

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Niroei v. Bushell*,
2024 BCSC 1935

Date: 20241023
Docket: S243102
Registry: Vancouver

Between:

Farzaneh Niroei

Petitioner

And

**Philip Colin Bushell
Kimberly Jennifer Bushell (Kim Bushell)**

Respondents

Before: The Honourable Justice McDonald

Reasons for Judgment

The Petitioner, appearing in person:

F. Niroei

No other appearances:

Place and Date of Hearing:

Vancouver, B.C.
July 24, 2024

Place and Date of Judgment:

Vancouver, B.C.
October 23, 2024

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Introduction:

[1] The petition challenges a decision of the Residential Tenancy Branch (“RTB”) made on March 12, 2024, granting the tenants a monetary award against the landlord. The petitioner seeks either an order quashing the decision or remitting the matter back to the RTB for determination before a different adjudicator. The petitioner was assisted at the hearing of her petition by her daughter, Ms. Nemati.

[2] On June 20, 2024, the petition and affidavit were personally served on the respondents as confirmed in Zouhair Kawadry’s July 16, 2024, affidavit of service. The petitioner also served the petition material on the Director of the RTB by registered mail.

[3] No responses to the petition were filed. No one appeared at the hearing of the petition on behalf of the respondents or the Director.

[4] For the reasons that follow, I am granting the petition and remitting the matter back to the RTB for determination before a different adjudicator.

Background:

[5] The petitioner, Ms. Niroei, was the landlord and the respondents, Mr. Bushell and Ms. Bushell, were the tenants.

[6] The respondents rented a home located at 12292 216th Street, Maple Ridge, British Columbia (the “Property”) from the petitioner for a monthly rent of \$3,000, pursuant to a rental agreement dated July 3, 2020.

[7] On February 28, 2023, the petitioner issued a two month’s notice to end tenancy to the respondents with an effective vacancy date of May 1, 2023 (the “Notice”). The Notice form includes a box titled, ‘Reason for this Two Month’s Notice to End Tenancy’, containing several potential check boxes. The petitioner ticked the box stating: “The rental unit will be occupied by the landlord or the landlord’s close family members (parent, spouse or child, or the parent or child of that individual’s spouse)”. Underneath that box on the Notice form, it also states: “Please indicate

which close family member will occupy the unit”, for which the petitioner selected: “The child of the landlord or the landlord’s spouse”.

[8] On March 1, 2023, the petitioner’s agent and Mr. Bushell communicated by text message about the Notice (the “Text Messages”). They agreed that the respondents would vacate the Property by July 1, 2023, and the respondents offered to pay \$1,000 per month of additional rent for May and June 2023. In the Text Messages, the petitioner’s agent told Mr. Bushell that “she’ll [Ms. Niroei] be moving into the property herself, as it seems that’s the only viable option.” Mr. Bushell responded by saying, “Ok sounds good and we appreciate thanks. We understand too it’s hard all over currently. So yes 4k for May and June.”

[9] After the respondents moved out of the Property on July 2, 2023, they applied to the RTB for a return of security deposit. The petitioner was unaware of the application respecting the security deposit until she received an email from the RTB on October 27, 2023, informing her of a monetary award made to the respondents. The petitioner submits that no security deposit was paid by the respondents.

[10] The petitioner’s application for review of the security deposit decision was dismissed. In addition, her request to review the evidence submitted by the respondents was also dismissed. The petitioner is not seeking to review the decision concerning the security deposit but it is relevant to the issue of the ongoing communication between the parties and the matter of notice.

[11] In December 2023, the petitioner and the respondents communicated by text message and email concerning payment of the monetary award related to the security deposit. In the meantime, unbeknownst to the petitioner, the respondents had already commenced another dispute against her at the RTB. The respondents said nothing to the petitioner or her agents about the additional dispute during the December 2023 communications about the monetary award for the security deposit.

[12] On December 29, 2023, the RTB emailed the petitioner concerning an “Evidence Deadline Reminder” for a hearing scheduled on January 12, 2024. Prior

to receiving this email, the petitioner had received no notice of the dispute or the hearing.

[13] The petitioner contacted the RTB on December 29, 2023, and was advised that the respondents had filed a dispute against her on November 2, 2023. The RTB officer emailed the petitioner some, but not all, of the documents the respondents had submitted into evidence with the RTB.

