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Housing Law Update, 2021

Recent Developments in Residential Tenancy Law

Robert Patterson & Zuzana Modrovic, TRAC

Changes to the *Residential Tenancy Act* and *Regulation*

Email service - effective March 1, 2021

Residential Tenancy Regulation

Part 8 — Giving and Serving Documents

Other means of giving or serving documents

43 (1)For the purposes of section 88 (j) [how to give or serve documents generally] of the Act, the documents described in section 88 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2)For the purposes of section 89 (1) (f) [special rules for certain documents] of the Act, the documents described in section 89 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3)For the purposes of section 89 (2) (f) of the Act, the documents described in section 89 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

When documents are considered to be received

44 A document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

Email service ctd

Section 89 of the RTA

Both 89(1) and 89(2) have been amended to add a section that allows the documents referred to in section 89 to be served “by any other means of service provided for in the regulations.”

This essentially means that these documents can be served by email in accordance with sections 43 and 44 of the Regulation.

Expanding the Scope of Admin Penalties - effective March 25, 2021

Administrative penalties

87.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations, or

(b) failed to comply with a decision or order of the director.

Administrative penalties

87.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations,

(b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or

(c) given false or misleading information in a dispute resolution proceeding or an investigation.

Rent Increase Freeze - effective March 25, 2021

Notice of rent increase has no effect

43.1 (1) For the purposes of this section, a date that applies under section 90 (a), (b), (c) or (d), or that is prescribed under section 97 (2) (p), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 43 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

Additional Rent Increases for Capital Expenditures - effective July 1, 2021

***RTA* s. 97 Power to Make Regulations**

- Updated s. 97(2)(o) so that the Lieutenant Governor in Council can make regulations regarding additional rent increases for capital expenditures (and perhaps other future reasons for additional rent increases), how they are to be calculated, and how they are to be applied

Regulation Part 4 - Rent Increases

S. 21.1
New section that provides definitions for all of Part 4

- Eg:
  - **"major component"** in relation to a residential property means (a) a component of the residential property that is integral to the residential property, or (b) a significant component of a major system
  - **"major system"** in relation to a residential property, means an electrical system, mechanical system, structural system or similar system that is integral (a) to the residential property or (b) to providing services to the tenants and occupants of the residential property

Additional Rent Increase for Capital Expenditures ctd.

- Landlords can apply for additional rent increase for capital expenditures that were incurred in the 18-month period preceding the application

- If the landlord gets an additional rent increase for capital expenditures, they can’t make another application for additional rent increase for capital expenditures for at least 18 months after the previous application

- Landlords have to make a single application for all units that they intend to impose the additional rent increase on

Additional Rent Increase for Capital Expenditures ctd.

- RTB **must** grant the application for the portion of the capital expenditure for which the **landlord establishes** that:

    - The capital expenditures were incurred for any of a prescribed list of repairs/replacements/installations, for example, “the installation, repair or replacement of a major system or major component that has failed or is malfunctioning or inoperative or that is close to the end of its useful life;”

    - The capital expenditure was incurred within 18 months preceding the application

    - The capital expenditures are not expected to be incurred again for at least 5 years.

Additional Rent Increase for Capital Expenditures ctd.

- The RTB **must not** grant the application for a portion of a capital expenditure for which the **tenant establishes** that the capital expenditures were incurred

    - for repairs or replacement required because of inadequate repair or maintenance on the part of the landlord, or

    - for which the landlord has been paid, or is entitled to be paid, from another source.

- According to s. 21.1, "'another source' includes a grant scheme or similar scheme, an insurance plan and a settlement of a claim;"

Additional Rent Increase for Capital Expenditures ctd.

Determining the Amount

- After the RTB determines which of the claimed capital expenditures are eligible for additional rent increase, the amount of additional rent increase for capital expenditures is determined in accordance with s. 23.2 of the Regulation

- There are 2 calculations - one under section 23.2(2) and another under section 23.2(3). The amount of additional rent increase permitted by s. 23.2(4) is the lower of the 2 calculated amounts.

