

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Tod-Hackett Group Ltd. v. Boom*,
2026 BCSC 989

Date: 20260529
Docket: 2511579
Registry: Victoria

Between:

Tod-Hackett Group Ltd.

Petitioner

And:

Marianne Boom and Alwyn Cox

Respondents

On judicial review from: An order of the Residential Tenancy Branch
dated June 5, 2025 (File No. 910191967)

Before: The Honourable Justice K. Wolfe

Reasons for Judgment

Counsel for the Petitioner:

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C.E. Stewart

Place and Date of Hearing:

Victoria, B.C.
September 26, 2026

Further case authority provided by
Petitioner:

October 9, 2025

Place and Date of Judgment:

Victoria, B.C.
May 29, 2026

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Overview

[1] The petitioner landlord, Tod-Hackett Group Ltd. (the “Landlord”), applies for judicial review of a June 5, 2025 decision (the “Decision”) made by a delegate of the Director of the Residential Tenancy Branch. In the Decision, the arbitrator (the “Arbitrator”) set aside a four-month notice to end tenancy (the “Notice”) the Landlord had issued to the respondent tenants, Ms. Boom and Mr. Cox (collectively, the “Tenants”), and awarded the Tenants their \$100 filing fee.

[2] The Landlord, which is a “family corporation” as defined in the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [RTA], issued the Notice under s. 49 of the RTA. That section allows a landlord to end a tenancy if the Landlord (or a close family member) wishes to occupy the rental unit for their own use. The Tenants filed a notice of dispute resolution and asserted in a hearing before the Arbitrator that the Notice was issued in bad faith. The Arbitrator found the Landlord did not have sufficient cause to end the tenancy for two reasons: the Landlord provided different reasons for wanting to occupy the rental unit and there was an “absence of evidence” that the Landlord and a family member would occupy the unit.

[3] The Landlord says the Decision is patently unreasonable because the Arbitrator failed to consider or materially misapprehended relevant evidence and the Arbitrator erred in applying the requirements of the RTA. The Tenants say the Decision is not patently unreasonable: there was evidence to support the Arbitrator’s conclusions and the Arbitrator’s interpretation of the statutory requirements is consistent with the applicable policy guidance.

[4] For the reasons that follow, I grant the petition for judicial review and find the Decision patently unreasonable on the basis that the Arbitrator misapprehended and ignored relevant evidence. Further, in these unique circumstances, I decline to remit the matter for reconsideration as the outcome is inevitable and concerns for delay, efficient use of public resources and fairness weigh heavily against permitting further proceedings. Instead, I exercise my discretion to order the Tenants to vacate the unit within 60 days of the date of these reasons for judgment.

Issues

[5] The petition raises three issues for determination:

- a) Did the Arbitrator fail to consider or materially misapprehend relevant evidence about the Landlord's reasons for ending the tenancy?
- b) Did the Arbitrator err by interpreting the *RTA* to require the Landlord to demonstrate an intention to reside in the unit for 12 consecutive months?
- c) If the Decision is patently unreasonable, what is the appropriate remedy?

[6] The Landlord and Tenants also sought costs from each other, which I will address at the conclusion of these reasons for judgment.

[7] The Director of the Residential Tenancy Branch (the "Director") filed an affidavit containing the record of proceeding as well as a response to petition outlining general principles of judicial review in this context and some case specific policy guidance. The Director did not take a position on the petition.

Analysis

The standard of review and the role of the Court on review

[8] There is no dispute that the "patent unreasonableness" standard applies on a judicial review of the merits of an arbitrator's decision under the *RTA*: *RTA* ss. 5.1 and 84.1(2) and *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [ATA], s. 58. It is agreed to be a highly deferential standard. While a different standard of review applies if procedural fairness grounds are raised, they are not raised in this case.

[9] Section 58(3) of the *ATA* provides criteria for when an exercise of discretion by a decision-maker will be patently unreasonable, but there are no such statutory criteria where the impugned decision involves a finding of fact or law. In such cases, the common law meaning of "patent unreasonableness" continues to apply.