[14] By the deadline of January 1, 2024, the petitioner prepared a response and submitted her own evidence to the RTB. However, the respondent submits that she did so without having access to all the evidence that the respondents had submitted to the RTB.

[15] The respondents served their notices of dispute on the petitioner at the address in the rental agreement. However, the petitioner's evidence is that, consistent with the Text Messages, she moved into the Property after the respondents vacated on July 2, 2023. The respondents did not serve the petitioner at the address of the Property despite being told the Petitioner was moving into the Property.

[16] The respondents also filed an application for dispute resolution for a monetary order for compensation for the petitioner's failure to accomplish the stated purpose on a notice to end tenancy under s. 51 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA]. A hearing of the dispute was held on January 12, 2024 and it continued on March 11, 2024.

[17] On March 12, 2024, the arbitrator issued the decision and made the monetary order (the "Decision").

[18] The petitioner sought a review consideration. However, that review was dismissed on March 29, 2024 (the "Review Decision"). In the Review Decision, the arbitrator found that the landlord was responsible for providing evidence at the hearing and because she failed to do so, the review was dismissed.

[19] On May 10, 2024, the petitioner filed a petition for judicial review which came on for hearing in chambers on July 7, 2024.

Issue

[20] The issue is whether the Decision should be set aside because the Decision is patently unreasonable, and the Arbitrator failed to act fairly.

Standard of Review

[21] For a finding of fact or law or an exercise of discretion by the RTB, the applicable standard of review is patent unreasonableness: ss. 5.1 and 84.1 of the RTA and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA].

[22] In *Gichuru v. Palmar Properties Ltd.*, 2011 BCSC 827, Justice Pearlman explains what is meant by patent unreasonableness:

[34] A decision is patently unreasonable where it is not merely unsupported by reasons that are capable of withstanding a probing examination, but is openly, evidently and clearly irrational: *Ford v. Lavender Co-operative Housing Association*, 2011 BCCA 114. When reviewing a decision for patent unreasonableness, it is not open to the court to second guess conclusions drawn from the evidence considered by the decision-maker, or to substitute different findings of fact or inferences. A decision can only be said to be patently unreasonable where there is no evidence to support the findings, or the decision is openly, clearly, and evidently unreasonable: *Manz*, at para. 39 citing *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80.

[23] For a question of procedural fairness, the applicable standard of review is whether, in all the circumstances, the tribunal acted fairly: s. 58(2)(b), ATA.

Determining what amounts to an unfair process requires a contextual approach that considers the decision and its statutory, institutional and social context: *Li v. British Columbia (Residential Tenancy Director)*, 2024 BCCA 202 at paras. 33-34.

[24] The duty of the reviewing court is to “determine whether the decision maker’s reasons meaningfully account for the central issue and concerns raised by the parties”: *Guevara v. Louie*, 2020 BCSC 380 at para. 48, citing *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

Analysis

[25] As the Review Decision did not consider the substance of the landlord's complaints and because none of the issues raised fall into the grounds provided for in s. 79(2) of the *RTA*, I conclude that the decision to be reviewed by this court is the Decision made on March 12, 2024.

Is the Decision Patently Unreasonable Because Evidence was Ignored or Misapprehended?

[26] The petitioner alleges that the Decision is patently unreasonable because the arbitrator misapprehended or ignored evidence. Specifically, the arbitrator accepted that in the Text Messages, the parties agreed to amend the Notice to give the respondents a longer period to move out. At the same time, the arbitrator ignored or misapprehended parts of the Text Messages where the parties agreed that the landlord would be moving into the property instead of the landlord's son. The petitioner also alleges the arbitrator ignored or misapprehended text messages sent by the respondents to the petitioner clearly acknowledging that the petitioner was living in the Property.

[27] In the Decision, the arbitrator discussed the text messages between the parties after the Two Month Notice was received, stating as follows:

Following receipt of the Two Month Notice, on March 1, 2023, the Tenants had a conversation by text message with the Landlord (through her representatives) about extending the effective date of the Two Month Notice. The Tenants sought to avoid disrupting their children's school year. The parties ultimately agreed that the Tenants would vacate on July 1, 2023. The parties also agreed that the Tenants would pay additional rent in the amount of \$1,000.00 for each of May and June 2023. It was the Tenants who initially suggested a rent increase for the final two months of the tenancy. At this time, there was no discussion of the one-month compensation set out in section 51(1) of the Act.

...