Additional Rent Increase for Capital Expenditures ctd.

How additional rent increases for capital expenditures are imposed:

- The rules for when a landlord can impose an additional rent increase for capital expenditures are set out in 23.3 of the Regulation
- Imposed in the first 12 months in which it may be imposed to comply with timing and notice requirements (s. 23.3(2)), or it may be imposed over three phases as set out in ss. 23.3(1) and 23.3(3)
    - Which it is depends on whether the amount of the increase determined in s. 23.2(4) was higher or lower than the calculation in 23.2(2)

Fact Sheet: https://www2.gov.bc.ca/assets/gov/housing-and-tenancy/residential-tenancies/information-sheets/rtb151.pdf

Additional Rent Increase for Capital Expenditures ctd.

(6) If the amount of the additional rent increase approved under section 23.1 is not imposed in accordance with subsection (2) or (3) of this section, as applicable, the landlord must not carry forward the unused portion or add it to any future rent increase.

(7) A landlord

(a) may impose only one additional rent increase approved under section 23.1 at one time, and

(b) must impose additional rent increases approved under section 23.1 in the order of applications approved under that section and, in relation to each application approved, in the order of the applicable phases.

(8) For certainty, if an additional rent increase approved under section 23.1 is imposed in phases, the landlord may not omit imposing the additional rent increases in one of the phases in order to impose an additional rent increase subsequently approved under that section.

(9) If a tenant vacates a rental unit before one of the additional rent increases is imposed, the landlord must not impose that additional rent increase on the new tenant of the rental unit.

[en. B.C. Reg. 174/2021, Sch. 1, s. 3.]

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021

- Section 49(6)(b) of the RTA that previously allowed landlords to serve 4 month notices to end tenancy for renovations or repairs is now repealed

(6) A landlord may end a tenancy in respect of a rental unit if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to do any of the following:

(a) demolish the rental unit;

(b) renovate or repair the rental unit in a manner that requires the rental unit to be vacant;

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021

Director's orders: renovations or repairs

49.2 (1) Subject to section 51.4 *[tenant's compensation: section 49.2 order]* , a landlord may make an application for dispute resolution requesting an order ending a tenancy, and an order granting the landlord possession of the rental unit, if all of the following apply:

(a) the landlord intends in good faith to renovate or repair the rental unit and has all the necessary permits and approvals required by law to carry out the renovations or repairs;

(b) the renovations or repairs require the rental unit to be vacant;

(c) the renovations or repairs are necessary to prolong or sustain the use of the rental unit or the building in which the rental unit is located;

(d) the only reasonable way to achieve the necessary vacancy is to end the tenancy agreement.

Ending a Tenancy for Renovations/Repairs - effective July 1, 2021

(2) In the case of renovations or repairs to more than one rental unit in a building, a landlord must make a single application for orders with the same effective date under this section.

(3) The director must grant an order ending a tenancy in respect of, and an order of possession of, a rental unit if the director is satisfied that all the circumstances in subsection (1) apply.

(4) An order granted under this section must have an effective date that is

- (a) not earlier than 4 months after the date the order is made,
- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, and
- (c) if the tenancy agreement is a fixed term tenancy agreement, not earlier than the date specified as the end of the tenancy.

Compensation for Ending a Tenancy - effective July 1, 2021

Changes to section 51:

(1.2) If a tenant referred to in subsection (1) gives notice under section 50 before withholding the amount referred to in that subsection, the landlord must refund that amount.

(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 if

(a) steps have not been taken, within a reasonable period after the effective date of the notice, to accomplish the stated purpose for ending the tenancy, or

(b) the rental unit is not used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

(1.2) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50 , the landlord must refund the amount paid .

(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 if the landlord or purchaser, as applicable, does not establish that

(a) the stated purpose for ending the tenancy was accomplished within a reasonable period after the effective date of the notice, and

(b) the rental unit, except in respect of the purpose specified in section 49 (6) (a), has been used for that stated purpose for at least 6 months' duration, beginning within a reasonable period after the effective date of the notice.

