IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Naderi v. Cheng,*
2026 BCSC 861

Date: 20260512
Docket: S256477
Registry: Vancouver

Between:

Ahmad Naderi

Petitioner

And

Vivian Cheng and Cornell Ra

Respondents

Before: The Honourable Justice Wilson

On judicial review from: An order of the Residential Tenancy Branch,
dated July 3, 2025.

Reasons for Judgment

Counsel for the Petitioner:	A. Ehteshami
The Respondents appearing on their own behalf:	V. Cheng C. Ra
Place and Date of Hearing:	Vancouver, B.C. April 17, 2026
Place and Date of Judgment:	Vancouver, B.C. May 12, 2026

[1] The petitioner seeks an order setting aside the decision of an arbitrator of the Residential Tenancy Branch (the "RTB").

[2] The background of this matter is largely uncontroversial.

[3] The petitioner entered into a contract of purchase and sale to buy a property at 208 – 26 Street East in North Vancouver. The property consists of two separate structures, a main house (the "Main House") and a detached laneway house (the "Laneway House"). The respondents were the tenants in the Main House.

[4] The petitioner required as a term of the contract of purchase and sale that notice be given for the respondents to vacate the property. The notice was provided on November 13, 2023, and although the effective date for vacant possession was February 29, 2024, the respondents vacated early, on February 14. The notice provided that the petitioner or a close family member intended to occupy the property.

[5] In or about May 2024, the petitioner commenced renovations of the lower area of the Main House. As of September 10, 2024, the Main House was rented out to new tenants.

[6] The process before the RTB was initiated by an application brought by the respondents. The respondents' claim was that they were entitled to compensation equivalent to 12 months' rent because the petitioner had not moved into the rental unit and as such did not satisfy the requirement of living in the rental unit for six months after the eviction.

[7] Section 51(2) of the *Residential Tenancy Act,* SBC 2002, c. 78 [*RTA*] provides as follows:

> 51(2) Subject to subsection (3), the landlord or, if applicable, the purchaser who asked the landlord to give the notice must pay the tenant, in addition to the amount payable under subsection (1), an amount that is the equivalent of 12 times the monthly rent payable under the tenancy agreement unless the landlord or purchaser, as applicable, establishes that both of the following conditions are met:

> (a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice;
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> (b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose, beginning within a reasonable period after the effective date of the notice, for at least the following period of time, as applicable:
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> (i) if a period is not prescribed under subparagraph (ii), 12 months;
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> (ii) a prescribed period, which prescribed period must be at least 6 months.

[8] The hearing took place over two days. The petitioner testified, as did his son, Parham, a neighbour referred to as S.F., two of Parham's friends, D.T. and H.P., and, a contractor, B.H.

[9] Arbitrator N. Smith found in favour of the tenants, finding as follows on page 13 of the decision:

> Based on the evidence before me, the testimonies of the parties, and on a balance of probabilities, I find that the Tenants have established their claim for compensation related to a notice to end tenancy where the Landlord did not accomplish the stated purpose or comply with the Act.

[10] The petitioner argues that the arbitrator's decision is patently unreasonable because it does not explain why the arbitrator came to the decision she reached. He says the reasons are insufficient to explain the outcome. He also argues that the arbitrator was biased, and that the decision cannot stand as a result.

[11] For the reasons that follow, I conclude that the arbitrator's reasons are insufficient, and the petition must be granted. I reject the suggestion of bias on the part of the arbitrator, and I also reject the petitioner's suggestion that the court substitute its own decision.

Standard of Review

[12] The standard of review is one of patent unreasonableness.