[10] In *Yee v. Montie*, 2016 BCCA 256, the British Columbia Court of Appeal relied on a number of earlier decisions (including *Manz v. Sundher*, 2009 BCCA 92 at

para. 39, *Speckling v. British Columbia (Workers' Compensation Board)*, 2005 BCCA 80 at para. 37 and *Law Society of New Brunswick v. Ryan*, 2003 SCC 20 at para. 52) to confirm that a decision will be patently unreasonable if “there is no evidence to support the findings”, or if the decision is “openly, clearly, evidently unreasonable”, “clearly irrational” or “evidently not in accordance with reason”: Yee at paras. 21-22. While sometimes referred to as a defect that is apparent on the face of decision, even where a decision attracts the patent unreasonableness standard, the Court is not precluded from considering the record of the decision: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, 1997 CanLII 385 (S.C.C) at para. 57.

[11] The ability to consider the record in addition to the decision is consistent with the Court’s supervisory role on judicial review. On judicial review, the Court’s role is generally not to hear new evidence or argument, nor to decide or re-decide the case. Rather, it is to review the decision in the context of the record to ensure that a decision-maker acts within the scope of its authority and does not lose jurisdiction by failing to provide a fair process or by rendering a decision that fails to meet the applicable level of scrutiny: *Dunsmuir v. New Brunswick (Board of Management)*, 2008 SCC 9 at para 28; *Actton Transport Ltd. v. British Columbia (Director of Employment Standards)*, 2010 BCCA 272 at paras. 19-23; *Alfier v. Sunnyside Villas Society*, 2021 BCSC 212 at paras. 29-32.

Issue 1: Did the Arbitrator fail to consider or materially misapprehend relevant evidence?

[12] The Landlord says the Decision is patently unreasonable because the Arbitrator failed to consider or materially misapprehended relevant evidence respecting the Landlord’s reasons for ending the tenancy and intention to occupy the rental unit. The Tenants say there was evidence before the Arbitrator which could support the conclusions reached and it was open to the Arbitrator to prefer their evidence over that of the Landlord. To understand these positions, I start with the factual background and the relevant portions of the record.

Background

[13] The Landlord is a British Columbia company, the shares of which are all owned by Mr. Timothy Hackett and/or his close family members. As noted, this makes the Landlord a “family corporation” under the *RTA*. Mr. Hackett is the sole director of the Landlord.

[14] The Landlord owns Long Beach Lodge Resort just south of Tofino. Mr. Hackett founded the resort more than 20 years ago and has been responsible for much of its management and direction over the years. However, as Mr. Hackett’s primary residence is in Victoria, when required to be present, he lived at the resort.

[15] The Landlord is also the registered owner of a triplex located at 421 Main Street, Tofino, British Columbia. Under a residential tenancy agreement signed by Mr. Hackett on behalf of the Landlord, the Tenants have occupied one of the units in the triplex since approximately the beginning of December 2020. That is the rental unit at issue in these proceedings. At the start of the tenancy, Ms. Boom was working at the resort.

[16] In late 2024, Mr. Hackett wished to semi-retire and planned to pass on responsibilities for the resort to his stepdaughter, who also does not have a home in Tofino. Mr. Hackett decided he wished to take back the rental unit occupied by the Tenants to use it as a home for himself when staying in Tofino, for his stepdaughter while she was working at the resort and for his close family members when visiting.

[17] In early 2025, Ms. Boom gave her notice of resignation. On February 3, 2025, Mr. Hackett sent Ms. Boom an email to acknowledge her work at the resort. In that email, Mr. Hackett also advised Ms. Boom he would be “stepping back” so his stepdaughter could manage the resort, and he would be asking the Tenants to vacate the unit so that he could use it, and he mentioned his brother using the unit as well. That email began a chain of correspondence between the parties (and at times, including Mr. Hackett’s stepdaughter) that continued until March 24, 2025. The entire email chain was submitted by the Tenants and forms part of the record of proceedings before the Arbitrator.

