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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Resurreccion v. Neumann,*
2025 BCSC 1647

Date: 20250825
Docket: S252882
Registry: New Westminster

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241

Between:

Cristopher Resurreccion, Leonida Resurreccion, Christian Resurreccion
Petitioners

And

Megan Neumann
Respondent

Before: The Honourable Justice Sukstorf

On judicial review from: An Order of the Residential Tenancy Branch dated January 25, 2024.

Reasons for Judgment

Counsel for the Petitioners:	T. Brown
Counsel for the Respondent:	L.A. Buitendyk
Place and Date of Hearing:	Port Coquitlam, B.C. July 10, 2025
Place and Date of Judgment:	New Westminster, B.C. August 25, 2025

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OVERVIEW

[1] This judicial review concerns whether a tenancy was lawfully ended to allow occupancy by the landlord or a close family member, or whether the rental unit was instead used as a short-term Airbnb rental, contrary to the *Residential Tenancy Act,* S.B.C. 2002, c. 78 [*RTA*]. The respondent tenant, Megan Neumann, vacated the unit but later saw what she believed was her former residence listed on Airbnb. She filed a complaint with the Residential Tenancy Branch (the "RTB"), alleging that the landlords did not use the unit for the landlord or a close family member to move in, but instead used the rental unit to generate income as a short term rental.

[2] Relying on circumstantial evidence, the RTB Arbitrator found in favour of the tenant and awarded her $17,236, the equivalent of 12 months' rent under s. 51.2 of the *RTA* and a return of the $100 filing fee of the application under s. 72 of the *RTA*.

[3] The petitioner landlords now seek to set aside that decision, arguing it was based on speculation, lacked evidence, and breached procedural fairness. They contend that the Arbitrator's decision was both patently unreasonable and procedurally unfair. They claim that the Arbitrator made factual errors and failed to present key allegations to them during the hearing, by drawing an inference, without providing them notice, that they may have altered or staged their rebuttal photos. They argue that this inference was speculative, lacked evidentiary support, and played a central role in undermining their credibility.

[4] After reviewing the evidentiary record and the RTB decision, I am satisfied that the Arbitrator's findings were reasonable and available on the evidence and do not meet the high threshold for patent unreasonableness. Although the evidence was entirely circumstantial and the Arbitrator's reasoning was not without imperfections, the decision reflects a tenable and transparent line of analysis.

[5] Additionally, there was no unfair breach of procedural fairness. The Arbitrator's comment about the petitioners possibly staging rebuttal evidence was made in the context of assessing the weight given to evidence provided by the petitioners, did not introduce a new theory of the case that the petitioners did not

have an opportunity to respond to, and was not central to the Arbitrator's determination

[6] The Arbitrator's conclusion—that the petitioners used the unit for short-term rental—was supported by the cumulative effect of several indicators and falls within the range of outcomes defensible under the applicable legal standard.

ISSUES

[7] The issues examined in this judicial review are:

a) Were the Arbitrator's findings patently unreasonable? and

b) Did the Arbitrator breach the petitioners procedural fairness?

FACTS

[8] The petitioners are Cristopher Resurreccion, Leonida Resurreccion, and their son, Christian Resurreccion. Given that all the petitioners share the same surname, and without intending any disrespect, where necessary, I will refer to each of them by their first names.

[9] The petitioners entered into a contract of purchase and sale for the condominium unit located at Unit 3611- 13696 100 Avenue, Surrey, BC, on May 1, 2023 ("the Condo"), where the tenant was residing. They say they intended that the third petitioner, Christian, would move into the Condo.

[10] At the petitioner's request, on May 28, 2023, the sellers issued a Two-Month Notice to End Tenancy, stating that the purchaser or a close family member intended, in good faith, to occupy the Condo. The notice provided for an effective move-out date of July 31, 2023. On June 23, 2023, the tenant completed the move-out inspection. The Move Out Inspection Report included several photos taken of the Condo during that inspection.

[11] The petitioners claim that after they completed some minor improvements to the Condo, Christian moved in on August 13, 2023. The Condo is a 1-bedroom suite

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located on the 36th floor of an apartment building that has 48 floors and about 462 condos, many of which share the same physical layout and view.

[12] After the tenant vacated the unit, she continued receiving multiple buzzer access requests on her phone and multiple different vehicles were observed parking in the unit's parking spot.