[13] Pursuant to s. 5.1 of the *RTA*, the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*] applies to the RTB:

Application of Administrative Tribunals Act

5.1 (1) The following provisions of the *Administrative Tribunals Act* apply to the director, as if the director were a tribunal, to determinations under Division 1.1 of Part 4 of this Act, to dispute resolution proceedings under Division 1 of Part 5 of this Act, to reviews under Division 2 of Part 5 of this Act and to the imposition and review of administrative penalties under Part 5.1 of this Act:

(a) Part 1 [Interpretation and Application], except for the definition of "facilitated settlement process";

(b) section 29 [disclosure protection];

(c) section 44 [tribunal without jurisdiction over constitutional questions];

(d) section 46.3 [tribunal without jurisdiction to apply the Human Rights Code];

(e) section 48 [maintenance of order at hearings];

(f) section 56 [immunity protection for tribunal and members];

(g) section 57 [time limit for judicial review];

(h) section 58 [standard of review with privative clause];

(i) section 59.1 [surveys];

(j) section 60 (1) (i) and (2) [power to make regulations];

(k) section 61 [application of Freedom of Information and Protection of Privacy Act].

[14] There is a privative clause under the *RTA* which is found at s. 84.1:

Exclusive jurisdiction of director

84.1 (1) The director has exclusive jurisdiction to inquire into, hear and determine all those matters and questions of fact, law and discretion arising or required to be determined, and to make any order permitted to be made, in the following:

(a) a dispute resolution proceeding;

(a.1) a determination under Division 1.1 of Part 4;

(b) a review under Division 2 of this Part;

(c) a proceeding under Part 5

(2) A decision or order of the director on a matter in respect of which the director has exclusive jurisdiction is final and conclusive and is not open to question or review in any court.

[15] The *ATA* mandates the standard of review where the legislation that creates the tribunal has a privative clause:

Standard of review with privative clause

> **58** (1) If the Act under which the application arises contains or incorporates a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
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> (2) In a judicial review proceeding relating to expert tribunals under subsection (1)
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> (a)a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
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> (b)questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
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> (c)for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
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> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
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> (a)is exercised arbitrarily or in bad faith,
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> (b)is exercised for an improper purpose,
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> (c)is based entirely or predominantly on irrelevant factors, or
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> (d)fails to take statutory requirements into account.

[16] This is not a case regarding the process or procedures followed by the arbitrator. The focus is therefore whether or not the arbitrator's decision was patently unreasonable.

[17] In *Hollyburn Properties v. Staehli*, 2022 BCSC 28, Justice Brongers summarized the application of the standard of patent unreasonableness in the context of the *RTA* at para. 25:

> [25] As the *ATA* does not define patent unreasonableness as it applies to a tribunal's factual or legal findings, however, guidance regarding its meaning must be sought from the case law. In *Kong* [*Kong v. Lee* 2021 BCSC 606], at paras. 58-65*,* Madam Justice MacDonald set out a number of jurisprudential holdings which provide content to the notion of patent unreasonableness, including:
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> (a) as expert tribunals are entitled to significant deference, the standard is an onerous one and their decisions can only be quashed if there is no rational or tenable line of analysis supporting them (*Victoria Times Colonist v. Communications, Energy and Paperworkers,* 2008 BCSC 109 at para. 65; aff'd 2009 BCCA 229);

> (b) a decision is patently unreasonable if it is openly, evidently, and clearly irrational, or unreasonable on its face, unsupported by evidence, or vitiated by failure to consider the proper factors or apply the appropriate procedures (*Gichuru v. Palmar Properties Inc.,* 2001 BCSC 827 at para. 34, citing *Lavender Co-Operative Housing Association v. Ford,* 2011 BCCA 114);
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> (c) a patently unreasonable decision is one that almost borders on the absurd (Voice Construction Ltd. v. Construction & General Workers' Union, Local 92, 2004 SCC 23 at para. 18 and West Fraser Mills Ltd. v. British Columbia (Workers' Compensation Appeal Tribunal), 2018 SCC 22 at para. 28);
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> (d) it is a possible that a great deal of reading and thinking will be required before the problem in a patently unreasonable decision is apparent, but once its defect is identified, it can be explained simply and easily, leaving no real possibility of doubting that the decision is defective (*Yee v. Montie,* 2016 BCCA 256 at para. 22);
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> (e) the standard of patent unreasonableness also applies to the consideration of adequacy of reasons, which involves an assessment of the justification, transparency and intelligibility of the decision-making process (*Vavilov*); and
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> (f) under the *RTA* regime, the overriding test for adequacy of reasons is whether a reviewing court is able to understand how and why the decision was made (*Ganitano v. Yeung,* 2016 BCSC 2227 at para. 24).