[18] It is clear the Tenants did not wish to vacate the rental unit. In an email dated February 4, 2025, Ms. Boom characterizes herself and Mr. Cox as “quiet, respectful tenants” and suggests their tenancy “ensur[es] steady, long-term income” and they wish to “continue living here”. In response, on February 19, 2025, Mr. Hackett’s stepdaughter offers to reimburse the Tenants for three months’ rent if they agree to move out by end of May 2025. When the Tenants’ response of February 21, 2025 did not clearly indicate if they were accepting or rejecting the offer, on March 19, 2025, Mr. Hackett requested a “definite response” to the offer by the end of the week. In the same email, Mr. Hackett appeared to respond to the Tenants’ earlier suggestion that they were providing “steady, long-term income” by stating “[w]e have always viewed your suite as staff housing”, noting the below-market rent reflected that reality. In the very next sentence, Mr. Hackett clarified

However, your current rental situation has nothing to do with us asking you to vacate, it is because we have another use for the suite, which allows us the ability to serve you with an eviction notice and [sic] the end of the month. This is something I really do not want to do, recognizing your long service at the resort.

[19] Ms. Boom responded on March 20, 2025 saying she would reach out the following week after seeking legal advice. Mr. Hackett responded the same day to advise he would serve an eviction notice before the end of the month. Ms. Boom replied on March 21, 2025 indicating her disappointment at the threat of eviction, but maintaining she and Mr. Cox were “unable to commit to a move-out date” and would prefer to stay, especially given the challenges with finding accommodation in Tofino.

[20] Later on March 21, 2025, Mr. Hackett responded advising, among other things, that the eviction notice would provide the Tenants four months to vacate. Mr. Hackett’s email referred to the earlier offer, recognized the challenges with the housing market and then made a further offer that if the Tenants would confirm via email that they would vacate by September 30, 2025, he would reimburse them for three months’ rent. Ms. Boom sent a final email on March 24, 2025, stating the Tenants had been actively looking for accommodation but “cannot commit to a move-out date” and “[i]f that means you have to proceed with an eviction notice, then so it be...”

[21] On March 27, 2025, Mr. Hackett personally delivered the Notice (dated March 26, 2025) to the Tenants, requiring them to vacate by July 31, 2025. The Notice was generated using the Residential Tenancy Branch Web Portal and lists Mr. Hackett as the Landlord. It states the reason for ending the tenancy as follows:

The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child; or the parent or child of that individual's spouse), and intends in good faith to occupy the rental unit for at least 12 months.

At the bottom of the Notice, Mr. Hackett certifies that he will occupy the rental unit. The third page of the Notice is labelled "Important Tenant Information" and includes, among other things, a heading of "Landlord must act in good faith" and an explanation of what constitutes good faith.

[22] The top of the Notice states the Tenants have 30 days to dispute the Notice by filing an application for dispute resolution. The Tenants did so on April 25, 2025, asserting the Landlord was acting in bad faith and misrepresenting its intent to occupy the rental unit. Both parties submitted materials to the Residential Tenancy Branch for the hearing. The Tenants' materials included a written argument and supporting materials, including the tenancy agreement and full email chain summarized above. Mr. Hackett submitted a written statement which included responses to the Tenants' key arguments. The hearing proceeded before the Arbitrator on May 21, 2025 by conference call. The Decision indicates that, in addition to the materials provided in advance, both parties provided testimony during the hearing.

The Arbitrator's Decision

[23] The Arbitrator rendered the Decision on June 5, 2025. The introduction says the hearing dealt with the Tenants' application for "cancellation of the [Notice] under section 49 of the Act" and "authorization to recover the filing fee... under section 72 of the Act". Page 2 indicates that Mr. Hackett, Ms. Boom and Mr. Cox attended the hearing.

