COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Sefcikova v. Orca Realty Inc.,*
2025 BCCA 174

Date: 20250528
Docket: CA49883

Between:

Gabriela Sefcikova and Kamil Sefcik

Appellants
(Plaintiffs)

And

Orca Realty Inc. and Sandra Bayliss

Respondents
(Defendants)

And

Director of the Residential Tenancy Branch

Respondent

Before: The Honourable Mr. Justice Willcock
The Honourable Justice Donegan
The Honourable Justice Riley

On appeal from: An order of the Supreme Court of British Columbia, dated April 26, 2024 (*Sefcikova v. Orca Realty Inc.*, 2024 BCSC 697, Vancouver Docket S226358).

The Appellants, appearing in person:	G. Sefcikova K. Sefcik
Counsel for the Respondents, Orca Realty Inc. and Sandra Bayliss:	C. Gray
Counsel for the Respondent, Director of the Residential Tenancy Branch:	J.M. Patrick R.L. Shaw
Place and Date of Hearing:	Vancouver, British Columbia March 26, 2025
Place and Date of Judgment:	Vancouver, British Columbia May 28, 2025

Written Reasons by:
The Honourable Mr. Justice Willcock

Concurred in by:
The Honourable Justice Donegan
The Honourable Justice Riley

Summary:

The appellant tenants vacated a rental unit upon receiving a Notice to End Tenancy for Landlord's Use. They subsequently brought an action for damages in the Supreme Court on the basis the landlords failed to occupy the premises within a reasonable period. They appeal the chambers judge's summary dismissal of their claim, arguing it was not fit for determination by way of summary trial, that it was procedurally unfair, and that the judge made errors in assessing and weighing the evidence. The Director of the Residential Tenancy Branch was added as a respondent on appeal to address a procedural irregularity which occurred in the court below.

Held: Appeal dismissed. The judge did not err in assessing the evidence or determining the claim by way of summary trial. Her conclusion that the premises were occupied by the landlords within a reasonable time was supported by the sworn evidence of the landlords and numerous witnesses. There was no procedural unfairness in reaching that conclusion. Finally, it should be reiterated that when a party, relying on statutory exceptions to the Director's exclusive jurisdiction, seeks to bring a residential tenancy dispute to the courts as opposed to the Residential Tenancy Branch, the proper procedure is to file a petition and provide notice to the Director.

Reasons for Judgment of the Honourable Mr. Justice Willcock:

Introduction

[1] Sandra Bayliss and her spouse, Lucy Hollis (together, the "Landlords"), are the registered owners of unit 11, 1701 Chesterfield Avenue in North Vancouver (the "Unit"). In June 2018, the appellants rented the Unit through the Landlords' property agent, Orca Realty Inc. ("Orca"). On November 26, 2021, they were served with a Two Month Notice to End Tenancy for Landlord's Use. The appellants vacated the premises on January 31, 2022. Thereafter they came to believe the Landlords had not re-occupied the premises within a reasonable period.

[2] On August 8, 2022 they filed a Notice of Civil Claim against Ms. Bayliss and Orca in the Supreme Court of British Columbia, seeking compensation of $46,200, an amount equivalent to 12 times their monthly rent, as well as damages of approximately $47,000 for moving expenses and “distress”.

[3] The claim for 12 times the monthly rent was made pursuant to subsection 51(2) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*Act*], which provides:

> 51 (1) A tenant who receives a notice to end a tenancy under section 49 *[landlord's use of property]* is entitled to receive from the landlord on or before the effective date of the landlord’s notice an amount that is the equivalent of one month’s rent payable under the tenancy agreement.
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> …
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> (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:
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> (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.
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> [Emphasis added.]

[4] The respondents applied pursuant to Rule 9-7 of the *Supreme Court Civil Rules* for an order dismissing the claim at a summary trial. The matter came on for hearing before Madam Justice Sukstorf on April 5, 2024. The claim was dismissed for reasons indexed at 2024 BCSC 697.

[5] The summary trial judge held:

1) She had jurisdiction to hear the application

[6] The judge considered provisions of the *Act* which delineate the jurisdiction of the courts and the Residential Tenancy Branch ("RTB"). She noted that s. 58(2)(a) specifies that, except for claims equal to 12 times the monthly rent, disputes exceeding $35,000 cannot be handled by the RTB. Section 58(2)(a.1) provides that claims for 12 times the monthly rent (including claims under s. 51(2)) may not be determined by the RTB if they exceed $65,000. The Supreme Court has jurisdiction to determine a dispute referred to in subsection (2)(a) or (a.1) on application pursuant to s. 58(4).