Compensation for Ending a Tenancy - effective July 1, 2021

New section 51.4

51.4 (1) A tenant who receives an order ending a tenancy under section 49.2 *[director's orders: renovations or repairs]* is entitled to receive from the landlord on or before the effective date of the director's order an amount that is the equivalent of one month's rent payable under the tenancy agreement.

(2) A tenant referred to in subsection (1) may withhold the amount authorized from the last month's rent and, for the purposes of section 50 (2), that amount is deemed to have been paid to the landlord.

(3) If a tenant referred to in subsection (1) paid rent before giving a notice under section 50 , the landlord must refund the amount paid.

51.4 ctd.

(4) Subject to subsection (5), the landlord 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 if the landlord does not establish that the renovations or repairs have been accomplished within a reasonable period after the effective date of the order.

(5) The director may excuse the landlord from paying the tenant the amount required under subsection (4) if, in the director's opinion, extenuating circumstances prevented the landlord from accomplishing the renovations or repairs within a reasonable period after the effective date of the order.

Changes to the *MHPTA* and *Regulation*

MHPTA s.32

Park rules

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term, other than a standard term or other material term, in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

MHPTA s.36.1

Notice of rent increase has no effect

36.1 (1) For the purposes of this section, a date that applies under section 83 (a), (b), (c) or (d), or that is prescribed under section 89 (2) (r), as the date a notice is deemed to be received is the date that applies regardless of whether the notice is received earlier or later than that date.

(2) A notice given under this Part for an increase based on a calculation made under section 36 (1) (a) has no effect if the notice

(a) is received before September 30, 2021, as determined under subsection (1) of this section, and

(b) has an effective date that is after March 30, 2020 and before January 1, 2022.

MHPTA s.48

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 *[form and content of notice to end tenancy]*, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 39 *[landlord's notice: non-payment of rent]* , and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

MHPTA s.80.3

Administrative penalties

80.3 (1) Subject to the regulations, the director may order a person to pay a monetary penalty if the director is satisfied on a balance of probabilities that the person has

(a) contravened a provision of this Act or the regulations,

(b) failed to comply with a decision or order of the director, or a demand issued by the director for production of records, or

(c) given false or misleading information in a dispute resolution proceeding or an investigation.

MHPTA s.89 - Power to make regulations

(m) respecting

(i) the procedures a landlord must follow to establish, change or repeal a park rule, and

(ii) the frequency with which a landlord may establish, change or repeal a park rule;

(n) respecting the security a landlord may require when a tenant is moving a manufactured home onto or off a manufactured home site;

(o) prescribing fees for anything done or any service provided under this Act;

(p) prescribing calculations for rent increases under section 36 (1) (a) *[amount of rent increase]*;

(q) respecting rent increases that may be approved by the director under section 62 *[director's orders: rent increases]* on application under section 36 (3) *[amount of rent increase]*, including, without limitation,

(i) prescribing circumstances for the purposes of section 36 (3),

(ii) prescribing calculations for rent increases under section 62 ,

(iii) prescribing rules respecting the application of rent increases under section 62 , and

(iv) respecting the maximum rent increase that may be approved by the director under section 62;

(q.1) prescribing an amount as compensation payable under section 44 (1), which amount may not be more than the monetary limit for claims under the *Small Claims Act*;

(q.2) prescribing an amount as compensation payable under section 44 (2), which amount may not be more than the monetary limit for claims under the *Small Claims Act*;

(r) respecting other means of giving or serving documents, including

(i) prescribing when documents given or served by those other means are deemed to be received, and

(ii) providing for different means of giving or serving documents for the purposes of sections 81 (j) and 82 (1) (f) and (2) (f);

MHPTA Regulation: Part 9

Part 9 — Giving and Serving Documents

Other means of giving or serving documents

59 (1) For the purposes of section 81 (j) *[how to give or serve documents generally]* of the Act, the documents described in section 81 of the Act may be given to or served on a person by emailing a copy to an email address provided as an address for service by the person.

(2) For the purposes of section 82 (1) (f) *[special rules for certain documents]* of the Act, the documents described in section 82 (1) of the Act may be given to a person by emailing a copy to an email address provided as an address for service by the person.