[24] Page 3 of the Decision sets out the background and evidence. The Arbitrator states they have reviewed all the evidence referred to during the hearing but “will refer only to what I find relevant for my decision.” After briefly summarizing the terms of the tenancy agreement and the pertinent details and timing for the Notice, the Decision summarizes the evidence as follows:

The Landlord testified the following:

- they provided the Tenant the Four Month Notice because they and their stepdaughter will be occupying the unit when they are in Tofino, British Columbia (Tofino) for work
- their stepdaughter is in Tofino at least three weeks a month
- they will be in Tofino at least three days a month

The Tenant testified the following:

- they believe the Four Month Notice has been given two [sic] them in bad faith because the Landlord has provided different reasons for occupying the unit

The Tenant provided the following as evidence:

- a copy of an email dated February 3, 2025, from the Landlord to Tenant M.B. that states “I will be asking you to vacate your Main St. apartment, with me stepping back for [name redacted] to manage the lodge, I want to be able to visit Tofino, away from the lodge. [name redacted] will use it as well, as he has now retired.”
- a copy of an email dated March 19, 2025, from the Landlord to Tenant M.B. that states, “We have always viewed your suite as staff housing and this is evidenced by the rent you have been paying. Market rent would be at least another \$1000 per month.”

[Redactions in original.]

No other evidence is referenced.

[25] Under the heading “Analysis”, the Arbitrator correctly states that s. 49 of the RTA permits a landlord to end a tenancy if the landlord or a close family member is going to occupy the rental unit. The Decision incorrectly states that a tenant may dispute a notice to end tenancy within 15 days. It is agreed, and the Notice and various Residential Tenancy Branch policy materials confirm, that at the relevant time, a tenant had 30 days to dispute this type of notice to end tenancy.

[26] After noting that the Landlord bears the burden to prove sufficient grounds to issue the Notice, and that the Tenants dispute the Notice was issued in good faith, the Decision addresses the concept of good faith. It is agreed that the language of the Decision in this regard closely tracks language in the Residential Tenancy Policy Guideline 2A: Ending a Tenancy for Occupancy by Landlord, Purchaser or Close Family Member (“Policy Guideline 2A”) – a policy document issued by the Director to assist staff and the public in interpreting the *RTA*. The Landlord does not suggest any error in how the Decision articulated the good faith test.

[27] The substance of the Arbitrator’s analysis is wholly contained in the two paragraphs that follow, which I reproduce in full:

The Landlord stated in two separate emails to Tenant M.B. that the unit will be used for two different purposes. In the first email date February 3, 2025, the Landlord states that they and their brother will use the unit for when they visit Tofino. In the email dated March 19, 2025, the Landlord states that they have always viewed the unit as staff housing. Furthermore, the Landlord testified that they provided the Tenant the Four Month Notice because they and their stepdaughter will be occupying the unit when they are in Tofino for work. This raises significant doubt about their honest intention that they and their stepdaughter will live in the rental unit for at least 12 months.

Given the different scenarios for how the rental unit will be used after the end of the tenancy and the absence of evidence that the Landlord and their stepdaughter will occupy the unit, I find it more likely than not the Landlord’s stepdaughter and the Landlord do not intend to reside in the rental unit for 12 consecutive months and the Landlord does not have sufficient cause to end the tenancy with the Four Month Notice.

[Emphasis added; redactions in original.]

[28] Based on the above analysis, the Arbitrator granted the Tenants’ application to cancel the Notice, and as the Tenants were successful, found the Tenants entitled to recover their \$100 filing fee.

Discussion

[29] I am satisfied that the Arbitrator erred in reaching the above conclusion in two ways that render the Decision patently unreasonable.