[7] The summary trial judge observed that the Notice to End Tenancy was issued under s. 49, and the appellants were seeking $47,548 in additional damages on top of the $46,200 claimed for 12 months' rent, exceeding the general $35,000 limit of the RTB. Therefore, she concluded, the court had jurisdiction to hear this case.

[8] She noted that s. 58(4)(a) states the court may order the RTB to hear and determine a claim whose value exceeds its statutory limits; however, neither party had requested that option.

2) It was appropriate to determine the dispute by summary trial

[9] The judge concluded that although the tenants contested some of the evidence produced by the Landlords, those contests were founded upon speculation alone or were irrelevant to the issues before the court. She was satisfied she could decide the case based on the documentary record. Both sides were given a full day to present their evidence and arguments.

3) The only issue was whether the owners occupied the premises within a reasonable time

[10] The judge noted that the parties agreed that the Notice to End Tenancy was effective as of January 31, 2022, and the tenants vacated the premises in accordance with the Notice. They also agreed that the Landlords had occupied the premises for significantly longer than the six-month requirement (in s. 51(2)(b)(ii)) and they continued to live in the premises over two years later.

4) They did so

[11] While the appellants rented the premises, Ms. Bayliss and Ms. Hollis, both employed by Teck Resources Limited, and their two young children resided in Logan Lake. In August 2021, Ms. Hollis accepted a promotion which required her to relocate to Vancouver commencing on December 1, 2021. That precipitated the decision to end the appellants' tenancy. Ms. Hollis returned to Vancouver several months before Ms. Bayliss and the rest of the family.

[12] The judge found Ms. Hollis' occupancy of the premises from February to April 2022 (when Ms. Bayliss also re-located to Vancouver) was intermittent and she spent her free time with her family in Logan Lake. However, the premises were not vacant or unused. The judge noted:

> [71] …[I]t is not unusual for dual professional couples to live apart from time to time due to work commitments nor is it unusual to phase a larger family move of furniture and effects in incremental stages to accommodate the demands of the respective parents' careers and the needs of their family.

[13] Interpreting "occupancy" in a manner consistent with the judgment in *Schuld v. Niu*, 2019 BCSC 949, she held the landlord was not required to occupy the premises as a primary or principal residence. That definition of "occupancy" is not challenged. On that basis, the judge was satisfied the premises were occupied by Ms. Hollis within a reasonable time of the vacancy.

[14] Accordingly, the claim was dismissed.

Procedural Irregularity

[15] At the outset of the appeal the Court granted leave to the Director of the RTB to be added as a respondent to the appeal, for the purpose of addressing a procedural irregularity in the trial court. The *Act* grants the exclusive jurisdiction to resolve tenancy disputes to the Director, subject to five exceptions enumerated in s. 58(2). Of those exceptions, there are three circumstances where the Supreme Court may resolve the dispute or order the Director to resolve it. They are:

a) when the claim is for an amount that is more than the monetary limit for claims under the *Small Claims Act*, R.S.B.C. 1996, c. 430 (s. 58(2)(a));

b) when the amount claimed under certain enumerated provisions exceeds $65,000 (s. 58(2)(a.1)); and

c) when the dispute is linked substantially to a matter that is before the Supreme Court (s. 58(2)(d)).

Where a party wishes to invoke the jurisdiction of the court to hear a tenancy dispute falling within one of the exceptions, that party must file a petition and provide notice to the Director: *Gates v. Sahota*, 2018 BCCA 375 at paras. 42–43; *Choi v. Westbank Projects Corp*., 2024 BCCA 410 at para. 36.

[16] The Director says the appellants ought to have filed a petition and provided notice to the Director, rather than filing a notice of civil claim. That is not disputed. The parties now acknowledge that there was an error in the manner in which the proceedings were initiated in the trial court. Having said that, no party takes issue with the jurisdiction of the summary trial judge or our jurisdiction. We are simply asked to reiterate what was said in *Choi,* for the benefit of litigants in residential tenancy matters:

> [36] … [T]he procedural steps prescribed in *Gates* continue to apply. If the moving party wishes to raise an *RTA* dispute in Supreme Court that falls within one of the exceptions listed in s. 58(2), they must invoke the jurisdiction of the court under s. 58(4) by way of petition on notice to the opposing party and the Director, in accordance with Rules 2-1(2)(b) and 16-1(3). If they fail to do so the responding party may apply under s. 58(4), again on notice, to have the matter heard by the Director.
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> [Emphasis added.]