[18] Patent unreasonableness is a highly deferential standard, and the petitioner therefore bears a high onus.

[19] In *Ganitano v. Yeung*, 2016 BCSC 2227, Justice Griffin (as she then was) discussed adequacy of reasons in the context of a RTB dispute. She described the requirement for reasons as part of the duty of fairness. At paras. 21 – 24, she stated the following:

> [21] The requirement to give written reasons is a facet of the duty of fairness. Analytically, an investigation into the adequacy of reasons may bleed into substantive review. Where reasons are inadequate, it may be difficult for a reviewing court to ascertain a delegate's justification for an outcome; however, where reasons are adequate an arbitral outcome may nevertheless be unreasonable or patently unreasonable.
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> [22] Reasons allow individuals to know why, how, and on what evidence a decision-maker reaches his or her decision; see D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, updated 2014) at c. 12 at 70.

> [23] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, a union sought judicial review on the basis that the arbitrator provided inadequate reasons for the arbitral award. The Court at para. 16 held that "a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion". Reasons are adequate, the Court held, if a reviewing court can ascertain the rationale of the decision.
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> [24] In assessing the adequacy of reasons, context is relevant. In *Christiansen v. Harwood*, 2015 BCSC 1440, Fisher J., at para. 20, held that in the context of residential tenancy disputes the standard of adequacy is lowered because the governing legal regime is relatively straightforward. The Court reiterated that the overriding test for adequacy is whether a reviewing court is able to understand how and why the decision was made.
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> [Emphasis added.]

[20] In *Laverdure v. First United Church Social Housing Society*, 2014 BCSC 2232, at para. 35, Justice Davies broke down the ultimate test for sufficiency of reasons in the context of an RTB hearing as:

> [35] What I take from my review of all of the authorities to which I was referred is that for the reasons of a Dispute Resolution Officer to be adequate, they must:
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> 1) Set out the legal test to be met by the party advancing its claim;
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> 2) Set out the adjudicator's findings of fact and the principal evidence upon which those findings were made; and
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> 3) Apply those findings of fact to the test to be met in reaching a conclusion that will allow the parties and others (including a reviewing court) to understand how and why the adjudicator reached that decision.

[21] An RTB arbitrator's decision is not required to meet the same level of detail or clarity as a decision of the court. Rather, as set out in para. 23 of *Ganitano* above, reasons are adequate if a reviewing court can determine the logical path for the arbitrator's decision.

Insufficiency of Reasons

[22] The requirements of s. 51(2) of the *RTA* at the relevant time were that the petitioner or a close family member must have moved into the Main House within a reasonable time and occupied it for at least six months. The petitioner as the landlord acknowledges that he had the onus of proof.

[23] Both Ahmad Naderi and Parham Naderi testified that Parham moved into the Main House on March 8, 2024, and continued to reside there until September 9, 2024. There was no suggestion that the petitioner and his wife lived in the Main House. The sole question for determination related to Parham's occupation. In this regard, the petitioner must have failed if he could not establish on a balance of probabilities that:

a) Parham moved into the unit within a reasonable time, as that phrase is used in s. 51(2); and

b) Parham occupied the unit for six months.

[24] Apparent from the outcome in this matter is that the arbitrator must not have accepted the evidence tendered on behalf of the petitioner. However, it is not apparent from the reasons as to whether the arbitrator did not accept that Parham moved in by a particular date, or whether she did not accept that he ever occupied the Main House at all.