[30] First, and most critically, the Arbitrator relies on what the Arbitrator characterizes as an “absence of evidence that the Landlord and their stepdaughter will occupy the unit.” This is a central component of the Arbitrator’s determination. But on the face of the Decision, the Arbitrator’s statement that there is “an absence of evidence” on this point makes no rational sense at all. In the previous paragraph, the Arbitrator references the Landlord’s testimony about his intentions to occupy the rental unit. Further, as set out above, on the previous page, where the Decision summarizes the evidence, the Decision reflects that Mr. Hackett testified not only to his intention to use the unit for himself and his stepdaughter while in Tofino, but also to the fact that his stepdaughter would be in Tofino at least three weeks a month and he would be there at least three days a month. On its face, the Decision is clear that there was evidence that Mr. Hackett and his stepdaughter would occupy the unit.

[31] What is more, as the record of proceedings illustrates, there was also additional evidence of the Landlord’s intentions before the Arbitrator. The email chain contains multiple statements to the effect that Mr. Hackett wishes to use the rental unit for his personal use. As well, the written statement Mr. Hackett submitted for purposes of the hearing clearly states his intentions:

... I have always been clear, that I wanted to occupy the suite, for my own use and that of family. We have been reorganizing our resort responsibilities, and my step-daughter has become the company manager. In this role, she is required to come to Tofino, from her home in North Vancouver to Tofino, at least three weeks a month, for most of the week. [Name redacted], requiring my support, means that I too need to come to Tofino, although not as regularly. Consequently the suite will be occupied almost weekly.

[32] The Arbitrator makes no reference to any of the additional evidence that bears directly on the central issue of the Landlord’s intentions.

[33] I accept that it would have been open to the Arbitrator to consider and reject the evidence of Mr. Hackett’s intentions that was presented for purposes of the dispute resolution hearing. But there is no indication in the Decision that that is what occurred. Instead, the Arbitrator makes a bold statement that there is an “absence of

evidence” about the Landlord’s intentions. The Decision itself and the record of proceedings do not in any way support the Arbitrator’s statement as accurate.

[34] In judicial reviews of decisions made by delegates of the Director, this Court has repeatedly confirmed the Supreme Court of Canada’s guidance from *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [Vavilov] that administrative decision-makers must meaningfully engage and grapple with evidence that bears directly on a central issue. Their decisions must do more than simply summarizing the evidence and stating a conclusion; rather, the reasons must demonstrate how the evidence was assessed and, where there is conflicting evidence, must explain why one version was preferred over another: *Fraser v. 1392383 B.C. Ltd.*, 2025 BCSC 1669 at paras. 118, 124, citing *Vavilov* at paras. 126-128. Where evidence is presented that bears on a central issue, the failure to consider that evidence, or to explain why it was rejected, will render a decision patently unreasonable: *Campbell v. McInness*, 2017 BCSC 1134 at paras. 11, 20; *Eskandarzadeh v. Nate*, 2025 BCSC 1236 at paras. 16-18, citing *Furtado v. Maasanen*, 2020 BCSC 1340 at paras. 32, 34-35, aff’d 2023 BCCA 193.

[35] I find the Arbitrator’s conclusion and reliance on an “absence of evidence” of the Landlord’s intentions, in the face of a record and a Decision which demonstrates the opposite, and in the absence of any suggestion or explanation that the clearly presented evidence had been rejected, renders the Decision patently unreasonable.

[36] This error is, in my view, sufficiently fatal on its own to warrant setting aside the Decision, but I will briefly address the Landlord’s assertion that the Arbitrator misapprehended the evidence in concluding the Landlord gave different reasons for wanting to end the tenancy.

[37] The two paragraphs of the analysis set out above, combined with the Arbitrator’s summary of the evidence, suggest that the Arbitrator primarily relied on the Landlord’s emails of February 3 and March 19, 2025 to find the Landlord provided different reasons about how the unit would be used. However, the Decision suggests the Arbitrator also considered the Landlord’s testimony at the hearing.