[13] In October 2023, the tenant discovered an Airbnb listing that appeared identical to her unit, displaying the following consistent characteristics:

a) The host was named "Cris" consistent with the name of "Cristopher";

b) The profile photo of "Cris" on Airbnb depicts Devil's Tower, a historical landmark in Wyoming, USA. The tenant discovered Facebook photos showing Leonida and Cristopher Resurreccion in front of Devil's Tower during a trip earlier that year. She took a screenshot of those photos and submitted them as part of her evidence;

c) The Airbnb listing's photos showed a unit with the same layout and tile patterns in the shower;

d) The window frame next to the patio had dark residue markings with an almost identical colour and pattern to those in the tenants unit that were caused by the residue of tape formerly used by the tenant to secure her air conditioner; and

e) A distinctive floral tablecloth on a table, set in the same position appeared in the photos in the Airbnb listing as well as a Facebook post by one of the petitioners found by open source internet searches;

[14] On October 12, 2023, the tenant filed a Notice of Dispute Resolution at the RTB, claiming $17,136.00 in damages on the ground that the petitioners did not occupy the Condo as they purported while terminating her lease, but rented it out on a short-term basis through Airbnb (a short-term rental agency), contrary to the provisions of the *RTA*.

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[15] The Airbnb listing and corresponding photos from the Facebook post were removed after the tenant filed her RTB complaint.

[16] The petitioners filed affidavits attesting that Christian moved into the unit on August 13, 2023, and denying any involvement renting the unit through Airbnb.

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LEGAL FRAMEWORK

Statutory Scheme

[17] The petitioners bring this petition under ss. 5.1 and 84.1 of the *RTA*, and s. 58 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 [*ATA*].

[18] For judicial review purposes, the Director is regarded as an expert tribunal within the meaning of s. 58 of the *ATA*. Section 84.1 of the *RTA* states that the Director of the RTB has exclusive and final authority to hear and decide all matters of fact, law, and discretion arising in a dispute resolution process or review. The Director can issue any order allowed under the *RTA*, and decisions made under this authority are not subject to challenge or review in any court, except as permitted under the *ATA.*

[19] Although the analytical framework set out in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, governs statutory appeals and certain types of judicial review, it does not displace statutory standards of review set out in the *ATA*.

[20] Section 58(2) of the *ATA* prescribes the standard of review to apply depending on the nature of the issue:

a) Under s. 58(2)(a), findings of fact, law, or exercises of discretion in matters within the tribunal's exclusive jurisdiction may only be interfered with if they are *patently unreasonable*;

b) Under s. 58(2)(b), decisions respecting procedural fairness and the application of common law rules of natural justice must be assessed on the standard of *fairness in all the circumstances*; and

c) Under s. 58(2)(c), all other questions are reviewed on a standard of *correctness*.

[21] In this case, the petitioners challenge the RTB's findings of fact and mixed fact and law, as well as the procedural fairness of the hearing process. Accordingly, both ss. 58(2)(a) and 58(2)(b) of the *ATA* are engaged. The petitioners bear the onus of demonstrating that the RTB's findings were patently unreasonable or that the hearing process was procedurally unfair.

Patent Unreasonableness

[22] A discretionary decision may be found patently unreasonable under s. 58(2)(a) of the *ATA* if it was exercised arbitrarily, in bad faith, for an improper purpose, based predominantly on irrelevant factors, or fails to consider statutory requirements: *ATA* s. 58(3).

[23] A decision is patently unreasonable if it is irrational or lacks any tenable line of reasoning. It must be "openly, clearly, and evidently unreasonable," or unsupported by any evidence: *Manz v. Sundher*, 2009 BCCA 92 at para. 39; *Yee v. Montie*, 2016 BCCA 256 at para. 22.

[24] In conducting this review, the court must consider the reasons given by the Arbitrator and whether the outcome is rational, considering the evidence and the statutory scheme. The court may not reweigh the evidence or substitute its view for that of the tribunal. However, it may intervene when the decision is irrational, procedurally unfair, or unsupported by evidence that can sustain the conclusion reached.

Procedural Fairness

[25] Procedural fairness is made up of the right to be heard and the right to an impartial hearing and concerns how the decision maker made the decision: *Crest Group Holdings Ltd. v. British Columbia (Attorney General)*, 2014 BCSC 1651 at para. 36. Assessing procedural fairness requires a contextual approach analyzing

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the decision being made in its statutory, institutional, and social context: *PHS Community Services Society v. Swait*, 2018 BCSC 824 at para. 44.