The Landlord also made the argument that the stated reason was amended or modified by agreement with the tenants in early March 2023. In other words, the stated reason was changed from the Landlord's child moving in to the Landlord moving in. I am not convinced that the evidence supports this claim. There was no clear communication that the Two Month Notice was verbally amended or modified. Had the Landlord wanted to change her

reason for ending the tenancy, she should have issued a new notice and withdrawn the initial notice.

[Underline added]

[28] During the March 1, 2023, exchange of text messages between the Landlord’s representative and the tenant, the tenant acknowledged that the landlord herself would be moving into the Property:

...

Tenant: Could you do \$3800 May 1 June 1 then landlord moves back. Is fine and will work.

Landlord’s Agent: Currently that doesn’t even cover her mortgage payments. She’s been taking a big loss for months but being the gracious woman that she is, she’s taken it on the chin. Also, why she’ll be moving into the property herself, as it seems that’s the only viable option. \$4k for May and \$4k for June seems very family [sic] considering the change in her expenses on this property.

Landlord’s Agent: Also this is why she’ll be moving into the property herself^{f***}

Landlord’s Agent: Is what I meant to say

Tenant: Ok sounds good and we appreciate thanks

Tenant: We understand too it’s hard all over currently

Tenant: So yes 4k for May and June

Landlord’s Agent: That’s great, Phil. So just to confirm, you’ve be [sic] looking to stay until the end of June. Can I presume the property will be vacant by June 30th? Could we arrange a walk through for that date?

...

[29] In the Decision, the arbitrator states he is not convinced the Two Month Notice was amended because “[t]here was no clear communication that the Two Month Notice was verbally amended or modified.” However, the arbitrator had already acknowledged the existence of the Text Messages and turned his mind to that evidence, making it illogical to say there was no communication between the parties regarding the notice amendment. I am mindful that a tribunal need not recite all evidence or demonstrate that all aspects of the evidence have been considered, but the tribunal must consider all the evidence respecting the ultimate issue: *Kinexus Bioinformatics Corporation v. Asad*, 2010 BCSC 33 at para. 18.

[30] As the ultimate issue before the arbitrator was whether the landlord failed to accomplish the stated purpose on a notice to end tenancy, it was material for the arbitrator to consider if there existed another notice which amended the stated purpose.

[31] I recognize that it was open to the arbitrator to find that the Text Messages amending the original Two Month Notice did not constitute notice in the correct form or that the arbitrator’s discretion under s. 68 of the *RTA* should not be exercised to amend the notice, but this is not what occurred. Instead, the arbitrator concluded that “[t]here was no clear communication” between the landlord and the tenant regarding the amendment. On the face of the evidence, which the arbitrator previously accepted established an amendment to the effective date of the Two Month Notice, the finding of no clear communication was not clearly available to the arbitrator on a rational or tenable line of analysis on the evidence.

[32] In my view, the Decision is openly, clearly, and evidently unreasonable.

Is the Decision Procedurally Unfair?

[33] Prior to the Decision, there were two days of hearings. The first day of hearing occurred on January 12, 2024, and the continuation of the hearing occurred on March 11, 2024.

[34] In the Decision, the arbitrator refers to submissions made by the landlord’s agent on different days of the hearing. In determining whether there were extenuating circumstances, the arbitrator noted that the landlord’s evidence, given through her daughter acting as an agent, was “somewhat contradictory” when the arbitrator compared the evidence given one the first day of the hearing to the evidence on the second day.

[35] The petitioner submits that the hearing was procedurally unfair for a number of reasons that she describes in her evidence and the petition.

[36] The authorities establish that procedural unfairness issues should be raised before the adjudicator at the time of the hearing, and not before a reviewing court for the first time: *Bajwa v. British Columbia Veterinary Medical Association*, 2010 BCSC 848 at para. 74; *Hennessey v. Canada*, 2016 FCA 180 at paras. 20–21.

[37] Further, a party must raise the issue of bias before the decision maker and allow the decision maker to rule on the allegations: *Hennessey* at para. 21. Only after this process can the party raise it on judicial review: *Bajwa* at para. 77.

[38] However, as noted by the Court of Appeal in *Athwal v. Johnson*, 2023 BCCA 460, the principle that a party should raise all issues at first instance is not a hard and fast rule: at para. 64. The court may exercise its discretion to allow a party to raise a new issue on judicial review, especially if the party was practically precluded from raising the issue at first instance and there is no prejudice to the other party: *Athwal* at para. 64. The Court in *Athwal* was also sympathetic to the fact that it is difficult for lay people to identify and raise a procedural fairness issue during an intimidating adversarial dispute resolution process.

