

HARPER GREY LLP
3200 – 650 West Georgia Street
Vancouver, British Columbia, V6B
4P7
Canada

Tel: 604 687 0411
Fax: 604 669 9385

CASE SUMMARY: RESIDENTIAL TENANCY BRANCH CORRECT IN EXERCISING JURISDICTION WHERE PROCEEDINGS CONCERNED AN ALLEGATION OF REPEATED LATE RENT PAYMENTS

Application to dismiss action and petition for judicial review both arising out of tenancy relationship governed by Manufactured Home Park Tenancy Act, S.B.C. 2002, c. 77.

Administrative law; Decisions reviewed; Residential Tenancy office; Judicial review; Delay; Standard of review; Patent unreasonableness; Landlord and tenant; Damages; Practice and procedure; Limitations of actions; Remedies; Declaratory relief

Pettipas v. Dhillon, [2017] B.C.J. No. 1312, 2017 BCSC 1150, British Columbia Supreme Court, July 6, 2017, M.B. Blok J.

Mr. Pettipas and Mr. Dhillon entered into a three-year lease in 2009 in respect of land on which Mr. Pettipas placed a mobile home.

In 2011, Mr. Pettipas commenced a civil action alleging Mr. Dhillon failed to prepare the mobile home site in a timely manner, seeking damages and declaratory relief (the “Action”). After commencing the Action Mr. Pettipas took no steps to advance the Action for over six years.

After Mr. Pettipas commenced the Action the parties appeared before the Residential Tenancy Board (“RTB”), under the *Manufactured Home Park Tenancy Act*, S.B.C. 2002, c. 77, in respect of an application for an order of possession of the mobile home site. In 2013, Mr. Pettipas relied on the existence of the Action to obtain an order dismissing the application before the RTB on the basis it was linked to the Action. In 2016, the parties again appeared before the RTB in respect of a further application for an order of possession on the basis of late payment of rent. The RTB determined the matter was not substantially linked to the Action because it concerned late payment of rent and granted the order of possession in favour of Mr. Dhillon. Mr. Pettipas applied for review of that decision. The application for review was dismissed.

In 2016, Mr. Pettipas applied for judicial review of the RTB decisions (the “Petition”).

Mr. Dhillon applied to dismiss the Petition on the basis it was without merit and the Action on the basis of want of prosecution.

The chambers judge concluded the Petition was without merit and the delay in prosecuting the Action warranted dismissal in the interests of justice.

The RTB adjudicator’s decision to proceed with the application for an order of possession involved an exercise of discretion. That exercise of discretion is reviewable on a statutory patently unreasonable standard. The chambers judge concluded the decision to exercise jurisdiction was correct because the RTB proceedings concerned an allegation of late payment of rent, which arose years after the complaints that were the subject of the Action, and the matters were unrelated.

The Action concerned events that occurred eight years before the hearing and the Action was outstanding for six years with no steps taken to move it forward. The chambers judge concluded there was want of prosecution in the Action because there was inordinate delay, the delay was intentional because it was used tactically in order to provide a defence to the RTB proceedings, and the delay was unreasonable, inexcusable, and prejudicial, warranting dismissal.

The Petition and the Action were dismissed.

This case was digested by [Joel A. Morris](#) and edited by [William W. Clark](#) of Harper Grey LLP. If you would like to discuss this case further, please feel free to contact them directly at jmorris@harpergrey.com or wclark@harpergrey.com or review their biographies at <http://www.harpergrey.com>.