IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Lopez v Macdonald Commercial R.E.S. Ltd.,* 2026 BCSC 2150

Date: 20261104
Docket: S260632
Registry: Vancouver

Between:

Alfonso Martinez Lopez

Petitioner

And:

Macdonald Commercial R.E.S. Ltd. and Bartizan Holdings Ltd.

Respondents

Before: The Honourable Justice Stephens

Reasons for Judgment

On judicial review from: a decision and order of the Residential Tenancy Branch, dated December 1, 2025.

Counsel for the Petitioner:	J. Jeong
Counsel for the Respondents Macdonald Commercial R.E.S. Ltd. and Bartizan Holdings Ltd:	R. Prokopishin
No further appearances	
Place and Date of Hearing:	Vancouver, B.C. September 2, 2026
Place and Date of Judgment:	Vancouver, B.C. November 4, 2026

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Overview

[1] The petitioner applies for judicial review of a decision of a Residential Tenancy Branch ("RTB") arbitrator (the "Arbitrator") dated December 1, 2025 (the "Decision"), dismissing the petitioner's application for dispute resolution and granting the respondent landlord an order of possession effective on December 31, 2025. The Decision and order of possession have been stayed until the determination of this judicial review.

[2] The Decision was granted on the basis of the landlord's "one month notice to end tenancy for cause" dated September 3, 2025 ("Notice to End Tenancy"), which had alleged that the petitioner had unreasonably disturbed other tenants.

[3] The petitioner tenant contends the Decision is patently unreasonable as it relates particularly to the Arbitrator's treatment of submissions made in the proceeding that the petitioner has "cognitive barriers." The petitioner alternatively seeks, if the petition is dismissed, an order extending the interim stay granted in this matter by one month from the date the Court issues a decision regarding this matter.

[4] The issues on this petition are:

1. Was the Decision patently unreasonable and should it be set aside?

2. If not, should this Court order that the stay continue for one month after this Court's decision?

[5] I find the petition should be dismissed, but the Arbitrator's Decision and order for possession should be stayed for one further month from the date of this decision.

Submissions Before the Arbitrator

[6] Judicial review of the substantive merit of a statutory decision is generally conducted on the record of the statutory decision at issue: *Mehmood v British Columbia (Provincial Immigration Programs),* 2026 BCSC 1252 at para 5 [*Mehmood*], citing *Air Canada v British Columbia (Workers' Compensation Appeal Tribunal)*, 2018 BCCA 387 at paras 34–35. For this reason, I do not consider

evidence in the petitioner's affidavit which was not contained in the record before the Arbitrator when I decide if the Decision was patently unreasonable.

[7] However, also placed in evidence before me were the transcripts of the proceeding before the Arbitrator, which do form part of the record on review.

[8] I set out below some excerpts from the record of administrative proceedings which are relevant to this judicial review.

[9] During the course of the administrative proceedings before the Arbitrator, the tenant's advocate (the "Advocate") submitted:

a) "…you get the sense that [the petitioner] does have some issues with cognition, or memory recollection";

b) when speaking about whether paying rent on the first of the month is common sense, "that is not always the case particularly when there are cognition or language barriers"; and

c) "the tenant clearly has some language and cognition difficulties".

[10] The Advocate also submitted that the petitioner had been "dealing with some language and cognitive barriers" at some of the relevant times:

> …you can see in the videos…., in the parking lot video, that the tenant is keeping a distance. He is speaking very respectfully. He is not raising his voice in those videos. He's not using bad language. He's dealing with some language and cognitive barriers, but I would say, to the best of his ability, and in a very respectful way, he is trying to resolve the problem."
>
> [emphasis added]

[11] The landlord's agent referred to the Advocate's submissions in this respect, saying: "as [the Advocate] said… the Tenant… has mental or cognitive issues, memory issues."

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Decision

[12] The Notice to End Tenancy stated the Tenant must vacate the rental unit by October 31, 2025, because:

- the Tenant is repeatedly late paying
- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord

[13] Both grounds seeking to uphold the Notice to End Tenancy were considered by the Arbitrator in the administrative proceeding below.