[25] While I do not accept the petitioner's suggestion that the arbitrator failed to summarize the legal test correctly, it is not apparent from the decision as to the basis upon which she concluded that the landlord had failed to accomplish the stated purpose on the notice to end the tenancy. The absence of any clear articulation in the reasons as to why she found in favour of the tenants renders it difficult to place her comments regarding the evidence into context.

[26] The petitioner points to a number of examples within the decision that he considered problematic. In his amended petition, the petitioner summarized the evidence before the arbitrator. He presented insurance and bank documents, utility bills, an internet bill, a photograph of Parham with his friends, referred to in the decision as D.T. and H.P., and oral testimony from the petitioner, Parham, and four witnesses: a contractor, D.T., H.P., and a neighbour. The friends testified to spending time with Parham in the Main House. The contractor testified about seeing Parham in the Main House on over a dozen occasions and having coffee and tea

with the petitioner and his family in the Main House. The neighbour testified about seeing the petitioner, his wife, and Parham's friends coming and going from the Main House.

[27] However, in rejecting the petitioner's arguments, the arbitrator made the following observations:

a) The petitioner did not provide "any evidence demonstrating their relocation into the residential property" in reference to the absence of a receipt from a moving company;

b) insurance and financial letters were "not definitive proof that the address on the letter [sic] is [Parham's] home address";

c) the neighbour did not provide any corroborating evidence about Parham occupying the Main house, and her evidence was vague because she did not recall specific dates;

d) the petitioner did not upload any corroborating picture evidence demonstrating that Parham was occupying the Main House;

e) Parham's verbal testimony was not corroborated with any documentary evidence; and

f) Parham's friends' testimonies were similar, and uncorroborated by any documentary evidence.

[28] Ultimately, this arbitration rises and falls on credibility. I accept that the overall tenor of the arbitrator's decision is that she must not have accepted the petitioner's evidence; however, she did not provide reasons as to why she did not accept that evidence. In *Andree v. Bentley*, 2011 BCSC 641, at para. 23, Justice Harris (as he then was) said:

> Sworn evidence is presumed to be truthful and if reasons are to fulfill their function they should disclose the basis upon which the sworn evidence has been rejected. This is particularly so where the finding involves a finding of credibility. In this case, the officer must have concluded that the sworn

> evidence that the landlord's agent relied on the representation was not credible, but no explanation is provided to support that conclusion: see *Megens v. Ontario Racing Commission,* 2003 CanLII 30010 (ON SCDC), 64 O.R. (3d) 142, 225 D.L.R. (4th) 757 (Div. Ct.). A tribunal is required to set out its findings of fact and the principal supporting evidence on which it is based: see *Via Rail Canada Inc. v. Canada (National Transportation Agency)* (2000), 2000 CanLII 16275 (FCA), 193 D.L.R. (4th) 357, [2001] 2 F.C. 25 (Fed. C.A.); *Desai v. Brantford General Hospital* (1991), 1991 CanLII 8235 (ON SCDC), 87 D.L.R. (4th) 140, 13 Admin L.R. (2d) 312 (Ont. Div. Ct.)

[29] The reasons do not specifically address the credibility of the witnesses at the hearing. As a result, the reasons do not provide an explanation for why so little of the evidence of the petitioner's witnesses was accepted, and therefore there is a lack of logical connection between the evidence the arbitrator received and the ultimate conclusion.

