

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Alam v. Leung*,
2025 BCCA 85

Date: 20250304
Docket: CA50058

Between:

Akm Matiul Alam

Applicant/Appellant
(Respondent)

And

Sophie Leung and William Lien

Respondents
(Petitioners)

And

The Director of the Residential Tenancy Branch

Respondent
(Respondent)

Before: The Honourable Mr. Justice Groberman
The Honourable Madam Justice Horsman
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated
July 4, 2024 (*Leung v. Alam*, 2024 BCSC 1188, Vancouver Docket S240638).

Oral Reasons for Judgment

The Applicant/Appellant, appearing in
person:

A. Alam

The Respondents, appearing in person:

S. Leung
W. Lien

No one appearing for the Respondent, The
Director of the Residential Tenancy Branch

Place and Date of Hearing:

Vancouver, British Columbia
March 4, 2025

Place and Date of Judgment:

Vancouver, British Columbia
March 4, 2025

Summary:

This is an application to vary the order of a single justice in chambers. The justice dismissed an application to extend the time to file an appeal book and factum in a residential tenancy proceeding. Held: Application dismissed. The applicant has not demonstrated any reversible error in the justice's exercise of discretion.

[1] **WINTERINGHAM J.A.:** The appellant, Akm Matiul Alam, applies pursuant to s. 29 of the *Court of Appeal Act*, S.B.C. 2021, c. 6 [Act] to vary the January 29, 2025 order of Justice Griffin in chambers, denying his application for an extension of time to file an appeal book and factum.

[2] The respondent opposes the application to vary.

Background and Procedural History

[3] The underlying appeal involves a judicial review of a Residential Tenancy Branch (“RTB”) decision of January 7, 2024. The appellant (Akm Matiul Alam) was the tenant and the respondents (Sophie Leung and William Lien) were the landlords. The respondents purchased the property where Mr. Alam was living and terminated his tenancy so they could move in. About one year later, the respondents rented the property to another tenant. Before the RTB arbitrator, Mr. Alam sought compensation from the respondents, alleging they had not moved into the property and that the termination of his tenancy was unlawful. The RTB adjudicator found in favour of Mr. Alam and awarded him the equivalent of 12 months of rent (\$43,300) under s. 51(2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78.

[4] The respondents applied to introduce additional evidence (including photographs depicting them moving in and letters from neighbours about the dates they moved in). The RTB adjudicator denied the request to introduce this evidence.

[5] The respondents commenced a judicial review of the compensation decision and the review decision. The judicial review was heard on April 10, 2024. Justice Baker issued reasons for her decision on July 4, 2024, indexed at 2024 BCSC 1188. Justice Baker set aside the compensation and review decisions and ordered that the matter be remitted for a new hearing, finding that the RTB

hearing was procedurally unfair. She found that the compensation and review decisions were patently unreasonable.

[6] Mr. Alam filed a notice of appeal on August 6, 2024. The appeal record was due on October 6, 2024. On October 7, 2024, Mr. Alam filed an application seeking an extension of time to file it. Justice Riley granted this extension on October 17, 2024, extending the time to file the appeal record to October 28, 2024. Mr. Alam missed this deadline and filed a further application to extend the time to file his appeal record, appeal book, and factum. Justice Bennett extended the time to file the appeal record to November 25, 2024 and the appeal book and factum to December 15, 2024.

[7] Mr. Alam filed his appeal record on November 14, 2024. On December 16, 2024, Mr. Alam filed a further application for an extension of time to file his appeal book and factum. Then, Ms. Leung filed an application to dismiss the appeal (in chambers). On January 2, 2025, Justice Riley heard both applications. He dismissed Ms. Leung's application to dismiss the appeal and allowed Mr. Alam a further extension of time to file his remaining materials. This time, Mr. Alam was to file his materials by January 6, 2025.

[8] On January 9, 2025, Mr. Alam brought another application for a further extension of time to file his remaining materials. The respondents opposed the application for an extension. Justice Griffin heard the application on January 29, 2025. Giving oral reasons for judgment, she dismissed the application for an extension of time to file the appeal book and factum: *Alam v. Leung*, (29 January 2025), Vancouver CA50058 (B.C.C.A.). This is the order that Mr. Alam now seeks to vary.