[14] The Arbitrator referenced the tenant Advocate's submissions including, among other things, "cognitive deficiencies" and "barriers":

> In response to the Landlord's attempt to end the tenancy on the basis of repeatedly paying the rent late, [the Advocate] stated that:
>
> - the Tenant did not understand the consequences of repeatedly being late with the rent, in part due to cognitive deficiencies and a language barrier…
>
> …
>
> [The Advocate] submits:
>
> …
>
> - the Tenant has cognitive barriers …

First Ground: s 47(1)(b) re Asserted Late Payment of Rent

[15] The first ground related to s 47(1)(b) of the *Residential Tenancy Act,* SBC 2002, c 78 (*RTA*), which states that a landlord may end a tenancy where a "tenant is repeatedly late paying rent". Here, the Decision found that the petitioner was under no obligation to pay the rent prior to the fifth day of each month. Further, the Decision found that "the Application for Dispute Resolution was filed on time." The Decision found, "that ending the tenancy for repeatedly late paying rent is not necessary, as the Tenant has clearly expressed a willingness to pay rent when it is due."

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[16] None of these specific conclusions, which related to the first ground under s 47(1)(b) of the *RTA*, are directly challenged on judicial review.

Second Ground: s. 47(1)(d)(i) re Assertion of Disturbing Another Occupant

[17] What is instead at issue on judicial review is the Arbitrator's consideration of the second ground of the Notice to End Tenancy, dealing with s 47(1)(d)(i) of the *RTA*, as to whether the petitioner had "significantly interfered with or unreasonably disturbed" another occupant.

[18] At the time that the Decision was issued, section 47(1)(d)(i) of the *RTA* provided:

> **47** (1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
>
> **…**
>
> (d) the tenant or a person permitted on the residential property by the tenant has
>
> (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property…

[19] The Arbitrator made findings about the second ground.

August 15, 2025 Incident

[20] The Arbitrator found that "the Tenant went to unit [A] on or about, August 15, 2025 to discuss noise with the occupant of that unit", and that "the occupant of [A] was upset during the interaction which took place on" that date.

[21] However, the Decision found there was "insufficient evidence to establish that this incident, in and of itself, constitutes a 'significant interference' or an 'unreasonable disturbance'."

August 22, 2025 Incident

[22] The Decision also found that,

> … the Tenant spoke with the occupant of unit [A] on August 22, 2025, regarding noise coming from that unit. After viewing the video recording from this interaction, I find:

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- the occupant clearly and unequivocally asked AM [the petitioner] to leave their front door
- the occupant told AM they would call the police [if] the Tenant did not leave
- AM repeatedly discusses noise concerns with the occupant, even after being asked to leave
- the occupant continues to discuss the concerns with AM, rather than ending the conversation by closing the door
- AM appears upset, but is not behaving loudly or aggressively
- AM apologizes for yelling at the occupant in the past
- the occupant of unit [A] appears frustrated but not frightened.

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[23] The Decision found that, “the occupant of unit [A] reported the August 22, 2025 incident to the police”, and that it was “reasonable to conclude that the occupant was disturbed by the interaction.”

[24] The Decision found that “AM [the petitioner] yelled at the occupant of unit [A] prior to the occupant recording the interaction.” The Arbitrator also found that “the police told AM not to return to unit [A], and that they have not done so since August 22, 2025”.

[25] The Arbitrator found that “the Tenant knew, or should have known, that they were disturbing the occupant of unit [A] when they did not leave their doorstep after being informed that the occupant would call the police.”

[26] However, the Arbitrator also concluded that while the “interaction of August 22, 2025 disturbed the occupant of unit [A], I am not satisfied the disturbance, in and of itself, constitutes an unreasonable disturbance.”

August 30, 2025 Incident

[27] The Arbitrator however turned to a third incident, and found that “on August 30, 2025, the Tenant banged on their ceiling at 1/2 hour intervals, between 11 PM and 1 AM.”

[28] The Arbitrator found that “the Tenant knew, or should have known, that banging on their ceiling on August 30, 2025 would disturb the occupant of unit [A]”.

[29] The Arbitrator found that "the disturbance on August 30, 2025 constituted an unreasonable disturbance, given the duration and timing of the disturbance."