[30] The arbitrator also made a number of inferences regarding the evidence presented. An inference is a deduction of a fact made by the trier of fact based on evidence presented. The BC Court of appeal provided the following guidance about inferences in *British Columbia (Director of Civil Forfeiture) v. Angel Acres Recreation and Festival Property Ltd*., 2023 BCCA 70, at paras. 172-174:

> [172] A factual inference is a conclusion as to the existence of further facts that may, not must, be drawn from a proven fact or group of proven facts: David Watt, *Watt's Manual of Criminal Evidence* (Toronto: Thomson Reuters, 2021) at 126; *R. v. Munoz* (2006), 86 O.R. (3d) 134, 2006 CanLII 3269 (Ont. S.C.J.) at para. 24 and note 9. "[A] judge must rely on logic, common sense and experience, taking into account the totality of the evidence, when deciding whether to draw an inference": *Rain Coast Water Corp.* at para. 69, citing *R. v. Calnen*, 2019 SCC 6 at para. 112. If there is no evidentiary basis for an invited inference, that is, if the inference does not flow logically and reasonably from established facts, the inference cannot be drawn: *J.P.* at para. 341, citing *R. v. Morrissey* (1995), 97 C.C.C. (3d) 193 at 209, 1995 CanLII 3498 (Ont. C.A.). Doing so would amount to speculation or conjecture: *J.P.* at paras. 339–341; *Rain Coast Water Corp.* at para. 69.
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> [173] The evidence may support more than one inference. Further, to be relevant, it "need not prove conclusively the proposition of fact for which it is offered." It need only "render the fact it is tendered to establish slightly more or less probable" than would be the case without it: *R. v. Evans*, 2019 ONCA 715 at paras. 184–185.
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> [174] Contrary to the Director's submission, where the evidence as a whole supports more than one factual inference, the trier of fact is generally not obliged to consider "the most probable inference to draw from the evidence." Rather, the trier of fact is obliged to determine whether the evidence

> establishes particular factual inferences on a balance of probabilities. After all, “the only practical way in which to reach a factual conclusion in a civil case is to decide whether it is more likely than not that the event occurred”: *F.H.* at para. 44. It is only in the case of inconsistency between such available inferences — namely, where the two inferences cannot both be true — that the trier of fact must determine which is more probable.

[31] A trier of fact needs to be careful not to draw inferences too quickly, especially when there are other plausible explanations or inferences that may be drawn from the same evidence. In some cases, the trier of fact may draw inferences based on evidence that is not presented. An adverse inference is when a trier of fact, in the absence of an explanation, infers from the failure to tender evidence on a point that the evidence either does not exist, or would not assist the party.

[32] The difficulty in a review of the reasons is that because the arbitrator did not articulate why she found in favour of the respondent tenants, it is not possible to find a logical path to the outcome based on the evidence. The arbitrator did not set out what inferences she made from the evidence.

[33] As stated above, it is not clear if the arbitrator found that Parham never occupied the Main House, or whether she concluded that he moved in but after when he said he did, such that the minimum six months of occupation had not been reached before he moved out. The answer to that question makes a difference in determining whether the outcome was patently unreasonable in all of the circumstances. I will refer to some examples.

[34] The arbitrator referred to the lack of evidence “demonstrating relocation onto the residential property such as movers’ receipts”. Presumably, the arbitrator drew an adverse inference from the failure to tender such evidence. However, it is uncontroverted that the petitioner and his wife and Parham all moved to the address, and the question is whether Parham moved into the Main House and, if so, when he did so. Aside from the fact that not everyone hires a moving company to move, even if the family had all moved into the Laneway House, including Parham, the receipt would likely still show the same address. The absence of a moving receipt could

only be probative of a matter in issue if the arbitrator concluded that Parham did not move in on the date he said he did.

[35] Parham's friends, D.T. and H.P., both testified that they were in the Main House on approximately three occasions in June 2024. The arbitrator stated the following at p. 12:

> I find the friends' testimonies similar and uncorroborated by any documentary evidence. These friends said they were there to study and work on a project, but I question whether three young men gathering to study and work without internet was a probability. PN's internet plan began on July 15, 2024; however, none of the witness friends spoke of this being a problem. The Landlord submitted PN's Telus bill as evidence that PN lived in the rental unit, but the address on the bill says, "CTGE", and I find that the Telus service was more likely than not connected to the coach house as opposed to the main house.

