

# COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Moore v. Cheung*,  
2025 BCCA 39

Date: 20250207  
Docket: CA50328

Between:

**Wayne Moore**

Appellant  
(Petitioner)

And

**Kevin Cheung**

Respondent  
(Respondent)

Before: The Honourable Madam Justice Bennett  
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated  
December 19, 2024 (*Moore v. Cheung*, 2024 BCSC 2312,  
Vancouver Docket S235747).

The Appellant, appearing in person:

W. Moore

Counsel for the Respondent:

T. Boyd

Place and Date of Hearing:

Vancouver, British Columbia  
January 14, 2025

Place and Date of Judgment:

Vancouver, British Columbia  
February 7, 2025

**Summary:**

*The appellant tenant applies for a stay of an order of possession pending appeal of a judicial review of a Residential Tenancy Branch decision approving his eviction for causing significant risk to property. Held: the stay is granted. The appellant has shown some merit to the appeal, irreparable harm if he is evicted, and the balance of convenience favours staying the order of possession until the appeal is decided.*

**Reasons for Judgment of the Honourable Madam Justice Bennett:****Overview**

[1] The appellant, Wayne Moore, applies for a stay of proceedings and stay of an order of possession pending appeal.

**Background**

[2] The underlying appeal is from a judicial review of a Residential Tenancy Branch (“RTB”) decision approving a one month’s notice to end tenancy provided to Mr. Moore on May 16, 2023.

[3] Mr. Moore lives in an apartment on Robson Street with his eighteen-year-old son, who is a college student. Mr. Moore has lived in the apartment for 15 years.

**RTB Hearing**

[4] On May 22, 2023, Mr. Moore applied to the RTB for dispute resolution, after being served with a one-month notice to end tenancy pursuant to s. 47 of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA]. Kevin Cheung is listed as the respondent in the style of cause in this appeal, although “Landa Robson Residential Holdings Ltd.” (“Landa”) is listed as the landlord in the Residential Tenancy Agreement filed by Mr. Moore. I understand that Landa is the property manager, while Mr. Cheung owns the suite, which is in turn located in a condominium complex that is operated under a strata council. I will refer to the “Landlord” or “respondent” to include both Mr. Cheung and his agents.

[5] Although in its notice to end tenancy the Landlord also alleged non-payment of rent, allowing an unreasonable number of occupants in the unit, and failure to

maintain adequate tenant insurance as bases to end the tenancy, these claims were not addressed in the RTB decision and the decision was not based on those grounds.

[6] Instead, the central dispute at the RTB hearing was the source of water damage to Mr. Moore's unit, which had spread to another unit and the commercial property below. Mr. Moore claimed that the damage was due to the failure of the Landlord to address long-standing leaks that he had reported to them. The Landlord claimed that the damage was caused by Mr. Moore, and that he had failed to report it to the Landlord in a timely fashion and subsequently did not allow access to the unit for repairs. The Landlord argued that Mr. Moore or his occupants represented a significant risk to the Landlord's property, justifying termination of the tenancy under s. 47(d)(iii) of the *RTA*.

[7] The Landlord's evidence concerning the source of the leak consisted of email logs between strata representatives and the property management company about the water damage, which cited an unattached plumbing report, and a water damage incident report done by Pro-Platinum Claim Restoration (the "Platinum Report"), which stated that a plumber would confirm the source of the leak.

[8] The tenant's evidence consisted of phone logs of calls between him and Mr. Wang, the property manager for the strata, and photographs of the unit, including photographs showing water leakage in the kitchen sink.

[9] The adjudicator ultimately preferred the evidence of the Landlord, and approved the one-month notice to end the tenancy on the basis that Mr. Moore had caused the leak through misuse of the kitchen sink and failed to report the leak effectively, and therefore represented a significant risk to the Landlord's property.

[10] On August 11, 2023, the RTB issued its decision and granted the Landlord an order of possession for the unit.

[11] Mr. Moore applied the same day for a review consideration, on the basis that he had new and relevant evidence not available at the hearing, namely, a plumbing

report. The application was dismissed because Mr. Moore did not attach the plumbing report, and in any case, the adjudicator found that Mr. Moore had not shown that it was not available before the hearing.

### **Interim Stay and Appeal**

[12] On August 16, 2023, the same day that Mr. Moore filed the petition for judicial review, he made an application for a stay of the order of possession pending hearing of the petition. He was granted an interim stay on August 17, 2023, until August 22, 2023, when the matter was set for hearing. On August 22, the matter was adjourned and the interim stay extended to August 31.