Arbitrator's Findings re Second Ground & s 47(1)(d)(i) of the RTA

[30] The Arbitrator referred to s 47(1)(d)(i):

> Section 47(1)(d)(i) of the Act permits a landlord to end a tenancy if the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.
>
> When a tenant disputes a One Month Notice to End Tenancy for Cause, the landlord bears the burden of proving there are grounds to end the tenancy pursuant to section 47 of the Act.

[31] On Page 14 of the Decision, the Arbitrator referred back to their factual findings and concluded there were grounds to end the petitioner's tenancy under s 47(1)(d)(i):

> When the Tenant's actions toward the occupant of unit [A] are viewed collectively, …. the Tenant has unreasonably disturbed this occupant, which is grounds to end the tenancy pursuant to section 47(1)(d)(i) of the Act.

[32] However, the Arbitrator considered whether "ending [the petitioner's] tenancy is necessary on the basis of the unreasonable disturbances and, specifically, whether all other reasonable avenues for resolution have been exhausted."

[33] The Arbitrator here found,

> … the Landlord has taken reasonable and responsible steps to stop the Tenant from interfering with the occupant of unit [A], by initially communicating verbally and by subsequently providing written warnings. In spite of the written warnings, I find the Tenant continued to unreasonably disturb the upper occupant, which resulted in the One Month Notice to End Tenancy for Cause being mailed on September 11, 2025.

[34] The Arbitrator considered the factor that "post-Notice conduct of the Tenant is relevant when considering whether a tenancy should end":

> Specifically, if the Tenant has made changes that would render it unnecessary to end the tenancy, the Notice should be set aside. This is consistent with *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, which suggests that post-Notice conduct is relevant when deciding

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> whether ending the tenancy is justified or necessary in the context of the protective purposes of the Act.

[35] Nevertheless, the Arbitrator concluded that the evidence "strongly suggests that the Tenant will continue to disturb the occupant of unit [A]," including evidence of October 2025 incidents which took place after the Notice to End Tenancy:

> I find that [the petitioner] continued to bang on their ceiling in October of 2025, in spite of the instructions provided to the Tenant by the police, the letters of May 20, 2025 and August 26, 2025, and the One Month Notice to End Tenancy for Cause. I find this continued inappropriate behavior strongly suggests that the Tenant will continue to disturb the occupant of unit [A] if the tenancy continues. [emphasis added]

[36] The Arbitrator acknowledged that the petitioner "now recognizes their behavior is inappropriate; that the Tenant has written an apology letter" and "the Tenant now commits to not communicate directly with any tenant regarding noise complaints or to bang on the ceiling…"

[37] Nevertheless, the Arbitrator was "not convinced that the disturbances will stop." The Arbitrator explained:

> … Given the Tenant continued to bang on their ceiling despite written notices from the Landlord and a One Month Notice to End Tenancy for Cause, I find it unlikely that the Tenant's behavior will change simply because they now have an advocate.

[38] The Arbitrator also did not accept the "submission that the Tenant is being disturbed by an unidentified banging noise or that the Tenant will now record and report noises directly to the Landlord". The Arbitrator instead found:

> Based on the recorded conversation of the upper occupant and the written submission of the former occupant of unit [B], I find it unlikely that the upper occupant is responsible for noises being heard by [the petitioner]. Regardless, the appropriate response to any noises is not banging on the ceiling in early morning hours.

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Arbitrator's Reference to the Advocate's "Cognitive Barriers" Submission

[39] As noted above, the Advocate submitted to the Arbitrator that, in the context of some of the incidents, the petitioner had been "dealing with some language and cognitive barriers". I repeat the Advocate's submissions for convenience:

> … you can see in the videos…., in the parking lot video, that the tenant is keeping a distance. He is speaking very respectfully. He is not raising his voice in those videos. He's not using bad language. He's dealing with some language and cognitive barriers, but I would say, to the best of his ability, and in a very respectful way, he is trying to resolve the problem…."
>
> [emphasis added]

[40] Toward the end of the Decision, in a passage of the Decision which the petitioner particularly challenges on judicial review, the Arbitrator addressed the Advocate's submissions in this way:

> I accept the undisputed submission that the Tenant has cognitive barriers. There is no evidence before me, however, which would suggest there has been a significant change in those barriers. I therefore cannot conclude that it is likely the Tenant's behavior will change, given that it has not significantly changed as a result of police and/or landlord interventions.