[36] The evidence included a photograph of the three men, and there is no dispute that the photograph, which also shows a rug and a table and various electronic devices, was taken inside the Main House. If the question is whether Parham ever occupied the Main House, the testimony of Parham and the testimony of his friends is corroborated to some degree by the photograph. However, if the arbitrator's concern was that Parham did not move until much later than he testified to, the evidence of Parham's friends and the photograph is of no value because neither of the friends said they were at the Main House before June.

[37] The comment about whether three young men gathering to study and work without internet was a probability is a curious one, given that their activities were immaterial to the matters to be decided, and it is not apparent how the arbitrator's skepticism about their work on a project impacted the decision.

[38] Similarly, the arbitrator expressed that the evidence of Parham's friends was not corroborated by documentary evidence, yet the photograph is arguably corroborative, and it is not apparent as to what else one might expect would have been produced.

[39] Finally, the evidence of the neighbour, R.F., which the arbitrator indicated was vague because she did not know the dates when she saw Parham or his mother at the Main House, is only probative of the question of whether Parham occupied the Main House. Moreover, absent a specific memorable event, it is not apparent why the neighbor would be expected to remember the exact dates of her observations.

[40] Reviewing the reasons as a whole, the arbitrator identified a number of circumstances where the petitioner's evidence could have been different or would have been better had such evidence been available, and appears to have drawn adverse inferences. The finder of fact is entitled to weigh evidence, including consideration of what was not put into evidence, in determining whether or not to accept or reject a party's evidence. However, the inferences drawn must be logically tethered to the material facts that needed to be found. Ultimately, the reasons do not advise the parties the basis for why the petitioner was unsuccessful. Did the arbitrator reject the testimony of the witnesses for credibility reasons? Did she prefer one witness's testimony over that of another witness? Did she find that Parham did not occupy the Main House within a reasonable time, did not occupy the Main House at all, or did occupy it but for less than six months? On review, it is simply unclear why and how she reached her final conclusion.

[41] For the above reasons, the reasons of the arbitrator are insufficient, and this judicial review must be granted.

Apprehension of bias

[42] The petitioner submits that there is a reasonable apprehension of bias. He argues that the test is "whether a reasonably informed bystander could reasonably perceive bias on the part of the adjudicator and refers to *Newfoundland Telephone Co. v. Newfoundland (Board of Commissioners of Public Utilities)*, [1992] 1 SCR 623. He argues that although bias is something that ought to be raised at the hearing as opposed to afterwards on judicial review, it was not apparent in this case until later. At paras. 67 and 68 of the amended petition, the petitioner pleads as follows:

> 67. While bias was not raised at the hearing before Arbitrator N. Smith, it is the Petitioner's position that the text of the Decision demonstrates bias. The contradictions in the Decision show how the reasoning provided was contorted to fit a conclusion rather than a conclusion flowing from the evidence. Sometimes the arbitrator found no evidence. At other times, the evidence reappeared but did not corroborate witness accounts. At still other points, evidence did corroborate but only to the extent that it showed the Petitioner was renovating.
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> 68. Likewise, the arbitrator applied inconsistent standards to *vivo voce* testimony. Where testimony was similar, the Decision mentions that fact with a negative light. Testimony was cast negatively when vague but "suspicious" when specific. The fact that the arbitrator expected the Petitioner's neighbour to provide their own corroborating evidence was also unusual.

[43] In essence, the petitioner is arguing that the arbitrator must have been biased given the conclusions and outcomes at the hearing.

[44] While I have concluded that the arbitrator's reasons are insufficient to explain the findings that she came to, there is absolutely nothing on the record that would indicate bias. Bias was defined in *R. v. Bertram*, [1989] O.J. No. 2123 (QL) (H.C.), quoted by Cory J. in *R. v. S. (R.D.)*, [1997] 3 S.C.R. 484, at para. 106 (S.C.C.) as:

> In common usage bias describes a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to legal proceedings, it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind which sways judgment and renders a judicial officer unable to exercise his or her functions impartially in a particular case.