(3) For the purposes of section 82 (2) (f) of the Act, the documents described in section 82 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

[en. B.C. Reg. 42/2021, App. 1.]

When documents are considered to be received

60 A document given or served by email in accordance with section 59 , unless earlier received, is deemed to be received on the third day after it is emailed.

[en. B.C. Reg. 42/2021, App. 1.]

Changes to RTB Policy Guidelines

Policy Guidelines 2A & 2B

- Both updated to reflect the change to s.51(2): the burden is on the landlord in 12 month rent claims
- Policy Guideline 2B updated to reflect the change to s.49(6) re:renovictions
  - “Necessary to Prolong or Sustain Use of Rental Unit/Building”
    - Three examples given: seismic upgrades; updating wiring to code; installing or replacing sprinkler system to meet fire code
  - “Only Reasonable Way to Achieve Vacancy”
    - If repairs take 45 days or fewer, and tenant is willing to make alternative living arrangements for the period of vacancy and provide necessary access, then tenancy does not have to end. If longer than 45 days, then it may be unreasonable for tenancy to continue, but will depend on how much longer it is - the longer, the more likely it’s unreasonable

Policy Guideline 3: Claims for Rent and Damages for Loss of Rent

- Clarifies that landlord's claims for compensation are to put them in the same position as if the tenant had complied with the legislation and the tenancy agreement.

- Updated to reflect new s.55(1.1)
  - if an Arbitrator upholds a Non-Payment Notice to End Tenancy, they must grant the landlord a monetary order for the unpaid rent, but cannot grant a monetary order for loss of rent due to overholding

  - An Arbitrator must determine when the tenancy ended:
    - if the tenant moved out, then the tenancy ended on the date of abandonment
    - if the tenant did not dispute the Notice or pay the amount demanded, then the tenancy ended on the effective date of the notice
    - if the tenant disputed the Notice but was unsuccessful at the hearing, then the tenancy ends on the date of the hearing

  - An Arbitrator must only award a monetary order for any unpaid rent that accrued up until the date the tenancy ended. A landlord must make a separate application for a monetary order to claim any loss of rent due to overholding for time the tenant stayed at the unit past the date the tenancy ended.

Policy Guideline 12: Service Provisions

- Canada Mail Express Post with signature option is now considered registered mail for the purpose of service

- Updated to reflect changes to *RTA* & *RTR* regarding email service

    - Parties can provide an email address for service purposes; if they provide one and then change emails, burden is on them to update the other side. If they do not, the other party can apply for a substituted service order (Form RTB-13) to ask to be allowed to serve by email and will need to provide evidence of a history of communication between them by email.

    - Proof of email evidence can include a screenshot of the sent email that shows the destination email address and the date and time it was sent

Policy Guideline 39: Direct Requests and Policy Guideline 49: Tenant's Direct Requests also updated to cover how relevant documents can be served if email has been provided as an address for service.

Policy Guideline 27: Jurisdiction

- Section B: updated to extend exception on monetary order limit to s.51.4, which is the new section that covers 12 month rent claims where a landlord ends a tenancy for renovations under s.49.2.

Policy Guideline 37: Rent Increases

- Significant re-write to cover the new Additional Rent Increase for Capital Expenditures formula
    - Must be to install, repair, or replace a major system or major component as required or permitted;
    - Be expected not to reoccur for 5 years;
    - Goes into detail about eligibility of specific capital expenditures;
    - Talks more about how the amount of increase is calculated and applied over the three years;

Policy Guideline 50: Compensation for Ending a Tenancy

- Updated to reflect changes to RTA s.51 and additions of ss. 49.2 and 51.4
    - Landlords now bear the burden of proof in s.51(2) compensation claims for 12 months of rent where the landlord does not use the rental unit for the stated purpose within a reasonable period of time and/or for at least 6 months
    - Clarifies that the 6 month requirement does not apply to s.49.2 renovictions
    - Still a notable grey area about “Reasonable Period” for accomplishing the purpose for ending the tenancy

Caselaw Update

Belmont v. Swan, 2021 BCCA 265

Landlord served a One Month Notice on the Tenant, Ms. Swan, for breach of material term. The Tenant disputed the Notice and an Arbitrator set it aside. The Landlord filed for Judicial Review and was successful, and the matter was remitted back to the RTB. The Tenant appealed.