[39] In my view, the petitioner did raise an issue of procedural fairness during the first hearing when her agent advised the arbitrator that “it would be difficult to proceed without knowing what the evidence is”. Despite being advised of this, the arbitrator asked the petitioner’s agent to begin her submissions and after approximately ten minutes, the arbitrator said the hearing would be adjourned. Despite raising this clear issue of procedural fairness during the first hearing, the arbitrator based the Decision on the existence of extenuating circumstances on alleged contradictions in the petitioner’s evidence given at the first hearing versus the evidence given at the continuation of the hearing.

[40] However, if I am wrong to conclude that the petitioner raised an issue of procedural fairness during the hearing, then I conclude in the alternative, based on the overall circumstances of the hearing, that the petitioner was practically precluded from raising the issue of procedural fairness at first instance and there is no

prejudice to the other party from exercising my discretion to allow the petitioner to raise procedural fairness as a new issue on judicial review.

The First Day of Hearing – January 12, 2024

[41] The petitioner details her concerns about procedural fairness issues respecting the first day of hearing on January 12, 2024, in paragraph 15 of her petition:

...the Tenants submitted additional evidence to the RTB on January 6, 2024 and January 8, 2024. This evidence was submitted past the RTB deadline for evidence submission, and it had also not been received by the Landlord. The Arbitrator suggested adjourning the hearing to allow the Tenants' late submission into evidence. The Arbitrator acknowledged that fairness dictates that the Landlord has access to all the evidence submitted by the Tenants and that it is important that the hearing be adjourned. Ms. Nemati [Landlord's agent] stated that it would be difficult to proceed without knowing what the evidence is. Despite this, the Arbitrator allowed the hearing to continue and asked the Landlord to begin presenting her case. After about 10 minutes of discussions, the Arbitrator interrupted Ms. Nemati [Landlord's agent] and began scheduling a date for the adjourned hearing. The hearing was adjourned to March 11, 2024.

[42] According to Rule 6.1 of the RTB Rules of Procedure ("Rules of Procedure"), the arbitrator must conduct the dispute resolution proceeding in accordance with the RTA, the Rules of Procedure, and principles of procedural fairness. The most basic aspect of procedural fairness is the right to be heard, and an affected party's right to know the case against them is at the very foundation of the participatory rights and the principle of *audi alteram partem*: *A. (L.L.) v. B. (A.)*, [1995] 4 S.C.R. 536, 1995 CanLII 52 at para. 27; *Telecommunications Workers Union v. Canada (Radio-television and Telecommunications Commission)*, [1995] 2 S.C.R. 781, 1995 CanLII 102 at para. 29. Without knowing the issues before the decision maker, an affected party cannot be said to have been provided with a "meaningful opportunity to present their case fully and fairly": *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 1999 CanLII 699 at para. 30.

[43] Despite acknowledging that fairness dictates that the landlord has access to all the evidence submitted by the tenants, and the landlord raises the issue of not knowing how to proceed without any knowledge of the new evidence, the arbitrator

allowed the hearing to continue by asking the landlord to present her case. Without knowing the contents of the tenants' evidence, the landlord did not know the case against her and could not respond to it meaningfully.

[44] It is obvious that in asking the landlord to continue presenting her case, the arbitrator acted unfairly. Approximately ten minutes later, the arbitrator then interrupted the landlord, stating that the hearing should be adjourned to a later date. The arbitrator then allowed the tenants to serve all documents comprising the late evidence submitted on January 6 and 8, 2024, to the landlords by January 19, 2024.

[45] The *RTA* permits the Director to establish rules of procedure for dispute resolution, including the disclosure, exchange or provision of information and records by parties before or during a dispute resolution process: s. 57.7(4)(c). The Rules of Procedure provide the arbitrator with the discretion to admit evidence late in the proceeding:

3.17 Consideration of new and relevant evidence

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [*Documents that must be submitted with an Application for Dispute Resolution*], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of procedural fairness.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [*Adjournment after the dispute resolution hearing begins*] and Rule 7.9 [*Criteria for granting an adjournment*]

...

3.19 Submitting evidence after the hearing starts

No additional evidence may be submitted after the dispute resolution hearing starts, except as directed by the arbitrator. In providing direction, the arbitrator will:

- a) specify the date by which the evidence must be submitted to the Residential Tenancy Branch directly or through a Service BC Office and whether it must be served on the other party; and
- b) provide an opportunity for the other party to respond to the additional evidence, if required.