[17] The Director submits that if we allow the appeal we should consider the appropriate remedy in light of the process established by s. 58 of the *Act*, including whether it is appropriate to order the Director to resolve the dispute.

Grounds of Appeal

[18] The appellants contend the summary trial judge erred in concluding the case was fit for determination by way of summary trial. They say “the only evidence before the judge that could prove Ms. Hollis occupied the property was the statements made by her and her spouse in their affidavits”, and the credibility of the respondents was “central to the case”.

[19] Further, they contend the judge erroneously relied on only a portion of the evidence in the record, assumed certain facts, and accepted the respondents' case at its highest.

[20] Finally, they say the summary trial was procedurally unfair and the judge demonstrated bias against them.

Analysis

[21] The appeal turns principally upon whether the case was fit for adjudication by summary trial. The allegation of procedural unfairness and the suggestion of bias (which is identified as a ground of appeal but not further considered in the appellants' factum or in argument) are both, to a great extent, reiterations of the argument that the case could not be fairly determined without a full trial on the merits. There is simply no basis in fact for any apprehension of bias. Here, as is often the case, the unsuccessful litigants mistakenly confuse an adverse outcome with an adverse judge.

[22] The only procedural issue distinct from the question of suitability for summary trial is the criticism of the judge's decision not to allow cross-examination of the deponents. That decision is reviewable on a deferential standard: *Stephens v. Altria Group, Inc*., 2021 BCCA 396 at para. 4. Among the factors that should be weighed in the exercise of the discretion to permit cross-examination is whether the cross-examination will serve a useful purpose by eliciting helpful evidence. The trial judge here noted that the appellants favoured an adjournment of the summary trial but were unable to identify any specific evidence that they were seeking that might be relevant to the issues before the Court. Neither before the trial judge nor here could the appellants describe how their case would be advanced by cross-examination of the deponents.

[23] The other alleged errors relate to the judge's assessment of the evidence. The assertion that the judge erred by "[r]elying on only a portion of the evidence in the record, assuming certain facts, and accepting the Respondent's case at its highest" refers to the language in *Concord Pacific Acquisitions Inc. v. Oei*, 2017 BCSC 236 at para. 50, in which the court rejected the defendants' argument that a summary trial could be determined on the basis of "assumed facts" in the face of conflicting evidence. That is not what occurred in this case. The summary trial

judge did not proceed on the basis of assumed facts but instead found that the Landlords' evidence established they had occupied the Unit within a reasonable period following the vacancy. She considered the tenants' evidence to be speculative, irrelevant, and in many instances, reconcilable with the Landlords' version of events.

[24] In her reasons for judgment the trial judge comprehensively describes (and enumerates at para. 49 (a) to (q)) the evidence in support of the conclusion that Ms. Hollis occupied the property from February 7, 2022 onward. That was the sworn evidence of Sandra Bayliss, Lucy Hollis, Alex Christopher, William Carpenter, and William Larmour.

[25] Sandra Bayliss deposed to changing the insurance for the premises to "owner occupied" on February 11, 2022. She appended a Home Insurance Application dated February 11, 2022 to her affidavit.

[26] Lucy Hollis deposed to being employed in Vancouver from December 1, 2021 onward and to moving into the premises on or about February 7, 2022. She appended to her affidavit documents recording her regular travel back and forth from North Vancouver to Logan Lake and her regular presence in Vancouver.

[27] Alex Christopher, a Teck employee, deposed to the fact Ms. Hollis accepted a position with Teck commencing December 1, 2021 that necessitated her relocation from Logan Lake to Vancouver.

[28] William Carpenter, a resident of a unit at 1701 Chesterfield Ave. that shares a wall with unit 11, and the strata secretary, deposed to the fact that Ms. Hollis moved into the Unit in February 2022.

[29] William Larmour, a resident of another unit at 1701 Chesterfield Ave. close to the respondent's premises and the strata treasurer, also deposed Ms. Hollis moved into the Unit in February 2022.

[30] The appellants adduced evidence suggesting the respondents were considering selling their townhouse in 2022. This might have been relevant had they done so, or if there was a question whether they were *bona fide* in their intention to re-occupy the premises but that was not an issue when the summary

trial was heard. They had, by then, been long living in the premises. *Bona fides* were not in issue.