BCCA held that the decision was patently unreasonable because the Arbitrator did not follow the basic principles of contractual interpretation.

Ratio: arbitrators must follow the basic principles of contractual interpretation

Para 29, citing *Cannacord Genuity Corp. v. Reservoir Minerals Inc.*, 2019 BCCA 278:

“The overriding concern is to determine “the intent of the parties and the scope of their understanding”. To do so, a decision-maker must read the contract as a whole, giving the words used their ordinary and grammatical meaning, consistent with the surrounding circumstances known to the parties at the time of formation of the contract. Consideration of the surrounding circumstances recognizes that ascertaining contractual intention can be difficult when looking at words on their own, because words alone do not have an immutable or absolute meaning”

Belmont v. Swan, 2021 BCCA 265

(1) When interpreting a contract, the court aims to determine the intentions of the parties in accordance with the language used in the written document and presumes that the parties have intended what they have said.

(2) The court construes the contract as a whole, in a manner that gives meaning to all of its terms, and avoids an interpretation that would render one or more of its terms ineffective.

(3) In interpreting the contract, the court may have regard to the objective evidence of the "factual matrix" or context underlying the negotiation of the contract, but not the subjective evidence of the intention of the parties.

(4) The court should interpret the contract so as to accord with sound commercial principles and good business sense, and avoid commercial absurdity.

(5) If the court finds that the contract is ambiguous, it may then resort to extrinsic evidence to clear up the ambiguity.

(6) While the factual matrix can be used to clarify the intention of the parties, it cannot be used to contradict that intention or create an ambiguity where one did not previously exist.

Flynn v. Pemberton Holmes Ltd., 2021 BCSC 1143

A dispute arose between the Tenants and their Landlord over whether they were entitled to use the crawlspace and shed on the rental property under their agreement - the Tenants thought they were, the Landlords did not.

The Landlord testified that they told the Tenants they were not included, and neither crawlspace nor shed were included in the move-in inspection form; the Tenancy Agreement did not say anything about either, and the Tenants testified that the Landlord never told them they weren't included.

The Arbitrator found that the shed and crawlspace were not included:

"Although the tenants are correct that under the *Act* and legislative framework they would have exclusive use possession of the rental space, I am not satisfied that the two storage areas were included as part of the rental space. In light of the disputed testimony that the agents had verbally informed the tenants that these two spaces were not included, I have considered the undisputed facts such as the fact that neither the written tenancy agreement nor the move-in inspection include these two spaces as part of the tenancy agreement. As stated above, the burden of proof is on the applicants, and I am not satisfied that the tenants had provided sufficient evidence to support that the landlord had included these areas as part of the tenancy." [Para 8]

Flynn v. Pemberton Holmes Ltd., 2021 BCSC 1143

The Tenants applied for Judicial Review of the decision and were successful. The Court found that the case turned on the Agreement.

This was in part because the Arbitrator did not make any findings of fact about what the Landlord's employees actually said to the Tenants. The Court also said that statements made after the tenancy began could not be properly used alter the meaning of the Agreement.

Ratio: the presumption is that a tenancy agreement is for the entire rental unit & property, barring any specific exclusions

"In my view, the Arbitrator made a patently unreasonable error in concluding that the Agreement was not sufficient to discharge the Tenants' burden of proof to establish that the Owners had included the Shed and Crawlspace as part of the rental unit. The Tenants entered into the Agreement to rent the Property, described by its residential address, in its entirety. The Agreement contained no terms which would have excluded the Shed or the Crawlspace. The Agreement, on its face, was sufficient to establish that there were no relevant exclusions from the Property. It was not necessary for the Agreement to list the Shed and Crawlspace explicitly as part of the rental unit, any more than it would have been necessary to state the detached garage, lawn and garden were included. The entire Property at the relevant residential address constituted the rental unit."[Para 29, emphasis added]