[13] On September 13, 2023, Mr. Justice Milman issued an order dismissing Mr. Moore's application and lifting the interim stay. Mr. Moore appealed this order. On September 21, 2023, Madam Justice Horsman of this Court granted Mr. Moore a stay pending the hearing of that appeal, which has not yet been heard. It appears that Mr. Moore was initially represented by counsel in the appeal, but according to his affidavit filed in his recent application to have the appeal removed from the inactive list, his lawyer has withdrawn.

### **Judicial Review**

[14] After a number of adjournments and applications, the petition for judicial review was heard on December 12, 2024, and judgment was given on December 19, 2024.

[15] On judicial review, Justice Baker upheld the adjudicator's decision, finding that they had applied the proper legal test for resolving credibility disputes, and that the adjudicator's findings on credibility were owed deference.

[16] Justice Baker also found that the RTB process was procedurally fair and found there was no evidence to support Mr. Moore's claim of bias.

### **Application and Underlying Appeal**

[17] Mr. Moore filed an appeal from Justice Baker's order on December 20, 2024.

[18] Mr. Moore applied for and was granted a no-fee order by Justice Riley on January 2, 2025.

[19] On January 3, 2014, Mr. Moore filed this application for a stay of the order of possession pending appeal.

**Legal Test for a Stay Pending Appeal**

[20] A justice of this Court has authority to stay part or all of the proceedings in the matter from which the appeal has been brought under ss. 30(c) and 33(2) of the *Court of Appeal Act*, S.B.C. 2021 c. 6.

[21] The test set out in *R.J.R.-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (S.C.C.), [1994] 1 S.C.R. 311 [*R.J.R.*] governs applications for stays pending appeal. The onus is on the applicant to show:

- 1) There is some merit to the appeal;
- 2) The applicant will suffer irreparable harm if the stay should be refused; and,
- 3) On balance, the inconvenience to the applicant if the stay should be refused would be greater than the inconvenience to the respondent if the stay should be granted.

See *Tanguay v. Bridgewater Bank*, 2012 BCCA 234 (Chambers), at para. 16.

[22] The overarching focus is the interests of justice: *Coburn v. Nagra*, 2001 BCCA 607.

**Analysis**

**Merits of the Appeal**

[23] The question on the merits test is whether there is a serious question to be determined. This is a low threshold. It does not require that the applicant show a strong *prima facie* case: *Tanguay* at para. 18.

[24] The respondent argues that the stay should not be granted because the appeal is meritless. He argues that the appellant has not raised any basis for a

finding that the RTB decision is patently unreasonable and asserts that the RTB hearing was procedurally fair.

[25] I take Mr. Moore to be arguing that the appeal does have merit, as it was patently unreasonable for the adjudicator to find that he was the cause of the water damage to the unit. Mr. Moore has also asserted various claims of bias against the RTB adjudicator and the chambers judge. There is no evidence in support of these claims and I will focus solely on whether it is arguable that the chambers judge erred in finding the RTB decision was not patently unreasonable.

[26] In her merits assessment in relation to Mr. Moore’s application for a stay in his appeal of the order setting aside the interim stay before the petition was heard, Justice Horsman found that there was some merit to that appeal. In my view, her comments are relevant to the merit of this appeal.

[27] Justice Horsman commented at paras. 11 and 35–36:

I observe that it is unclear what the arbitrator is referring to in suggesting that the Landlord had submitted documentary evidence to confirm that the leaks originated from the Unit and were likely caused by the tenants. The Platinum Report which identified the kitchen sink as the “suspected” source of the leak was in evidence. The related plumber’s report was not in evidence. There was only [the strata staff’s] email summarizing his understanding of the report.

...

The arbitrator in the original RTB hearing made adverse credibility findings against the applicant in part due to the applicant’s failure to provide corroborating evidence from a plumber to support his position on the cause of a leak. However, the Landlord also did not provide corroborating evidence from a plumber. There is no explanation in the record for the Landlord’s failure to put the [plumber’s report] in evidence before the RTB. The point is not addressed in the arbitrator’s decision.

I do not wish to say more than is necessary on the merits. It appears to me to be at least arguable that Justice Milman erred in his assessment of the strength of the applicant’s case. A review of the record raises an arguable point as to whether the arbitrator may have drawn arbitrary distinctions in their credibility findings, and held the applicant to a higher standard of

evidentiary proof. If so, this may meet the test for a patently unreasonable decision under s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004 c. 45.