In considering whether to admit documentary or digital evidence after the hearing starts, the arbitrator must give both parties an opportunity to be heard on the question of admitting such evidence.

[Underline added.]

[46] The arbitrator failed to comply with the Rules of Procedure in two ways when they decided to adjourn the hearing and accept the late evidence. First, the arbitrator did not explore with the tenants why the late produced evidence was not available at the time their original evidence was submitted: *Leung v. Alam*, 2024 BCSC 1188 at para. 27.

[47] Second, the arbitrator did not advise the landlord of her right to provide submissions on any prejudice arising to her from the admission of this late evidence: *Leung* at para. 27; *Khan v. Savino*, 2020 BCSC 555 at para. 26. Rule 3.17 expressly requires the arbitrator to give both parties an opportunity to be heard on the question of accepting late evidence: *Khan* at para. 26.

[48] The arbitrator adjourned the hearing to March 11, 2024, and allowed for the late evidence (originally submitted on January 6 and 8, 2024), to be served on the landlord by January 19, 2024. Although the arbitrator allowed the landlord to submit new evidence in response to the tenant's evidence, the arbitrator provided a deadline of January 26, 2024.

[49] Rule 3.17 expressly allows the other party to be given an opportunity to review the evidence, and Rule 3.15 provides a deadline for a respondent to serve their evidence to the applicant and the RTB not less than seven days before the hearing. Under Rule 3.15, the landlord should have had until seven days before March 11, 2024, to submit her evidence to the tenants.

[50] However, the arbitrator imposed an expedited deadline on the landlord. The landlord states that under that expedited deadline, she was unable to gather

evidence explaining the extenuating circumstances which led to her moving into the unit herself.

[51] The Rules of Procedure govern dispute resolution proceedings, and they contemplate a high level of procedural fairness and so persons dealing with the RTB would have a reasonable expectation that the Rules of Procedure would be complied with: *Ndachena v. Nguyen*, 2018 BCSC 1468 at para. 59.

[52] In my view, during the first day of the hearing, the arbitrator proceeded unfairly and breached the Rules of Procedure by: (1) allowing late evidence without exploring why the evidence was not available when the application was made or when the evidence was submitted; (2) not advising the landlord of her right to provide submissions on any prejudice arising to her as a result of accepting the late evidence; and (3) failing to give the landlord the requisite time to provide evidence.

The Continuation of the Hearing – March 12, 2024

[53] The petitioner's concerns about the lack of procedural fairness also extends to the continuation of the hearing on March 12, 2024.

[54] In my view, a high level of procedural fairness was owed to the petitioner including during the continuation on March 12, 2024, due to the importance of the Decision to the individuals involved and the legitimate expectations of the person challenging the Decision.

[55] In *Ndachena*, at paras. 56-60, the court set out the principles of procedural fairness in the context of RTB dispute resolution proceedings:

[56] The duty of procedural fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected. The purpose of the participatory rights contained within it is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional and social context, with an opportunity for those affected to put forward their views and evidence fully and have them considered by the decision-maker.

[57] Several factors are relevant to determining the content of the duty of fairness: (1) the nature of the decision being made and process followed in making it; (2) the nature of the statutory scheme and the terms of the statute

pursuant to which the body operates; (3) the importance of the decision to the individual or individuals affected; (4) the legitimate expectations of the person challenging the decision; (5) the choices of procedure made by the agency itself. This list is not exhaustive.

[58] I am satisfied that the petitioners were entitled to a high level of procedural fairness in the Dispute Resolution Applications. The issues before the Arbitrator were adversarial with serious financial consequences to the petitioners. The statutory scheme under the *RTA* vests the RTB with the same powers in residential tenancy disputes to grant monetary judgments as the provincial court has in other matters.

[59] The RTB Rules govern Dispute Resolution proceedings. They contemplate a high level of procedural fairness. Any person dealing with the RTB would have a reasonable expectation that the RTB Rules would be complied with.

[60] Rule 1.1 states that the objective of the RTB Rules is to ensure a fair, efficient and consistent process for the resolution of disputes between landlords and tenants.

[56] The claim by the tenants for \$48,000 was very significant because the *RTA* prescribes a punitive award of 12 months rent: *Leung* at para. 16. The quantum of compensation for a claim under s. 51 is often significant and it requires careful consideration: *Athwal* at para. 73.