Chishuan Housing Society v. Silver, 2021 BCSC 1074

Judicial Review of RTB decision granting an order that the LL comply with the RTA

Held: RTB Decision was set aside for lack of procedural fairness, and inadequate reasons

Facts:

- CHS is a nonprofit LL, JS is a tenant receiving subsidy
- The agreement between CHS and JS contains a term that says that "If the tenant is eligible for a rent subsidy and if the tenant is absent from the residential premises for one consecutive month or longer without the prior written consent of the landlord, the landlord may end the tenancy, even if the rent is paid for the period"
- JS applied to the RTB seeking an order that the above term is unconscionable
- Neither party raised the issue of quiet enjoyment under s. 28 of the RTA
- The Arbitrator did not make a determination on unconscionability, instead found that the term was contrary to section 28(c) of the RTA

Procedural Fairness

[59] I am satisfied that CHS was denied its right to procedural fairness by the Arbitrator's consideration of quiet enjoyment under s. 28(c) and the fact she ultimately based her decision on that. I do not agree with Ms. Silver's position that CHS put s. 28(c) in issue through its general submissions regarding the *Act*. While CHS's statements were broad, they cannot reasonably be read as an invitation or a challenge to the Arbitrator scour the whole *Act* in search of a provision that might prove CHS wrong.

Chishuan Housing Society v. Silver, 2021 BCSC 1074

PF ctd.

[60] Ms. Silver clearly put in issue the question of whether clause 17 is unconscionable in light of her own circumstances and whether it is unfair in light of the BC Housing precedent. Those were the issues advanced in the arbitration. Despite the informality of the proceeding and the fact that Ms. Silver generally asserted that clause 17 is an unreasonable restriction, I find that this was not sufficiently specific to put CHS on notice that it would need to address s. 28(c).

[61] I accept the arbitration process is an informal one where participants are often unrepresented. Even if they may rely to some extent on guidance from the RTB or even arbitrators, this does not give arbitrators licence to decide issues that were not argued before them without giving the parties a chance to be heard on those points.

Inadequate Reasons:

- The judge in this case found that it is not obvious on the face of section 28(c) that a right to QE would include a right to extended absences, and the arbitrator failed to explain why they found that it does:

[78] The Arbitrator's finding on this point begins with this statement:

> I find that clause 17 of the tenancy agreement seeks to limit the tenant's right to quiet enjoyment under section 28(c) of the *Act* by limiting her right to exclusive possession of the subject rental property. [emphasis added].

The underlined passage simply restates the wording of s. 28(c). It does not explain how or why the restriction on extended absences falls within that wording.

Chang v. Jiazheng, 2021 BCCRT 1032

Roommate dispute about security deposit

Held: LC was awarded double the security deposit.

Facts

- Respondent roommate LJ rented a room in a shared unit from applicant roommate LC
- LJ rented the whole unit from the landlord, who was not a party to this dispute
- LC and LJ made a written roommate agreement using the standard RTB form, which incorporated aspects of the RTA, including the provisions respecting security deposits
- LC paid a security deposit of $625 to LJ
- LJ did not return the security deposit and did not apply to the RTB (or the CRT) to be permitted to keep all or a portion of it
- LC applied to the CRT for double the security deposit

Interesting Findings:

- LJ argued that he did not apply to the RTB to keep the deposit within 15 days (which the roommate agreement required) because he learned that the RTB did not have jurisdiction. The implication was that LJ wanted the adjudicator to find that the term requiring him to apply to the RTB within 15 days to retain the deposit was unenforceable. The adjudicator disagreed, and wrote:
- " I find that Mr. Jiazheng could have complied with the contract by applying for dispute resolution at the CRT instead of the RTB, as discussed in the non-binding but persuasive CRT decision in *Sood v. Williamson*, 2019 BCCRT 1035. However, Mr. Jiazheng, did not file a CRT dispute or counterclaim within the 15-day deadline."