[41] In the next paragraph, the Arbitrator found that it was "likely that the Tenant will continue to breach [the] occupant's right to quiet enjoyment" if the tenancy continued and dismissed the petitioner's challenge to the Notice to End Tenancy:

> The Landlord has a duty to protect the quiet enjoyment of the occupant of unit [A]. In these circumstances, I find it likely that the Tenant will continue to breach that occupant's right to quiet enjoyment if this tenancy were to continue. I therefore dismiss the Tenant's application to cancel this One Month Notice to End Tenancy for Cause.

[42] In the result, the Arbitrator dismissed the application to set aside the Notice to End Tenancy and granted the respondent landlord an order of possession.

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Positions

Petitioner

[43] The petitioner contends that this judicial review "centers around the Arbitrator's treatment of disability in justifying an eviction." The petitioner contends that:

> The Arbitrator found that the Petitioner has unnamed "cognitive deficiencies" and "cognitive barriers" based on submissions that he has issues that affected his difficulty answering questions during the hearing, comprehension, memory recall, and the way he may come across to others in social interactions. At the last step of the analysis on whether an eviction is justified or necessary, the Arbitrator found that his cognitive barriers, and the lack of evidence showing "significant change" in said barriers, prevented her from concluding that the Petitioner's changed behaviour was going to last.

[44] The petitioner contends that the "Arbitrator failed to consider the entire context of the tenancy at hand in a holistic manner, and this failure renders the Decision patently unreasonable."

[45] He contends, "the Tenant was evicted based on three incidents, all of which took place in August 2025, in the context of a long-term tenancy of over 20 years where there were no prior issues."

[46] The petitioner further contends that the "Decision contradicts itself based on an improper consideration by the Arbitrator of the Tenant's 'cognitive barriers'," and that it "was patently unreasonable for the Arbitrator to make an adverse finding against the Tenant based on a discriminatory view of mental disability."

[47] In his petition, the petitioner contends,

> It is discriminatory, and therefore, patently unreasonable to expect that a person diagnosed with a disability need to have shown "significant change" in his disability to convince an Arbitrator that he is not likely to continue the conduct at issue. In effect, the Arbitrator implicitly drew a causative link between the conduct and the Tenant's disability. The Arbitrator made a negative, and speculative, inference based on the Tenant's disability that goes against the protective and remedial nature of the *RTA*.

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[48] The petitioner submits this was part of the "last step of the analysis" of the Arbitrator's decision, that the Arbitrator "considered the Petitioner's disability to be the last hurdle that prevented her from concluding that he can change," and that:

> While it was open for the Arbitrator to accept that the Petitioner has a disability, it required speculation to arrive at the conclusion that disability prevents change in behaviour or makes recidivism more likely.

[49] In oral submissions, the petitioner submitted he does not take issue with the adequacy of the Arbitrator's reasons—but submit they were nevertheless patently unreasonable.

Respondents

[50] The respondent landlord submits that the Decision was not patently unreasonable. The respondent submits, among other things, that the Arbitrator did not place a hurdle up that the petitioner had to meet, but addressed an argument made by the Advocate in a way which was logical and not patently unreasonable.

[51] The RTB director also filed a response but took no position on this petition.

Discussion

Legal Context – Standard of Review

[52] The standard of review to the Decision is patent unreasonableness: *RTA* at s 5.1(1)(h); see also *Kong v Lee,* 2021 BCSC 606 at paras 54-57.

[53] This is a highly deferential standard. As stated in *Mordo v Goulet*, 2022 BCSC 1968 [*Mordo*]: "[t]his is the most deferential standard of review known to Canadian law": at para 31, citing *The College of Physicians and Surgeons of British Columbia v The Health Professions Review Board*, 2022 BCCA 10 at para 130.

[54] *Mordo* further states:

> [32] The patently unreasonable standard has been described in various ways, including "clearly irrational," "evidently not in accordance with reason," or "so flawed that no curial deference can justify letting it stand" or "openly, clearly, evidently unreasonable"…

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> [33] When applying the standard of review, this Court applies the analytical methodology to judicial review set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, with a focus on the reasons given by the administrative decision maker…
>
> [34] In conducting the judicial review, the reasons are not required to meet a standard of perfection… And the judicial review process is not a treasure hunt for error…
>
> [citations omitted]

See also: *Scherba v Peace Arch Senior Citizens Housing Society*, 2026 BCSC 2 at paras 12-14.