[57] In considering the legitimate expectations of the person challenging the decision, it appears, based on how the continuation of the hearing proceeded, that the landlord might not have understood the case she had to meet. In para. 33 of her affidavit, the landlord deposes that she did not raise the topic of her son's health as an extenuating circumstance as she "did not believe it to be relevant since [she] had submitted evidence to the Arbitrator that the Notice had been amended on March 1, 2023, one day after it was issued, and that the Tenants had been informed that [she herself] would be occupying the Property. [She] instead focussed on establishing that [she] occupied the property for over 6 months in good faith."

[58] The majority of the continuation of the hearing was spent discussing the allegations that the Property had been vacant during the period alleged and the cost of rent in the last two months of the tenancy. The arbitrator did not raise the topic of extenuating circumstances or even question whether the tenants received notice of

the fact that the stated purpose had changed from the landlord's son occupying the property to the landlord occupying the property herself.

[59] The arbitrator failed to identify the key issue for the landlord to respond to. Not surprisingly, the landlord was under the impression that the main focus of the hearing was on whether: she had established the stated purpose of moving into the Property herself pursuant to the alleged amended notice provided on March 1, 2023; and, if she acted in good faith in moving into the Property. The arbitrator also did not provide the landlord with the opportunity to question the tenants, despite stating that she would have the chance to do so.

[60] Given that the ultimate issue before the arbitrator is whether the landlord failed to accomplish the stated purpose on a notice to end tenancy, it is puzzling that the arbitrator did not raise the issue of extenuating circumstances or ask the landlord for her position.

[61] During the continuation of the hearing, the tenants argued that the Property was vacant, and as a result, the landlord did not fulfill the stated purpose in the Notice. The landlord argued that the Property was not vacant and that she moved into the Property herself rather than having her son move in. Regardless of whether the Property was vacant, or whether the landlord moved in herself, the arbitrator ought to have known that this was contrary to the stated purpose in the Notice.

[62] In my view, to provide the high level of procedural fairness that was due to the petitioner, the arbitrator should have then invited submissions on the next part of the analysis, namely, whether extenuating circumstances existed and whether there was an amended notice. Rather than invite such submissions, the arbitrator allowed the landlord to continue speaking on whether she had good faith intentions when moving into the Property.

[63] The RTB is designed to assist lay people in advancing their disputes: *Leung* at para. 31. Given what was at stake, the arbitrator ought to have asked questions or directed the conversation regarding the existence of the amended notice and any

extenuating circumstances that might have prevented the landlord from executing the stated purpose in the Notice.

[64] Rule 7.25 of the Rules of Procedure provides the arbitrator with the power to ask questions of a party if necessary to determine the relevancy of evidence and assist the arbitrator in reaching a decision. While parties are expected to come to a dispute resolution prepared to present their case, it is understandable that a lay person may not be able to appreciate the main issue that must be addressed.

[65] In my view, it was incumbent upon the arbitrator to at least clarify for the parties the main issues he must decide on and the scope of the hearing. Such clarification was especially necessary in circumstances where there were a series of lapses in the procedural fairness accorded to the petitioner during the hearing. The arbitrator's failure to identify the key issue for the petitioner to respond to was a further breach of procedural fairness.

[66] When I apply a "contextual approach that considers the decision and its statutory, institutional and social context", for the reasons explained, I find that the arbitrator acted unfairly towards the petitioner in the continuation of the hearing, as well as in the first stage of the hearing.

Conclusion

[67] The petitioner has established the Decision was patently unreasonable and that there were breaches of the rules of natural justice and procedural fairness in relation to the conduct of the hearing before the arbitrator. In considering all the circumstances outlined above, I am satisfied that the RTB did not act fairly.

[68] The Decision dated March 12, 2024, in Residential Tenancy Branch File No. 910132911 is set aside and remitted back to the RTB for reconsideration before a different arbitrator in a hearing *de novo*.

[69] As a result of my decision to set aside the Decision, there is no need to address the additional issue raised by the petitioner respecting whether the award was miscalculated based on the rent being \$4,000, and not \$3,000, per month.

[70] The petitioner requests costs. As there was no response or appearance by the respondents, I decline to grant costs against them. While the petitioner has been successful, in light of my reasons for setting aside the Decision and the fact that there was no opposition to the petition presented by the respondents, I decline to grant costs against them.

“McDonald J.”