitioner said she was hospitalized. Therefore, additional time to prepare was provided to the petitioner.

[18] The petitioner submits the adjudicator determined an issue for the police concerning the incident in the yard. However, the arbitrator states this issue relates

to the landlord's ground for the notice and the arbitrator accepts the evidence, including of another witness, who said they had video footage to determine the incident did provide the landlord with grounds to issue the notice. There was no determination of an allegation of a criminal offence.

[19] The petitioner is concerned that the decision was procedurally unfair for stating that documentary evidence would not be considered, while accepting the landlord's evidence without reviewing it. The arbitrator set out the evidence she considered and her reasons for accepting or rejecting. She notes that a witness taking video footage enhanced the credibility of the witness concerning the events they testified to having seen. That is a reasonable inference to draw.

[20] In my view, the adjudicator clearly considered the petitioner's submissions. The adjudicator explains that they would not consider either party's evidence as there was no evidence to show that either parties' evidence had been served in accordance with the Act. There is nothing to demonstrate that this aspect of the decision is patently unreasonable or procedurally unfair.

[21] Having reviewed the decision, I do not find that the decision shows bias or impartiality as suggested by the petitioner. I do not agree that the decision reveals bias against the petitioner.

[22] In my view, the petitioner's grounds come down to the arbitrator not accepting her position or evidence. However, as to the question of whether the decision-maker acted fairly, a review of the decision, the submission and the evidentiary record leads me to find that the arbitrator acted fairly in making the decision.

[23] In my view, the petitioner has not shown a basis on which the decision should be set aside. I find there is nothing clearly irrational in the adjudicator's conclusion,

and I conclude that the petitioner has not demonstrated that the decision is patently unreasonable, and as such I dismiss the petition.

"McDonald J."