[31] The appellants also said there were grounds to believe Ms. Hollis did not, in fact, move to North Vancouver in February 2022. They deposed that they visited the property on March 5, April 16, May 21 and May 28, 2022 (all of which were Saturdays, when Ms. Hollis might have been in Logan Lake for the weekend) and the property appeared to be unoccupied. In addition to considering the value of those observations, the judge expressly described at para. 48 the appellants' evidence that:

a) The Landlords did not change the name on the mailbox for several months;

b) The moving documents related to the larger family move (when Teck hired a moving company between May 29, 2022, and June 2, 2022 to facilitate Ms. Bayliss' move from Logan Lake to North Vancouver) were in the name of Ms. Hollis and not Ms. Bayliss;

c) Ms. Bayliss stated in her affidavit that she visited Ms. Hollis in Vancouver from May 13 to 16 despite telling her friend on April 27, 2022 that she was not allowed any more time off before starting her new job; and

d) As of March 2022, the LinkedIn profile of Ms. Hollis still reflected that her job was in Logan Lake.

[32] In my view, the summary trial judge did not err in concluding that the appellants sought to impugn the respondents by asking her to draw inferences from the limited evidence they adduced. The argument based on this evidence was entirely speculative. Noting the appellants had identified concerns they wished to investigate almost a year before the summary trial, the judge concluded, reasonably, that they had had sufficient time "to inform themselves of any lingering issues that needed to be addressed": at para. 19.

[33] As this Court noted in *Gichuru v. Pallai*, 2013 BCCA 60:

> [34] In summary, the jurisprudence is clear that, subject to certain guidelines, the decision as to the suitability of proceeding by way of summary trial to determine an action (or issue), is a discretionary one.

> Appellate deference is given to the exercise of discretionary powers in the absence of a clear conclusion that the discretion has been wrongly exercised, in that no weight or insufficient weight has been given to relevant considerations (see *Creasey v. Sweny* (1942), 57 B.C.R. 457 at 459 (C.A.); *Friends of the Oldman River Society v. Canada (Minister of Transport),* [1992] 1 S.C.R. 3 at para. 104; *Stone v. Ellerman,* 2009 BCCA 294, 92 B.C.L.R. (4th) 203 at para. 94, leave to appeal ref'd [2009] S.C.C.A. No. 364; and *Bell v. Levy,* 2011 BCCA 417 at para. 75), or it appears that the decision is clearly wrong and may result in an injustice (see *Taylor v. Vancouver General Hospital* (1945), 62 B.C.R. 42 at 50, [1945] 3 W.W.R. 510 (C.A.)).
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> [35] The authorities are also clear that a summary trial, although heard on affidavits in chambers, remains a trial of the action for which the plaintiff (even if not the applicant) retains the onus of proof of establishing his or her claim(s) and the defendant (even if not the applicant) retains the burden of establishing any defence that is raised. Mr. Justice Wood, writing for the Court in *Miura v. Miura* (1992), 66 B.C.L.R. (2d) 345 (C.A.), clarified this issue (at page 352):
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> > There is no reason why the onus should be reversed simply because the defendant moves for judgment under Rule 18A, thus requiring the plaintiff to prove her case in a summary trial proceeding. ...
> >
> > ... the onus of proof does not shift simply because a trial is conducted summarily under rule 18A [now R. 9-7]. As in an ordinary trial, the party asserting the affirmative of an issue must prove it on a balance of probabilities. I believe that such a result is also consistent with what was said by McEachern, C.J.B.C. in *Inspiration Management et al. v. McDermid et al.* [citation omitted] at page 215 of the report:
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> > > The test for R. 18A, in my view, is the same as on a trial. Upon the facts being found the chambers judge must apply the law and all appropriate legal principles. If then satisfied that the claim or defence has been established according to the appropriate onus of proof he must give judgment according to the law unless he has the opinion that it will be unjust to give such judgment.

[34] In my view, there is no basis upon which we might interfere with the judge's decision as to the suitability of proceeding by way of summary trial.

[35] The judge determined that she was able to find the facts necessary to decide the case by way of a summary trial. She ultimately reached the conclusion that Ms. Hollis intermittently occupied the property based on a review of all the evidence from both parties. She concluded that the totality of the relevant evidence presented by the respondents supported that finding. Being satisfied that the defence had been established according to the appropriate onus of proof, she

was required to give judgment according to the law unless she was of the opinion that it would be unjust to give such judgment.

[36] I cannot say she erred in concluding that the defence was made out and that it would not be unjust to give judgment. In my view the argument that the judge erroneously relied on only a portion of the evidence in the record, assumed certain facts, and accepted the respondent's case at its highest is simply an attempt to re-argue the case.

[37] I would dismiss the appeal.

"The Honourable Mr. Justice Willcock"

I AGREE:

"The Honourable Justice Donegan"

I AGREE:

"The Honourable Justice Riley"