[55] *Connors v Maclean*, 2022 BCSC 1460 also sets out other principles for patent unreasonableness review:

> [32] … The patently unreasonable standard is at the high end of the deference spectrum. It has been described to apply to administrative decisions which are "openly, clearly, evidently unreasonable", "clearly irrational" or "evidently not in accordance with reason"…or a decision where the result borders on the absurd…
>
> [33] On an application for judicial review, a reviewing court must focus on the reasons given by the tribunal…The reasons shed light on the rationale for a decision. The focus of a court on judicial review must be on the decision actually made by the decision-maker, including both the decision and the outcome…
>
> [34] In addition, where "the impact of a decision on an individual's rights and interests is severe, the reasons provided to that individual must reflect the stakes", and "if a decision has particularly harsh consequences for the affected individual, the decision maker must explain why its decision best reflects the legislature's intention"…
>
> [35] While these principles in *Vavilov* were articulated by the Supreme Court of Canada in the context of discussing the application of the reasonableness standard of review, I find they also apply to the patent unreasonableness standard under the ATA.
>
> [citations omitted]

[56] Further, "[d]ecision-makers are presumed by a court on judicial review to have considered all of the evidence and arguments before them": *Hunt v Highview Estates Mobile Home Park*, 2022 BCSC 151 at para 71, citing *C.S. v British Columbia (Human Rights Tribunal),* 2017 BCSC 1268 at para 219; *Mordo* at para 35.

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[57] In addition, on judicial review, a "reviewing court must refrain from 'reweighing and reassessing the evidence considered by the decision maker'": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 125 [*Vavilov*]; *Mehmood* at paras 55, 72.

[58] I add that I agree with counsel for the petitioner's submission that the fact the petitioner has not applied for reconsideration of the Decision at the RTB does not, given the grounds asserted, preclude this Court from hearing this petition for judicial review.

Findings: Was the Decision Patently Unreasonable?

[59] The Arbitrator made findings about the petitioner's conduct on three instances with another occupant, as well as the petitioner's conduct of continuing to bang on the ceiling in October 2025. The Arbitrator found that this was "inappropriate behaviour."

[60] The portion of the Decision which is the focus of the petitioner's challenge on judicial review is where the Arbitrator stated:

> I accept the undisputed submission that the Tenant has cognitive barriers. There is no evidence before me, however, which would suggest there has been a significant change in those barriers. I therefore cannot conclude that it is likely the Tenant's behavior will change, given that it has not significantly changed as a result of police and/or landlord interventions.

[61] In his written submissions, the petitioner submits this is evidence of a patently unreasonable error, and contends that:

> a. the Arbitrator speculated on the nature of disability and its effect on the Petitioner's future behaviour;
>
> b. the Arbitrator made a finding based on speculation that is inconsistent with findings elsewhere in the Decision; and
>
> c. the Arbitrator's analysis on the second cause demonstrates a failure to properly interpret the eviction cause provision, s. 47 of the Residential Tenancy Act, S.B.C. 2002, c. 78 [*RTA*]

[62] I respectfully disagree, and instead find the Arbitrator's Decision is not patently unreasonable.

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Decision Addressed the Advocate's "cognitive barriers" Submission, Consistent with Vavilov Principles

[63] *Vavilov* states, in respect of reasonableness review, in a passage I find applicable also to patent unreasonableness review, that a statutory "decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties" may contribute to a reviewable error:

> [128] Reviewing courts cannot expect administrative decision makers to "respond to every argument or line of possible analysis"…, or to "make an explicit finding on each constituent element, however subordinate, leading to its final conclusion"… To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker's failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning… [emphasis added; citations omitted]

[64] In my view, it follows that, conversely, when a tribunal seeks to meaningfully grapple with a central submission made by a party, this is generally consistent with, and not contrary to, *Vavilov* principles.

[65] Here, the topic of cognitive barriers was advanced by the Advocate during submissions before the Arbitrator.

[66] The Decision addressed the Advocate's submission, implicitly, on the premise that the petitioner had "cognitive barriers" which related to at least one of the interactions at issue with another occupant.

