

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Mangat v. Dhindsa*,
2024 BCSC 2406

Date: 20241205
Docket: S244669
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Kuljit Singh Mangat

Petitioner

And

Sarabjit Singh Dhindsa

Respondent

Before: The Honourable Justice Elwood

On judicial review from: Decision of Arbitrator, Dispute Resolution Services,
Residential Tenancy Branch, May 17, 2024
(*Mangat v. Dhindsa*, RTB File Number 910141749)

Oral Reasons for Judgment

(In Chambers)

Counsel for the Petitioner:

Z. Modrovicova
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No other appearance

Place and Date of Hearing:

Vancouver, B.C.
December 5, 2024

Place and Date of Judgment:

Vancouver, B.C.
December 5, 2024

[1] **THE COURT:** The petitioner, Kuljit Singh Mangat, was the tenant of a residential unit owned by the respondent, Sarabjit Singh Dhindsa (the “landlord”). His tenancy ended after the landlord gave him an eviction notice that said that the landlord wanted to use the rental unit for personal use.

[2] The tenant says that he later found out that instead of using the unit himself, the landlord rented it out to someone else. The tenant applied for compensation under s. 51 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA] which provides that the Residential Tenancy Branch (the “RTB”) may order landlords to compensate their former tenants when the landlord fails to use a rental unit for the purpose stated in the notice.

[3] The background facts may be stated briefly. On November 20, 2022, the landlord served the tenant with a document entitled "Notice to Quit" which indicated that the tenant's tenancy would end in 60 days because the landlord wanted to take the unit for personal use. The Notice to Quit also stated that it was "in compliance with applicable laws for the Province of British Columbia".

[4] On November 21, the tenant asked the landlord to extend the date for the tenant to move out. On December 1, the landlord issued a second Notice to Quit. This Notice to Quit had all of the same information as the first notice, but indicated that the tenancy would end on March 31, 2023. The tenant and his family moved out of the unit on February 28, 2023.

[5] The tenant's claim for compensation under s. 51 came before Arbitrator Smith on May 17, 2024. The entirety of Arbitrator's Smith's analysis of the tenant's s. 51 claim is contained in three paragraphs of a decision of that same day:

I find the Landlord did not serve a formal notice under section 49 of the Act to the Tenant. The Tenant was not obligated to vacate the rental unit based on the written notice he uploaded in his evidence.

As a formal section 49 notice was not served on the Tenant, the Tenant is not eligible to receive the 12 months compensation contemplated under section 51 of the Act.

I dismiss the Tenant's claim.

[6] The tenant acknowledges that the standard of review to be applied to issues of fact or law in the decision is patent unreasonableness. The meaning of this standard of review comes both from the case law and from the governing legislation, *RTA*, s. 5.1, and *Administrative Tribunals Act*, S.B.C. 2004, c. 45, s. 58(2)(a).

[7] A decision is patently unreasonable if it is openly, evidently, and clearly irrational. A decision is also patently unreasonable if it is unreasonable on its face, unsupported by evidence, or vitiated by failure to consider proper factors or apply the proper procedures: see *Kong v. Lee*, 2021 BCSC 606, for a thorough discussion of the standard of patent unreasonableness at paras. 56–65.

[8] In addition, s. 58 of the *Administrative Tribunals Act* defines a decision as patently unreasonable if, among other factors, it is based entirely or predominantly on irrelevant factors.

[9] Landlords can lawfully end a tenancy only in accordance with the relevant provisions of the *RTA*. To end the tenancy for personal use in compliance with the *RTA*, a landlord must intend, in good faith, to occupy the unit: s. 49(3).

[10] Section 49(7) of the *RTA* requires landlords to serve their tenant with a notice on the approved form, which is set out in s. 52. Section 52 provides that:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) [give] the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) ... state the grounds for ending the tenancy,
- ...
- (e) when given by a landlord, be in the approved form ...

[11] The RTB has developed a number of required forms. In the case of two months' notice to end tenancy for the landlord's use of property, the form is RTB-32.

[12] Along with fields for required information like the landlord's name, address of the property, and reasons for eviction, approved form RTB-32 includes two pages of information for the tenant who receives the notice. This includes information about compensation that may be owed to the tenant who is evicted for the landlord's personal use, what the good faith requirement means, and how the effective date of notice is calculated. In addition, immediately at the top of the approved form, is an information box informing the tenant who receives the notice how to dispute it at the RTB.

[13] In this case, the landlord did not comply with the RTB, in particular s. 49(7) and s. 52(e). Instead, the landlord served the tenant with his own form of notice that said the tenant needed to vacate the rental property for the landlord's personal use. The notice delivered by the landlord included their signature, the date on which notice was given, the address of the rental unit, the effective date of the notice, and the grounds for ending the tenancy.

[14] In my view, the arbitrator's reasons for dismissing the tenant's application for s. 51 compensation are illogical and contrary to the legislative intent of s. 51(2) of the *RTA*. It does not accord with reason to dismiss an application by a tenant for compensation on grounds that the landlord failed to fulfil the purpose of the eviction because the landlord failed to use the correct form to end the tenancy.

[15] Section 51(2) very clearly seeks to compensate tenants who are evicted by their landlords where the landlord subsequently does not use the unit for the purpose they said they would use it. The provision authorizing the RTB to award compensation equal to 12 months' rent clearly seeks to deter landlords from wrongfully evicting their tenants.

[16] The purpose of the forms approved by the RTB, and the purpose of the requirement in s. 52(e) for landlords to use the approved form, is clearly to standardize notices and provide tenants facing eviction with information, including their right to dispute the notice.

[17] It is simply illogical to turn the requirement for landlords to use prescribed forms with information intended to assist tenants to understand their rights into a reason to dismiss an application by a tenant for compensation under s. 51(2).

[18] If the legislator had wanted the tenant's right to seek compensation under s. 51(2) to be only available when a landlord has delivered a notice that fully complies with the form and content requirements of s. 52, then the legislator would have said so.

[19] It was patently unreasonable for the arbitrator in this case to deny the tenant recourse when the tenant moved out in accordance with the eviction notice from the landlord. It was the landlord's own non-compliance with the statute that gave rise to the lack of what the arbitrator referred to as formal notice. It was patently unreasonable to dismiss the tenant's claim because the landlord failed to comply with the *RTA*.

[20] The notice from the landlord complied with the other requirements in s. 52, other than being in the approved form. Importantly for the RTB's purposes, it provided a reason for the eviction that is contemplated by s. 49 of the *RTA*.

[21] In my view, the only available interpretation of s. 51 of the *RTA* consistent with its protective purpose, is that the notice from the landlord dated December 1, 2023, is a notice for the purposes of s. 51 of the *RTA*.

[22] For these reasons, I quash the decision of the arbitrator dated May 17, 2024, and remit the matter to the RTB for reconsideration with a direction that the RTB must consider the notice from the landlord dated December 1, 2023, as a notice for the purpose of s. 51.

“Elwood J.”