[38] Arguably, the main “difference” arises because of the meaning the Arbitrator appears to have ascribed to the following statements the Landlord made in the March 19, 2025 email: “We have always viewed your suite as staff housing and this is evidenced by the rent you have been paying. Market rent would be at least another \$1000 per month.” Both the February 3, 2025 email and Mr. Hackett’s testimony at the hearing reflect an intention that he will use the suite and reference his stepdaughter’s involvement. Mr. Hackett’s testimony at the hearing, which is consistent with the written statement *not* referenced at all by the Arbitrator, simply provides further detail about that intended use, including with respect to frequency.

[39] It is therefore necessary to consider whether the Arbitrator’s interpretation of the “difference” in the March 19, 2025 email is supportable in the context of the record as a whole. In my view, it is not. I say this for two reasons.

[40] First, looking only at the March 19, 2025 email on its own, the Arbitrator focused exclusively on the two sentences quoted above, where Mr. Hackett references the Landlord’s view of the unit as “staff housing”, as reflected in its lower-than-market rent. However, contrary to the meaning the Arbitrator appears to have given those sentences, Mr. Hackett does not state that the intention is to *continue* using the rental unit as staff housing. In fact, in the very next sentence of the email (which is not lengthy), Mr. Hackett specifically states that the Tenants’ “current rental situation” (which I understand to be a reference to the unit as staff housing), “has nothing to do with us asking you to vacate, it is because we have another use for the suite.” The Arbitrator fails to acknowledge the existence of this statement.

[41] Again, it was open to Arbitrator to refer to the qualifying statement and provide reasons for not accepting the explanation (if that was the rationale), but the Arbitrator does not make their reasoning pathway clear. Instead, the Decision leaves the misleading impression that the March 19, 2025 email did not contain further information about the Landlord’s reasons for seeking to end the tenancy. This is a further failure to grapple meaningfully with evidence bearing directly on the issues.

[42] Second, I agree with the Landlord that the March 19, 2025 email cannot be viewed in isolation, as the Arbitrator appears to have done. Instead, it is evident that it forms part of a larger, ongoing conversation between Ms. Boom, Mr. Hackett and his stepdaughter, that began with Mr. Hackett's email of February 3, 2025 and in which, in her email of February 4, 2025, Ms. Boom raises the spectre of the rental unit as income-generating. Viewed in the proper context, Mr. Hackett's comments about staff housing are clearly a response to that suggestion. In my view, the record as a whole does not support treating those comments as a stand-alone "reason" for the Landlord to seek to end the tenancy, which is what the Decision suggests the Arbitrator did.

[43] As a result, I find the Arbitrator misapprehended the evidence in concluding that the Landlord provided different reasons for having the Tenants vacate and different "uses" for the rental unit. As this Court noted in *Guevara v. Louie*, 2020 BCSC 380 at para. 69, a decision based on a clear misapprehension of the evidence is patently unreasonable.

[44] On the basis of these two errors, which grounded the Arbitrator's ultimate conclusion, I find the Decision as a whole patently unreasonable.

Issue 2: Did the Arbitrator err by interpreting the *RTA* as requiring the Landlord to demonstrate an intention to occupy the unit for 12 months?

[45] The Landlord also submits the Arbitrator's interpretation of the *RTA* was patently unreasonable, because the Arbitrator imposed a requirement on the Landlord to demonstrate an intention to occupy the unit for 12 consecutive months when the language of the *RTA* itself is devoid of such a condition. My conclusion above that the Arbitrator failed to consider or misapprehended relevant evidence is sufficient to render the Decision patently unreasonable. It is therefore not strictly necessary for me to consider the second issue on its merits. However, given the positions advanced at the hearing, I offer the following comments.

[46] In my view, the Landlord's argument in this regard ignores the reasons stated in the Notice for ending the tenancy, the policy guidance issued by the Residential

Tenancy Branch to assist its staff and the public in understanding and interpreting the *RTA* and decisions of this Court that have considered the requirement to “occupy” under s. 49 of the *RTA*.

[47] As noted above, in the Notice itself, the Landlord states the reason for ending the tenancy is its intention “in good faith to occupy the rental unit for at least 12 months.” Arguably then, it is the Landlord who first raises the issue of a 12-month period of occupation.

