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CASE SUMMARY: COURT UPHOLDS ARBITRATOR'S EVICTION DECISION ON JUDICIAL REVIEW FOLLOWING TENANT'S FAILURE TO COMPLY WITH MATERIAL TERMS OF RENTAL AGREEMENT

Administrative law – Decisions of administrative tribunals – Residential Tenancy office – Landlord and tenant – Residential tenancy agreements – Eviction; Judicial review – Standard of review – Patent unreasonableness – Procedural requirements and fairness – Disclosure of records

Vaquerano v. 43 Housing Society

The petitioner sought judicial review of a Residential Tenancy Branch decision to dismiss her application to cancel an eviction notice served by her landlord pursuant to s. 47(1)(h) of the Residential Tenancy Act, S.B.C. 2002 c. 78 (the "RTA"). Section 47(1)(h) of the RTA permits a landlord to end a tenancy if the tenant has: (i) failed to comply with a material term of the rental agreement; and (ii) has not corrected the situation within a reasonable time after the landlord gives written notice.

[2016] B.C.J. No. 2605

2016 BCSC 2300

British Columbia Supreme Court

December 8, 2016

Baird J.

The petitioner, Ms. Vaquerano, resided in subsidized housing along with her six children. The rental housing was operated by the respondent landlord. The petitioner's rental subsidy was paid for by the provincial government directly to the landlord based on financial information disclosed by the petitioner. To this end, and in order to determine the amount of subsidy available, the petitioner was required by the terms of her rental agreement to provide certain financial information on an annual basis, including, in relevant part, "any other proof of income deemed necessary".

In approximately 2006, the petitioner entered into a common law relationship with one Herbert Velasquez-Cruz, the father of the petitioner's two youngest children. Mr. Velasquez-Cruz lived full-time with the petitioner. In 2014, Mr. Velasquez-Cruz provided the landlord with a declaration that he had no income and no bank account. The rental amount to be paid by the petitioner, based on the subsidy, was fixed accordingly. However, during the 2015 review, the landlord received Mr. Velasquez-Cruz's 2014 income tax assessment, which showed that he had earned \$50,000 that year. As a result of this discrepancy, the landlord notified the government and made a series of demands on the petition for certain information and documentation pursuant to the rental agreement to get a clearer picture of household income. The petitioner responded by advising that Mr. Velasquez-Cruz had moved out in June 2015. The landlord followed this up with a further letter seeking financial information from the petitioner, including Mr. Velasquez-Cruz's tax returns for 2012, 2013 and 2015, as well proof that he was now residing elsewhere, the latter of which was specifically required by the provincial government. The petitioner failed to provide the information and the landlord provided the eviction notice on October 27, 2015. The petitioner challenged the eviction, which was upheld by the arbitrator on review in January 2016.

On judicial review, the petitioner argued that the decision of the arbitrator to uphold the eviction was: (1) patently unreasonable; and (2) failed to comply with the duty of procedural fairness owed to her.

Dealing with the first of these issues, the court held that it was a material term of the rental contract that the petitioner provide certain financial information to the landlord. Indeed, the court went as far to say that "full and frank disclosure of household income is central to the agreement" by which "the public interest is served" through preventing over-payment of limited housing subsidiary from the provincial treasury. Not surprisingly then, the court had little trouble in upholding the arbitrator's decision that the petitioner's failure to provide the requested financial information to the landlord was a material breach of the rental contract entitling the landlord to end the tenancy. Additionally, the court was not willing to disturb the arbitrator's finding as to the credibility of the petitioner and her explanation for her failure to provide the requested information.

As for the issue of procedural fairness, the petitioner argued that the arbitrator proceeded with the hearing before receiving documents that she wanted him to consider, including a letter from Mr. Velasquez-Cruz confirming that he had moved out. However, the arbitrator did not in fact render his decision until receiving and reviewing these documents (although he did proceed with the actual hearing without them). The petitioner argued that this failed to comply with the standard of procedural fairness she was entitled to. While the court was careful to note that it did not necessarily endorse the procedure adopted by the arbitrator, the fact that the arbitrator did read and consider these documents before rendering his decision was sufficient in the circumstances. Moreover, the court held that in any event the letter lacked relevance because it was not signed and failed to provide any information regarding the current whereabouts of Mr. Velasquez-Cruz. As such, the court held that it was unable to conclude that the decision to proceed with the hearing prior to obtaining the documents rendered it unfair.

Accordingly, the court upheld the eviction notice and dismissed the petition.

This case was digested by [Adam R. Way](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact him directly at away@harpergrey.com or review his biography at <http://www.harpergrey.com>.