[67] I do not find it was patently unreasonable for the Arbitrator to infer that the Advocate was submitting that there was a causal link between cognitive barriers and the petitioner's conduct, and to consider it on this premise.

[68] In my view, the Decision addressed the Advocate's submission regarding the petitioner's "cognitive barriers" in order to "meaningfully grapple with key issues or

central arguments raised by the parties" which demonstrated the Arbitrator was "alert and sensitive to the matter before" the RTB: *Vavilov* at para 128.

[69] The petitioner also contends that, "[t]here was no evidence on the nature of the disability at issue." The petitioner says that "a 'cognitive barrier' could equally capture minor impairments, or a recognized mental disability", and that "[i]t would have required, at least, some medical record or expert witness testimony to determine a person's disability, whether it affects behaviour, how it affected past behaviour, and how it may affect future behaviour." The petitioner contends, "[t]here was no such evidence on how the Petitioner's disability affects behaviour."

[70] However, in grappling with this "undisputed submission" about cognitive barriers, the Arbitrator had not been provided any expert evidence by either party.

[71] It was not incumbent upon the Arbitrator to, on their own, adduce further evidence to address the submissions made by the Advocate.

[72] The Arbitrator stated that there was "no evidence" provided on which they could find the petitioner's conduct in the future would change, which was not a patently unreasonable assessment of the state of the evidentiary record. In my view, this was not a patently unreasonable manner of considering the Advocate's submission in the circumstances.

[73] The Arbitrator's reasoning also did not fail to abide by any factual constraint: *Vavilov* at paras 99, 101.

[74] The Decision did not expressly find that "cognitive barriers" caused the petitioner's conduct, but addressed this on the premise of the submission made before the Arbitrator that there was some causal link.

[75] In the circumstances, it was not patently unreasonable for the Decision to observe that there was no evidence before the Arbitrator which would suggest that there has been "a significant change in those barriers".

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[76] The impugned paragraph of the Decision does not in my view demonstrate a patently unreasonable error, but instead demonstrates that the Arbitrator was alert, and responsive – in a *Vavilov*-compliant way – to one of the Advocate's submissions made in the administrative proceeding. In my view, the Arbitrator did not address it in a patently unreasonable way.

Did the Arbitrator Speculate on the Nature of Disability and its Effect on Future Behaviour?

[77] I respectfully do not accept the petitioner's argument that the Arbitrator's summary of the Advocate's submission as "cognitive deficiencies" revealed "some level of suspicion by the Arbitrator right away."

[78] Judicial review is not a treasure hunt for error (*Vavilov* at para 102), and I find the Arbitrator's paraphrasing was not patently unreasonable in this respect.

[79] As the respondent notes, the word "disability" does not appear in the Decision.

[80] I do not find that the Arbitrator impermissibly speculated about the characteristics of a disability experienced by the petitioner.

[81] The Arbitrator was provided no expert evidence in support of the petitioner's submission about "cognitive barriers" and it was not patently unreasonable for the Arbitrator to observe there was an absence of evidence in this regard.

Did the Arbitrator Make a Finding Based on Speculation that is Internally Inconsistent to Other Findings in the Decision?

[82] The petitioner also submits, that the "Arbitrator also allowed her speculation on disability to make a finding that is inconsistent to her findings elsewhere in the Decision". The petitioner refers to the Arbitrator's treatment of other evidence in the Decision.

[83] However, I do not find there to be a patently unreasonable inconsistency with the Decision.

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[84] In my view, this argument seeks the court "reweigh[] and reassess[] the evidence considered by the decision maker", which a reviewing court ought not to do on this judicial review: *Mehmood* at para 55, citing *Vavilov* at para 125.

[85] For example, it does not follow that because the Arbitrator did not uphold the Notice to End Tenancy on the first ground that there is a patently unreasonable inconsistency with the Arbitrator's nevertheless upholding it on the second ground. The Arbitrator had to consider a different evidentiary matrix, and different considerations, for each ground.

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Does the Arbitrator's Analysis on the Second Ground Demonstrate a Failure to Properly Interpret s 47 of the RTA?

[86] I respectfully do not accept the petitioner's argument that the Arbitrator placed "an additional burden of proof on a tenant" that "happens to have a disability" to "show change in disability".