The underlying order under review

[9] Justice Griffin began by setting out the procedural background, including the history of the various extension applications brought by Mr. Alam. After setting out the background, Justice Griffin set out, correctly in my view, the test that she had to apply. She noted that s. 32(2) of the *Act* allows a justice to extend a time limit,

provided in the *Act* or the *Court of Appeal Rules*, B.C. Reg. 120/2022, for doing an act. She then turned to the well-known criteria governing extensions of time to file materials: *Davies v. CIBC* (1987), 15 B.C.L.R. (2d) 256, 1987 CanLII 2608.

[10] In the application before her, Justice Griffin noted that because this was an application to extend time to file an appeal book and factum, the first *Davies* factor could be rephrased as to whether the appellant had a *bona fide* intention to proceed with the appeal, and to take the steps necessary to prosecute it, citing *Tan v. Tan*, 2024 BCCA 312 (Chambers). She also acknowledged that previous applications have established that the threshold was met for establishing there is some merit to the appeal.

[11] Justice Griffin found that Mr. Alam’s application turned largely on the third and fifth *Davies* criteria: whether the respondents are unduly prejudiced by an extension of time and whether it is in the interests of justice that an extension be granted.

[12] In her assessment of the *Davies* criteria, Justice Griffin considered the appellant’s submissions regarding the reasons for the delays, including his acute medical conditions, family problems, and difficulties with formatting legal documents. She was not persuaded that the medical documents he presented justified his failure to comply with time requirements. She was similarly not persuaded that the formatting issues he identified justified the history of missed filing deadlines. She recognized that the appellant did not have a lawyer but noted that the respondents were similarly self-represented.

[13] Justice Griffin found *McClaghry v. McClaghry*, 2018 BCCA 91 (Chambers), where multiple extensions had been granted over a six-month period, to be analogous to the appellant’s circumstances. In *McClaghry*, the applicant had cited health issues and difficulty understanding the filing requirements. Nonetheless, Justice Fenlon had refused to grant a fourth filing extension, finding “... it is not in the interests of justice to grant yet another extension”: at para. 18.

[14] Justice Griffin specifically noted the number of extensions that had been granted and the appellant's ability to organize those application materials. She concluded that the prejudice to the respondents and the overall interests of justice weigh against granting the extension of time application. Regarding prejudice, she appreciated that there was no clear financial or legal prejudice to the respondents beyond the delay itself, but recognized residential tenancy matters are meant to proceed expeditiously. She concluded by noting the dismissal of this appeal does not leave the appellant without a remedy because Justice Baker had remitted the dispute to the RTB for a new hearing.

[15] In the result, Justice Griffin dismissed the appellant's application for an extension of time to file his appeal book and factum. The result meant that the appeal was dismissed as abandoned.

Review Application

[16] The authority to apply to vary an order of a justice is found in s. 29 of the *Act*. A review application is not a re-hearing of the original application. Rather, it is a review of what the chambers judge did with the applicable test. This is a highly deferential standard of review. The Court will ask whether the judge was wrong in law, wrong in principle, or whether the judge misconceived the facts. Absent any of these errors, a division will not change the order: see *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7; see also: *Gill v. Gill Estate*, 2023 BCCA 427 at para. 13.

[17] In other words, on a review application, the applicant cannot simply argue that the justice should have reached a different result or exercised her discretion differently. There must be a legal error: see *Ashraf v. Jazz Aviation LP*, 2024 BCCA 45 at para. 3.

Analysis

[18] The appellant submits that Justice Griffin treated the extension application differently than Justice Riley, violating the principle of fairness. The appellant

contends that "... one judge emphasize[d] the merit of the appeal and lack of prejudice ... [and] another judge's strict refusal to accommodate a minor final delay (prompted by health and formatting issues) seems disproportionate".

[19] In his written submission, the appellant then addressed each of the factors that he submits, reveal error. He focused on those factors here this afternoon during the oral submissions provided. The appellant also provided written submissions as he expressed each of the factors that he identified as revealing error.