[48] Further, in its filed response to petition, the Director referred to Policy Guideline 2A. The affidavit of record filed by the Director for purposes of this judicial review includes the then previous and current versions of Policy Guideline 2A, which expressly address what is meant by the term “occupy” in s. 49 of the *RTA*.

[49] In particular, in section G, under the heading “*What “occupy” means*”, Policy Guideline 2A cites *Schuld v. Niu*, 2019 BCSC 949 and *Blouin v. Stamp*, 2021 BCSC 411 as support for the term “occupy” referring to occupation “for a residential purpose.” Policy Guideline 2A then provides that “a landlord can end a tenancy under sections 49(3), (4) or (5) if they or their close family member... intend in good faith to use the rental unit as living accommodation or as part of their living accommodation.”

[50] Section G of Policy Guideline 2A also includes the following:

Occupancy must continue for at least 12 months

The landlord or purchaser, or close family member of that landlord or purchaser, must intend to occupy the rental unit for at least 12 months...

The rental unit must generally be occupied as living accommodation on an ongoing basis over a consecutive 12-month period (see *Potherat v. Slobodian*, 2021 BCSC 1536). This does not mean that the person occupying the unit must physically reside there every day of that 12-month period, that they could not leave the unit for a vacation, or that the unit must be their primary residence (see *Sefcikova v. Orca Realty Inc.*, 2024 BCSC 697). For example, the person’s family may live in a different city from the office where the person must work in person 3 days per week. Over the 12-month period, the person intends to live in the rental unit when they must be at the office but otherwise return home to be with their family. This would likely meet the requirement to genuinely occupy the rental unit as living accommodation. However, a person occupying the unit must not stay there too infrequently or

too sporadically so that the unit is, in essence, being left vacant for a year with no one “living” there.

In general, the occupation of the rental unit must be of a nature that can reasonably justify the tenant losing possession of the rental unit.

[Emphasis added.]

[51] This same section of Policy Guideline 2A was referenced by this Court in *Osama v. Jiang*, 2025 BCSC 1079, an action disputing the validity of a landlord’s termination of a lease so that the rental unit could be occupied by her son. In upholding the trial judge’s decision, the Court of Appeal (2025 BCCA 427) elected not to engage directly with the question of whether the test for occupation should be framed as set out in Policy Guideline 2A, but also did not accede to the appellant’s argument that the trial judge erred in relying on Policy Guideline 2A as she did.

[52] As noted, the Decision used language drawn directly from another section of Policy Guideline 2A when describing the requirements of “good faith”. It is clear the Arbitrator was aware of and relied on Policy Guideline 2A in interpreting occupation, even if the Arbitrator did not expressly reference it by name. The section of Policy Guideline 2A quoted above references case authorities from this Court which support the general existence of a requirement to intend to occupy the rental unit as living accommodation or part of living accommodation (even if not a principal residence) over a consecutive 12-month period in order to issue a notice to end tenancy under s. 49 of the *RTA*. It is reasonable to infer that the Arbitrator’s multiple references in the Decision to the need for the Landlord to intend to occupy or reside in the rental unit for 12 months or 12 consecutive months relied, at least in part, on the available public policy guidance and the Court decisions referenced therein.

[53] The Landlord submitted that blind adherence to policies constitutes unlawful fettering. I accept that where an administrative decision-maker binds itself to policies or guidelines rather than exercising its discretion to decide the matter before it, an unlawful fettering may occur: *Chandler v. British Columbia (Superintendent of Motor Vehicles)*, 2018 BCCA 300 at para. 29. But it is not improper for an administrative decision-maker to have regard to and even be influenced by policies and guidelines, as long as they remain free to consider legally relevant factors and exercise their

discretion in accordance with the principles of procedural fairness: *Chandler* at para. 29. There is no evidence the Arbitrator blindly followed Policy Guideline 2A.