RTA

[26] Section 49(3) of the *RTA* states that a landlord who is an individual may end a tenancy for a rental unit if they or a close family member wish to occupy it. However, s. 51(2) requires the landlord to pay the tenant an amount equal to 12 months rent under the tenancy agreement, unless the landlord demonstrates that the purpose for ending the tenancy was achieved within a reasonable period after giving notice and that they occupied the unit for at least six months.

[27] However, a landlord may be excused from paying compensation to the tenant if extenuating circumstances prevented the landlord from occupying the unit as intended: *RTA*, s. 51(3). This provision under the *RTA* aims to balance the rights of landlords and tenants by ensuring that compensation is not granted automatically but is assessed in light of any such extenuating circumstances: *Shigani v. Taylor*, 2024 BCSC 979 at para. 20.

SUMMARY OF THE PARTIES' POSITIONS

Petitioners' Position

[28] The petitioners assert that Christian moved into the suite in mid-August 2023 and used it for residential purposes. They deny having operated or listed the unit on Airbnb.

[29] They argue that the Arbitrator's decision is patently unreasonable in that it was exercised arbitrarily, and, in the alternative, they submit that the decision was based on predominantly irrelevant considerations, and it should be set aside.

[30] They emphasize that the Arbitrator drew an adverse credibility finding against them after reviewing the photos they presented in rebuttal, which was based on inaccurate findings.

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[31] They also argue that the Arbitrator fabricated a theory of evidence tampering without providing them with notice, in breach of procedural fairness. They maintain that the tenant failed to confirm the listing and that the evidence does not support a finding of bad faith under the *RTA*.

Tenant's Position

[32] The tenant submitted photos from an Airbnb listing she claimed matched her former unit, pointing to similarities in shower tiles, furniture, window markings, and layout. She noted that the host's name "Cris" matched the first name of one of the petitioners, that the Airbnb account opened and the listing went live shortly after she vacated, and that she continued receiving buzzer requests on her phone even after moving out. She also asserts that as soon as she made her complaint to the RTB, the Airbnb listing disappeared. She acknowledged not attempting to book the suite but relied on accumulated circumstantial indicators. She supports the Arbitrator's decision as a reasonable inference based on the evidence.

ANALYSIS

A. Patent Unreasonableness

1. Tenant's Evidence and the Reasonableness of the Inference Drawn

[33] The main issue before me is whether it was patently unreasonable for the Arbitrator to infer that the petitioners used the rental unit for short-term Airbnb stays after serving the tenant a two-month notice to end the tenancy for their personal use. The evidence before the Arbitrator was purely circumstantial; the tenant did not confirm the unit number of the Airbnb listing, try to book or view the unit on the listing, or otherwise verify that it was the petitioners' suite.

[34] In administrative proceedings, circumstantial evidence is admissible. It can support findings of fact, as long as the inferences are reasonable, supported by the record, and meet the civil standard of proof: the balance of probabilities.

[35] That standard requires the decision-maker to be satisfied that it is more likely than not that the event occurred. The evidence must be clear, convincing, and

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cogent, though there is no fixed measure of sufficiency—it remains a qualitative, contextual assessment: *F.H. v. McDougall*, 2008 SCC 53 at para. 46.

[36] Circumstantial evidence in civil cases is treated like any other evidence, and its weight depends on the strength of the inference it supports. It is for the trier of fact to determine whether it meets the legal threshold.

[37] In their submissions, the petitioners argue that the Arbitrator erred by accepting the tenant's evidence, despite acknowledging that the tenant had not confirmed whether the unit listed in the Airbnb listing was, in fact, her former Condo. However, this argument implicitly demands a level of certainty which is inconsistent with the required standard. It suggests that circumstantial evidence must eliminate all other reasonable alternatives misapprehending the applicable standard in tenancy and administrative proceedings which is the balance of probabilities. It does not require certainty or the elimination of every other possibility.

[38] As stated above, in this case, the Arbitrator was only required to determine whether it was more likely than not that the tenant's former unit was the same as the one on the Airbnb listing. It does not require certainty, nor must the evidence exclude every other possibility. What matters is whether the inference drawn from the evidence is reasonable and supported by the record.