Failure to consider medical evidence

[20] First, the appellant submits the judge erred by finding there was insufficient cause for delay. He submits that the judge failed to properly consider his medical hardship, that he is almost 70 years old and that his medical records corroborate his "inability to finalize the required materials precisely on the due date".

[21] In my view, Justice Griffin did not improperly assess the medical evidence tendered and committed no error in her approach to her assessment or the sufficiency of it. She specifically described the hospital photograph and hospital record. She examined the medical evidence and found it to be "very vague" and "not persuasive that [the appellant] was not able to comply with the time requirements" (at para. 12).

Formatting obstacles

[22] Second, the appellant submits the judge erred by failing to consider the formatting obstacles he experienced and the Registry's rejection of the material he attempted to submit. Here, the appellant raises his status as a self-represented litigant and comments on the complexity of this Court's formatting rules. He submits that it was unfair that he was not allowed to have a "same-day or next-day cure period" to allow him time to correct his minor mistakes, instead of dismissing the entire appeal.

[23] On this point, Justice Griffin was simply not satisfied that the appellant had prepared the materials as required and as suggested by him. She found the photograph of the front cover of a document did not establish, to the extent necessary, that his materials were ready for filing but for the one formatting error. She noted that he had not presented his materials to show that they were “almost” ready for filing on January 6, 2025. Justice Griffin questioned the appellant’s submission on this point because he was historically able to file his extension applications without issue, stating, “[h]is ability to bring his extension application speaks to his ability to file documents”.

[24] In my view, the judge committed no error in her approach to the appellant’s submission on this point.

Unfair hearing

[25] The appellant submits that Justice Griffin denied him a fair hearing on the basis that he “... perceived certain lines of questioning to be leading or dismissive of my evidence”, stating some of the questions “... could signal an implicit bias”.

[26] The appellant has not presented the transcript of the January 29, 2025 hearing. However, like any judge, it was open to Justice Griffin to ask questions of the appellant about the material presented to her. It is my view that there is nothing in the material presented on this review that supports the appellant’s allegation of bias.

[27] The appellant also suggests that Justice Griffin failed to consider his status as a self-represented litigant. I disagree. The judge specifically identified his status, and on this point, commented that the respondents were also without counsel.

Prejudice

[28] The appellant submits that the judge erred by finding the respondents would suffer prejudice if another extension were granted. On this point, the judge noted, fairly, that “... there is no clear financial prejudice or legal prejudice to the

respondents beyond the delay itself ...”. However, correctly in my view, she recognized that RTB matters are to proceed expeditiously, noting that “... these cases involve lay-people who do not have the financial means to endure repeated applications and delays and who need to get on with their lives” (at para. 20). In my view, the judge committed no error in her finding of prejudice and considered the appropriate factors when she reached this determination.

Interests of justice

[29] The appellant submits that the judge erred in her approach to this *Davies* factor by: (1) promoting finality over fairness; (2) requiring strict adherence to procedural deadlines in the face of “genuine health emergencies”; and (3) improperly relying on *McClaghry*.

[30] I would not accede to any of these submissions. In my view, the judge carefully considered the history of the proceedings and the number of extension applications. She assessed the medical evidence presented and found it was insufficient to establish a basis for the extension sought. She was guided by the principles articulated in *McClaghry* and found the circumstances in this case to be similar.

Disposition

[31] Justice Griffin properly rejected the appellant’s arguments on the application for an extension of time. Her analysis was grounded in the correct legal framework. It was open to her to question the sufficiency of the materials filed on the extension application, particularly in circumstances where the appellant had filed multiple extension applications without issue.

[32] Accordingly, I would find that Justice Griffin applied the correct legal principles and made no errors of principle or misapprehensions of fact in her dismissal of the appellant’s application for an extension of time. I would dismiss the application to vary.

[33] **GROBERMAN J.A.:** I agree.

[34] **HORSMAN J.A.:** I agree.

[35] **GROBERMAN J.A.:** The application to vary the order of Justice Griffin is denied and in accordance with the practice of this Court, it follows that the appeal is declared to be at an end and the order should reflect that the appeal is dismissed as abandoned. Thank you.

“The Honourable Justice Winteringham”