[87] In my view, the Arbitrator did not construct an additional burden in the analysis; instead, the Arbitrator responded to the Advocate's submission. This was not placing a "heavier burden", but instead was addressing a submission made in the course of considering one of several factors in the overall reasoning in the Decision.

[88] Nor do I find that the Arbitrator "adopted an interpretation [of s 47(1)] that she certainly knew to be inferior." Here I note that the Arbitrator did consider, among other things, the petitioner's post-notice conduct, consistent with *Senft v Society for Christian Care of the Elderly*, 2022 BCSC 744 at para 39.

[89] Contrary to the petitioner's submission, the Arbitrator did consider the long duration of the petitioner's tenancy in the Background and Analysis of the Decision, which addresses both the first and second ground.

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The Arbitrator Did Not Place a Hurdle, Leading to Patent Unreasonableness

[90] Relatedly, the petitioner submits the Arbitrator placed a patently unreasonable hurdle in order for the petitioner to succeed in the RTB administrative proceeding. Specifically, the petitioner submits that, the Decision's "finding on 'cognitive barriers' was the last hurdle in the analysis of whether an eviction is justified or necessary."

[91] The petitioner argues that,

> A tenant with disability need not have to lift a heavier burden in eviction hearings based on the mere fact that they have a disability. Tenants with disability need not have to prove "significant change" in their disability, based on an assumption that there is a causal connection between the misconduct and disability. The absurdity of such burden is that certain disabilities can be immutable or a life long condition that a person simply manages without ever being able to make significant changes. The absurdity is further increased where an ambiguous threshold of "significant change" is imposed, as was done in this Decision. This is a harsh consequence that the Legislature could not have intended: see *Habitat for Humanity v. Booth*, 2026 BCCA 8 at para. 58.

[92] After addressing the cognitive barriers submission, the Arbitrator stated: "… I therefore cannot conclude that it is likely the Tenant's behavior will change, given that it has not significantly changed as a result of police and/or landlord interventions."

[93] To the extent the petitioner may suggest in this regard that the paragraph in the Decision, referring to cognitive barriers, was the sole reason tenancy was ended, I do not find that is what the reasons in the Decision reveal. Instead, this was but one factor considered in the Arbitrator's assessment, not the only factor.

[94] The Arbitrator had previously referred to other reasons which supported the conclusion that it was not "likely the Tenant's behavior will change given that it has not significantly changed as a result of police and/or landlord interventions." The Arbitrator found, among other things:

a) in spite of written warnings, the petitioner continued to unreasonably disturb the upper occupant; and

b) the petitioner continued to bang on the ceiling in October 2025, in spite of instructions provided to the petitioner by the police, by letters, and the Notice to End Tenancy.

The Arbitrator found that this evidence strongly suggested the petitioner would continue to disturb the occupant if the tenancy continued.

[95] The impugned part of the Decision, addressing the Advocate's submission that the "Tenant has cognitive barriers," did not in my view unilaterally put up a hurdle in the way of the petitioner, but instead responded to an argument made during the hearing as one of several considerations in the s 47(1)(d) ground. In my view, this was not a clearly irrational reasoning process.

[96] In short, I do not find the Arbitrator's reasoning in a way consistent with *Vavilov* principles constructed a legally impermissible hurdle in the analysis.

The Decision is not Patently Unreasonable

[97] The Arbitrator found they were "not convinced that the disturbances will stop" and it was "unlikely that the Tenant's behavior will change", linking this to a factual finding that "the Tenant continued to bang on their ceiling despite written notices from the Landlord and a One Month Notice to End Tenancy for Cause".

[98] I do not find the words in the Decision that, "I therefore cannot conclude that it is likely the Tenant's behavior will change", demonstrates that the Arbitrator placed sole weight on a lack of evidence of any significant change in "cognitive barriers" to support the conclusion that it was "likely that the Tenant will continue to breach [the] occupant's right to quiet enjoyment if the tenancy were to continue". Instead, that conclusion can be linked back to an earlier finding that the Arbitrator was "not convinced that the disturbances will stop", and the reasons must be considered in light of other factual findings in the Decision.

[99] I do not find this aspect of the Arbitrator's reasoning process "clearly irrational," or "evidently not in accordance with reason."