[39] While the evidence before the Arbitrator was circumstantial, the tenant's evidence was not insubstantial. To assess the reasonableness of the Arbitrator's conclusion, I will first review the evidentiary record before the Arbitrator.

2. Evidence before the Arbitrator

Evidence from the Tenant

[40] The tenant provided the following evidence:

a) Airbnb listing screenshots allegedly showing the unit she believed to be the one she previously occupied;

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b) Visual comparisons (balcony view, window markings, marble tiles, furniture patterns);

c) Name of Airbnb host: "Cris", and profile photo of Devil's Gate provide a link and similarity to the petitioner Cristopher Resurreccion;

d) Timing of Airbnb listings: Dates of reviews and listings align with the alleged short-term rental activity;

e) Tenant's written statements summarizing the evidence and explaining why she believed that the Airbnb unit was the same one she had been evicted from;

f) Observations of different vehicles parked in the petitioner's assigned stall and unknown individuals buzzing the tenant's phone to gain access to the unit;

g) Facebook post referencing similar interior decor (e.g., table in exact location adorned with identical floral tablecloth pattern); and

h) Statement that she did not attempt to book the Airbnb unit to verify identity or unit number—because she "didn't want to waste her money".

Evidence from the Petitioners

[41] The Arbitrator considered the following evidence provided by the petitioners:

a) Affidavit of Cristopher Resurreccion: Denying Airbnb use and explaining that their son, Christian, moved into the unit on August 13, 2023;

b) Affidavit of Christian Resurreccion: Confirming he resides in the unit, with photographic evidence of his belongings and furnishings;

c) Photographs of the interior (e.g., tile patterns, windows, furnishings) allegedly inconsistent with those in the Airbnb listing;

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d) Affidavit evidence that several units in the same building have identical or near-identical layouts and views;

e) Affidavit explaining “Cris” is a common name and not unique to the petitioner;

f) Denial of having operated any Airbnb account; and

g) Second affidavit from Cristopher responding to the tenant’s secondary statement.

3. Arbitrators Line of Reasoning and Conclusion

[42] The Arbitrator’s line of reasoning that led to the conclusion in the decision is as follows:

> The listing included photos of the rental unit which were extremely similar to the photos from the move-out condition inspection report, a photo from one of LR’s social media accounts, as well as the photos from the Purchaser’s own evidence. The listing profile had been active since August 2023, coinciding with the renovation completion date as indicated by the Purchasers.
>
> I accept the Purchasers’ position presented at the hearing, that this particular rental unit is located in a condominium which includes several of the same types of units, with the same view from the balcony. I also accept that the Tenant has only inferred, not confirmed, that the unit seen on the short-term rental website is the rental unit that the Tenant previously occupied. There is no direct evidence, such as a unit number, or any other sort of conclusive verification, presented by the Tenant.
>
> However, the Tenant’s evidence does include some very strong indications that this was the same rental unit. Firstly, there are black markings on the edge of one of the windows visible from the move-out condition inspection report—this is residue left from the tape that the Tenant used to secure their portable air conditioner while living in the rental unit. I observe that the same residue is visible in one of the short-term rental listing photos from October 2023. The Purchasers have submitted a different photo which shows that the black markings are gone, to prove that the unit in the short-term rental listing is not the same as the rental unit that the Tenant used to occupy.
>
> In a similar line of reasoning, the Purchasers further assert that the furnishings from the short-term rental listing are inconsistent with the current photos of the rental unit as seen in the submitted affidavit packages. However, I note that these pieces of evidence were submitted in response to the Tenant's claim in affidavit packages dated November 6, 2023, and onwards—I must consider the possibility that the black residue markings were removed, and the furnishings changed, to refute the Tenant’s evidence.

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> Secondly, the short-term rental listing shows a table with a distinct floral tablecloth. This table and tablecloth are indisputably the same type as the ones seen in LR's social media account photo from August 12, 2023—with reference to the aforementioned celebration. I accept the possibility that the same table and tablecloth could have been coincidentally used in a different unit within the same building, which is a position taken by the Purchasers during the hearing.
>
> Thirdly, the short-term rental listing photo of the shower shows a distinct marble tile pattern that is consistent with a rental unit photo submitted by the Tenant. The Purchasers have taken the position that the distinct marble tile pattern, in fact, proves that it is not the same rental unit because the tile textures from their current photos are different from the ones submitted by the Tenant for the short-term rental.
>
> In total, the Purchasers' evidence includes three photos of the bathroom with the shower and marble tiles in addition to the copies of the photos supplied by the Tenant. I note that these photos all feature the same white bottle of soap and blue cup sitting on the edge of the bathtub, in addition to other clear similarities. These photos are:
>
> - Exhibit "D" from CR2's affidavit package, labelled as "respondents' photos of the suite"
> - Image 1A from CR's first affidavit package, labelled as "current photo from the respondents' suite"
> - Image 2A from CR's first affidavit package, labelled as "photos from the respondents' suite".