[45] The fact that the arbitrator was not persuaded by the evidence called on behalf of the petitioner does not mean that she was biased. The arbitrator is entitled to make assessments of credibility, and is entitled to accept or reject evidence. The mere rejection of evidence is not indicative of bias.

[46] An allegation of bias implies that a party did not receive a fair hearing. There is no suggestion made in the circumstances of this case that the hearing was unfair; rather, the petitioner does not like the outcome. As Justice Sharma said in *Quigley v. Columbus Charities Association*, 2016 BCSC 1557, at para. 12:

> [12] Allegations of bias are serious. There is ample case law confirming the proposition that such accusations should not be made lightly; they require a

> factual foundation. Someone's belief or opinion that a decision-maker is biased is not a factual foundation. It is improper for anyone, no matter how aggrieved that person feels, to simply toss in bias allegations to accompany a complaint, as if for emphasis, when there is no evidence that person can point to that substantiates his or her belief. There is no basis in the material before me upon which an allegation of bias is properly raised and I will not consider it.

[47] An allegation of bias is unwarranted in these circumstances.

Disposition

[48] A judicial review is not a hearing *de novo*. Rather, the judicial review is undertaken on the record that was before the arbitrator. On that point, I observe that the petitioner seeks an order that the court substitute its own decision for that of the arbitrator. I find that it would be inappropriate for me to do so.

[49] The petitioner refers me to the decision in *Maasanen v. Furtado*, 2023 BCCA 193, in this regard.

[50] *Maasanen* is different from the case before me. In *Maasanen*, the arbitrator had made findings of fact, and those findings were not challenged. Rather, the question was one of interpretation of the legislation, more specifically what constituted a "reasonable period" for the landlord to assume occupancy. By contrast, in this case, the issue is the absence of sufficient reasons that enable the court to conclude how the arbitrator reached her decision and, in particular, why she rejected the landlord's arguments or the landlord's evidence.

[51] However, the fact that the court cannot ascertain why the arbitrator rejected the evidence of the petitioner's witnesses does not lead to the conclusion that the evidence of those witnesses must necessarily be accepted. There may be good reasons to reject some or all of it.

[52] The matter is referred back to the RTB, to be heard by a different presider.

Costs

[53] The *SCCR* provides that costs are awardable at the discretion of the presiding justice.

[54] The general principle is that costs are awarded to the successful party: see R. 14-1(9). “Success”, as it is defined for the purposes of costs, means substantial success. This is the same for trials, summary trials and petitions.

[55] In *Tisalona v. Easton*, 2017 BCCA 272 at para. 71, the Court of Appeal stated the law regarding costs as follows:

> [71] . . . [Rule 14 1(9)] grants unqualified discretion to depart from the *prima facie* rule that the successful litigant should be awarded its costs.

[56] This discretion must be exercised judicially, not arbitrarily or capriciously. The Court of Appeal will intervene when a trial judge makes an error in principle in an order departing from the *prima facie* rule: see *Brito (Guardian ad litem of) v. Woolley,* 2007 BCCA 1. Subject to such an error, the discretion is very broad.

[57] The petitioner was substantially successful on this petition. He obtained the judicial review he sought even though I declined to substitute the Court’s decision for the decision of the arbitrator. Normally the petitioner would be entitled to his costs at Scale “B” of Appendix “B”.

[58] However, the petitioner chose to advance unsubstantiated allegations of bias against the arbitrator. Serious allegations such as these can be a factor to consider in assessing costs on a judicial review: see *Silver Campsites Ltd. v. James,* 2012 BCSC 1437, at para. 68.

[59] Because the petitioner brought these serious and unfounded allegations, I decline to make any order for costs.

“Wilson J.”