[Emphasis added.]

[28] While these comments were made before Mr. Moore's petition for judicial review was ultimately heard, the judicial review decision did not explicitly address the issue raised in these comments. On this basis, in granting a no-fee application, Justice Riley recently concluded that there was some merit to this appeal. However, the respondent was not given notice of and did not attend the no-fee application.

[29] At the hearing of this application for a stay, the respondent submitted that Justice Horsman's decision was before Justice Baker in the petition for judicial review of the RTB decision, and that the petition reasons resolve the issue raised by Justice Horsman. Justice Baker summarized some of the evidence before the arbitrator at para. 21:

The landlord produced a water damage incident report, and an email between the strata manager and the landlord's agents, wherein the investigators identified the kitchen sink as the likely source affecting the tenant's unit, and other units and commercial units in the building.

[30] She then listed evidence submitted by the Landlord as follows:

- a) An email chain in September 2022 between the landlord and the property manager about a leak in unit 204, which was leaking into the ceiling of the restaurant below. It indicated they were having difficulty contacting the tenant to address the leak.
- b) Email in October 2022 expressing difficulty with Mr. Moore in arranging access to unit.
- c) Email in February 2023 regarding the leak continuing into the restaurant from unit 204 [Mr. Moore's unit] and possibly unit 205.
- d) Email April 12, 2023 from the property manager to Mr. Moore advising that because the damage to the unit was extensive, he would have to vacate to allow for restoration. The restoration was estimated at two months.

[31] Justice Baker's analysis on the issue of whether the decision was patently unreasonable is as follows:

[38] I find that the arbitrator's reasons establish a chain of reasoning based in the documents, and the credibility findings he made of the

witnesses. The arbitrator relied on the correct legal test in assessing credibility. While the outcome is not what Mr. Moore hoped for, I cannot agree that the reasoning of the arbitrator was so flawed that no amount of curial deference could let it stand.

[39] The role of this court is not to conduct a hearing de novo. It is not to re-weigh the evidence that was before the arbitrator, or to make new credibility findings in place of those made by the arbitrator: *Actton Transport Ltd. v. British Columbia (Employment Standards)*, 2010 BCCA 272 at para 23.

[40] In this case I find the arbitrator based his decision on the evidence before him. He is entitled to prefer certain pieces of evidence and testimony over others in coming to his conclusion.

[41] I find that the decision of the arbitrator is not patently unreasonable.

[32] In my view, Justice Baker's reasoning leaves open to Mr. Moore to argue that the RTB decision is patently unreasonable because the adjudicator held him to a different standard than the Landlord, by finding against him for failing to present documentary evidence from a plumber but not noting that the Landlord had not done this either. I cannot say whether this argument will ultimately be successful. However, I do not see this concern as being resolved by Justice Baker's decision, as the respondent has argued.

### **Irreparable harm**

[33] Irreparable harm "refers to the nature of the harm suffered rather than its magnitude": *R.J.R.* at 341. Harm that cannot be quantified in monetary terms is irreparable: *Mason v. The Mansion House Estates Ltd.*, 2022 BCCA 452 (Chambers) at para. 20.

[34] The respondent argues that Mr. Moore has failed to provide evidence that he has made attempts to find alternative housing, nor has he provided evidence that he will be unable to rent an alternative accommodation.

[35] In the hearing, Mr. Moore stated that he has lived in the apartment for 15 years, that in that time the cost of living has gone up "astronomically" and that renting a similar apartment at market rent today would double or even triple the price of his current rent. He says he has a close-knit relationship with his neighbours.

He said that his son, who lives with Mr. Moore, is going to college at Langara, and that this tenancy dispute has been difficult for him.

[36] Whether an eviction is an irreparable harm to an appellant will depend on the circumstances. Where a vulnerable person has no other place to go, an eviction has been found to constitute an irreparable harm: *Douglas v. Anavets Senior Citizens' Housing Society*, 2002 BCCA 486 (Chambers) at paras. 16–17. However, moving alone may not always be irreparable harm to a tenant: *Lee v. Wedekind*, 2021 BCCA 372 at para. 33.

[37] Mr. Moore has lived in the apartment for 15 years with his family. The unit is also home to his teenage son. He asserts that he is low income and has some health issues. On his no-fee application, Mr. Moore submitted that he is on WCB, has four or more members in his family and his gross household income is “way” less than \$84,000. On that basis, Justice Riley accepted that Mr. Moore had established undue hardship.