[54] In the circumstances, and were it necessary to consider the merits of the Landlord's second argument, I would not agree that the Arbitrator's reference to an intention to occupy the rental unit for 12 months amounts to an error in the interpretation of the *RTA* that would render the Decision patently unreasonable.

Issue 3: What is the appropriate remedy?

[55] The Landlord says the circumstances of this case warrant a departure from the usual remedy of remittal to the Residential Tenancy Branch for reconsideration, and this Court should, effectively, substitute its own decision by ordering the Tenants to vacate, including because of concerns of delay and fairness. The Tenants say there is no reason to depart from the usual remedy on judicial review if this Court finds the Decision patently unreasonable.

[56] At paras. 139-141 of *Vavilov*, the Supreme Court of Canada concisely addressed the compelling reasons why the Court does not usually step in and make the decision when an application for judicial review is successful. Those reasons include ensuring appropriate respect for the legislative choice to entrust certain decisions to administrative decision-makers rather than the courts. However, *Vavilov* also recognized that remittal is not appropriate in all situations and the decision on remedy is ultimately discretionary. Where a particular outcome is inevitable or the Court has determined there is only one reasonable interpretation, remittal would serve no useful purpose and may not be ordered: *Vavilov* at paras. 124, 142. Concerns for delay, fairness, costs to the parties and the efficient use of public resources may likewise inform the Court's exercise of discretion not to remit: *Vavilov* at para. 142.

[57] The Arbitrator's determination that the Landlord did not intend in good faith to occupy the rental unit rested on two conclusions: first, that the Landlord gave inconsistent reasons for ending the tenancy and second, that there was an "absence" of evidence Mr. Hackett or his stepdaughter would occupy the unit.

Above, I found the first to be a material misapprehension of the evidence that arose because the Arbitrator focused on one aspect of the Landlord's response in a lengthy email chain while ignoring the relevant context. The second completely fails to consider the clear evidence to the contrary in the record, which the Arbitrator themselves cited multiple times in the Decision. There was no other basis advanced, nor did the Arbitrator find any other basis, on which to call the Landlord's good faith into question. Given the record before the Court, I am persuaded that reconsideration would lead to only one result.

[58] Even were I not so persuaded, I would still exercise my discretion not to remit the matter for reconsideration. The resolution of these issues has been significantly delayed, including because of the time for the dispute resolution proceedings before the Residential Tenancy Branch, the time before the petition for judicial review could be filed and heard, and then the time required for the Court to provide this decision. It has now been more than 14 months since the Landlord issued the Notice, and more than nine months have passed from the date the notice would have required the Tenants to vacate. If the matter is remitted, there will be a further delay in the resolution of these issues, and there is a risk of further judicial review proceedings, particularly given the housing context in the area of the rental unit. There are also time and cost implications for both parties, and time and public resource implications for the Residential Tenancy Branch and potentially for the courts. While the fairness concerns cut both ways, the unfairness to the Tenants can be mitigated by allowing them some time from the date of these reasons to find new accommodation and vacate the unit.

[59] I therefore exercise my discretion not to remit the matter for reconsideration. Instead, I set aside the Decision, including the order that the Tenants recover their filing fee, and order the Tenants to vacate the unit within 60 days of the date of these reasons for judgment.

Conclusion and costs

[60] In conclusion, I make the following orders:

- a) the petition for judicial review is allowed;
- b) the June 5, 2025 Decision is quashed and a decision upholding the Landlord's notice to end tenancy is substituted; and
- c) within 60 days of the date of these reasons for judgment, the Tenants are to vacate the rental unit with a civic address of Unit #2, 412 Main Street, Tofino, BC and the Landlord is granted possession of that rental unit.

[61] The matter is not remitted to the Residential Tenancy Branch for reconsideration.

[62] The Landlord has been substantially successful on this application for judicial review and is entitled to its costs at Scale B from the Tenants. No order for costs is made for or against the Director.

"K. Wolfe J."