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[100] The video from August 22, 2025, which is evidence on this judicial review, showed the petitioner's interaction with another occupant upstairs. That incident occurred after a previous incident on August 15, 2025, and before other incidents of the petitioner banging on the ceiling.

[101] On August 22, 2025, the petitioner stood close to the front door of the upstairs apartment of another occupant, speaking to that occupant. The Arbitrator found the petitioner "yelled at the occupant", the occupant told the petitioner to leave, and that the occupant told the petitioner they would call the police, and the occupant was disturbed by the interaction. The Arbitrator also made other findings about incidents on August 15 and August 30, 2025 and October 2025 as described above.

[102] In the Decision, the Arbitrator stated, the "Landlord has a duty to protect the quiet enjoyment of the occupant of unit [A]".

[103] The Arbitrator considered the risk of another interaction between the petitioner and another occupant occurring, in the context of findings about previous incidents and interventions, and concluded that it was likely the petitioner would continue to breach the occupant's right to quiet enjoyment.

[104] I do not find that the absence of evidence that the petitioner continued further inappropriate behaviour in the month of November 2025 to render the Arbitrator's findings as to the petitioner's likely future continued conduct patently unreasonable. To so conclude would involve a "reweighing and reassessing the evidence considered by the decision maker", which a reviewing court ought not to do on this judicial review: *Mehmood* at para 55, citing *Vavilov* at para 125.

[105] Further, the factual context here is different than in *Guevara v Louie*, 2020 BCSC 380 [*Guevara*], relied on by the petitioner, where an arrangement for paying rent was at issue. There, the Court found:

> [80] … the outcome of the decision was openly and clearly, patently unreasonable. The parties to this dispute had agreed on a method of paying the rent whereby the tenant e-transferred the rent to the landlord. This method had advantages for both parties. It made it more convenient for the tenant, and it meant that the landlord had the rent money in her bank account

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> more quickly than she would have had if Ms. Guevara had given her a cheque on the first of the month, which would have taken up to three days to clear from the date she deposited it. The e-transfers made the funds available to Ms. Louis immediately upon her acceptance of them. Given these circumstances and the other factors I have outlined, the evidence before the Arbitrator did not justify his conclusion that the tenant was repeatedly late in paying the rent, as that term is used in s. 47(1)(b) of the RTA.

[106] Here, unlike *Guevara* at para 69, I do not find the Arbitrator made a decision which was based on "a clear misapprehension of the evidence."

[107] I find it was not patently unreasonable for the Arbitrator to dismiss the petitioner's application to set aside the Notice to End Tenancy and issue an order for possession.

Conclusion

[108] I am cognizant that an eviction can have severe consequences, and the tribunal's reasons must reflect the stakes: *Vavilov* at para 133; see also *Petrov v Plan A Real Estate Services Ltd.,* 2025 BCCA 163 at para 28; *Guevara* at para 81.

[109] The Decision's termination of the petitioner's tenancy has significant consequences for him, and I have sympathy for the petitioner in these circumstances, but on the law of standard of review I am bound to apply I cannot find the Decision was patently unreasonable. Accordingly, the petition must be dismissed.

Further Stay of RTB Decision

[110] If the petition is dismissed, the petitioner asks for a continuation of the interim stay.

[111] I do consider, on this issue, the affidavit of the petitioner filed January 28, 2026 in which he deposes, among other things, that he cannot find other apartments within his price range. The respondent did not oppose a further stay of the Decision and order of possession for one month if the petition were dismissed.

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[112] In the circumstances, I stay the Decision and order of possession for a period of one month from the date of my decision dismissing the petition.

Conclusion and Orders Made

[113] The *RTA* granted the Arbitrator the authority to make the statutory decision with respect to the petitioner's application to cancel the Notice to End Tenancy, and the *Administrative Tribunals Act,* SBC 2004, c 45 requires this Court to give deference to such a decision if it is not patently unreasonable.

[114] I find the Decision was not patently unreasonable.

[115] The petitioner's challenge to the Arbitrator's Decision must be dismissed.

[116] For these reasons I order that:

1. The Petition is dismissed; and

2. The Decision and order of possession be stayed for a further period of one month following the date of these Reasons.

[117] Each party shall bear their own costs of this proceeding.

"Stephens J."

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