[38] I agree with Justice Horsman that “[f]or this applicant, losing his long-term home does constitute irreparable harm that cannot be compensated for in the event he is successful on appeal”: para. 39.

### **Balance of convenience**

[39] The final factor requires weighing the interests of the parties and balancing the potential harm to each: *Mason* at para. 21. The question is “which of the two parties will suffer the greater harm from the granting or refusal” of the stay pending appeal: *R.J.R.* at 342.

[40] The respondent raises the following as harms it has suffered and/or will suffer as a result of the stay:

- (a) The Appellant has refused to pay rent for the Unit since September 2023;
- (b) the Respondent has been prevented from remedying substantial damage to the Unit;
- (c) the Respondent has been prevented from enforcing its lawful right to terminate a tenancy for more than a year;
- (d) the Respondent has been forced to respond to a series of meritless applications and court materials as the Appellant has not properly engaged in the court process; and

(e) the Appellant continues to assert meritless allegations of fraud and conspiracy against the Respondent and his counsel.

[41] The respondent also claims that the public interest is harmed in delaying the enforcement of the order of possession granted by the RTB, as it undermines the function of the tribunal concerned with the expeditious resolution of tenancy disputes.

[42] Mr. Moore's apparent refusal to pay rent is concerning but amounts to a separate issue to be put before the RTB. In terms of Mr. Moore's litigation behaviour, I accept that the respondent has been inconvenienced by the fact that the judicial review process took more than a year, largely because of applications and adjournments filed by Mr. Moore.

[43] However, Mr. Moore appears to be prosecuting this appeal diligently. He filed his notice to appeal the day after Justice Baker's decision was received, and he filed this application shortly after. He has also expressed an intention to file his leave to appeal application forthwith.

[44] I also note that Mr. Moore has had assistance from non-lawyers in the past. He would be well-advised to seek out the assistance of a lawyer for his appeal. He is not doing himself any favours by pursuing meritless claims and arguments that may be fueled by those purporting to be helping him.

[45] I also accept that the respondent has been inconvenienced by the fact that Mr. Moore's material filed on appeal and in this application has not been responsive to the relevant legal tests and has contained spurious allegations.

[46] For the respondent, the primary inconvenience flowing from the order of possession being further stayed is the risk that Mr. Moore will continue not to pay rent and the risk that he will not provide access to the unit for repairs, or that the unit will be further damaged. In my view, these risks can be attenuated in the terms of the order.

[47] The potential harm to each party can also be balanced in the terms of an order granting a stay. In *Douglas*, for example, an order of possession was stayed on the condition that the appellant tenant (1) “make every reasonable effort to obtain other accommodation”; (2) “eliminate the clutter of paper presently in the suite and maintain the suite in a clean and safe condition” (health and safety concerns created by the accumulation of paper was the stated reason for tenant’s eviction); (3) “submit to a weekly inspection by the Society on 24 hours’ notice”; and (4) “proceed promptly with the appeal and abide by the time limits set by the Court of Appeal Rules.”

[48] Justice Horsman attached conditions to her order staying the execution of the eviction.

[49] Similar conditions could be attached to an order in this case, requiring Mr. Moore to cooperate with remediation efforts, pay rent on time as it becomes due, and proceed promptly with this appeal, which will alleviate some or most of the respondent’s concerns.

[50] Mr. Moore confirmed at the hearing that he is able to pay his rent going forward, if such a term is ordered.

[51] Ultimately, if Mr. Moore is evicted, this cannot be remedied by his appeal. As in *Douglas*, if Mr. Moore “is successful in his appeal but has been evicted from his suite he will have a barren victory”: *Douglas* at para. 17

[52] In my view, Mr. Moore has met the requirements for obtaining a stay of execution of the order to vacate. Therefore, I grant the application, but with the following terms:

- i) Wayne Moore commence paying his rent of \$1,350.00 per month on February 1, 2025 and thereafter;
- ii) Wayne Moore must comply with reasonable directions from the Landlord that are necessary to allow the remediation work in his apartment to be carried out;

- iii) Wayne Moore will pursue his appeal diligently and comply with the *Court of Appeal Act* and *Rules* in all respects, and in particular, with respect to filing deadlines for material to advance the appeal; and
- iv) The Landlord may apply to the Court on two days' notice to lift the stay in the event that Wayne Moore fails to comply with the terms of this order.

[53] Costs of the application will be in the cause.

“The Honourable Madam Justice Bennett”