[43] After laying out his line of reasoning, the Arbitrator then found as follows:

> Normally, an isolated and single connection made by the Tenant between the short-term rental listing and the rental unit could be dismissed as coincidence. However, when taken as a whole, I find there are far too many coincidences argued by the Purchasers with reference to the short-term rental listing. It is possible that CR2 occupied the rental unit in some residential capacity since August 2023. However, based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Purchasers have also used the rental unit in a non-residential capacity — as a short-term rental — during the six-month period where they were supposed to be using it for residential purposes only.

4. Review of Reasoning and Decision

[44] In reviewing the line of reasoning and decision, I find that the issue turned on whether the Airbnb listing depicted the same unit the tenant had occupied. It was undisputed that the final inspection photos were of the Condo purchased by the petitioners. Although the Arbitrator accepted that Christian may have lived in the Condo since August in some capacity, the determinative question was whether the

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unit shown in the Airbnb listing matched the one the tenant vacated. The appropriate comparison was based on the totality of the evidence before the Arbitrator. Concerning the photos, the relevant images were those posted on the Airbnb listing and the move-out inspection photos—not the photos taken after the tenant made her claim, as they were of limited relevance in deciding the core issue.

[45] I find that the Arbitrator's reasoning and conclusion demonstrate that the Arbitrator assessed the evidence comprehensively rather than relying on a single piece of evidence or indicator. After reviewing all the evidence, the Arbitrator identified numerous coincidences linking the petitioners' Condo to the Airbnb listing and concluded that it was more likely than not the same unit.

[46] The Arbitrator recognized that the tenant had not confirmed the unit number linked to the Airbnb listing and explicitly stated that the tenant's claim was based on circumstantial evidence rather than direct proof. When evaluating the circumstantial evidence, the Arbitrator needed to consider all relevant evidence and decide whether it was more likely than not that the tenant's previous unit, the Condo, was the one listed on Airbnb.

[47] In their evidence submitted to the Arbitrator, the petitioners denied any use of Airbnb and emphasized that many units in the building have similar layouts, furnishings, and views. They argued that the name "Cris" is common and not unique to them. To rebut the tenant's allegations, they submitted affidavits denying short-term rental use, photos showing Christian's occupancy, and post-tenancy images, which they said were inconsistent with those in the Airbnb listing.

[48] They also argued that the visual similarities identified by the tenant could be explained by the standardized design of other units and the possible presence of other Airbnb rentals in the building. However, the Arbitrator was not required to assess each detail in isolation, and his line of reasoning made it clear that the decision was not based on any one piece of evidence. He considered the cumulative weight of evidence specific to the petitioners' unit—including the distinctive residue markings on the window, the floral tablecloth seen in both a Facebook post and the

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Airbnb listing, and the timing of the listing itself, which went live shortly after the tenant vacated. Notably, the Airbnb listing and the referenced Facebook photos were removed immediately after the tenant filed her complaint. While the petitioners maintained that these were coincidences, the Arbitrator reasonably found that the volume of the coincidences and the specificity of the overlapping indicators met the threshold that it was more likely than not the same unit.

[49] As highlighted above, circumstantial evidence can be sufficient when it supports a clear and reasonable inference. The Arbitrator's reasoning—based on cumulative details and evaluated against the standard of proof—reflected a sound line of analysis. I find that the Arbitrator's analysis stayed within the permissible scope of administrative fact-finding on a balance of probabilities and was not patently unreasonable.

5. Did the Arbitrator Commit a Factual Error Regarding the Tile Photos?

[50] The petitioners argue that the Arbitrator made a mistake in identifying inconsistencies in the tile photos they submitted. They contend that the four photos taken from their Condo are visually identical and distinct from the photos in the Airbnb listing. They assert that the Arbitrator's conclusions regarding the shower tiles unfairly undermine their credibility and influence his overall decision.

[51] In his reasons, the Arbitrator stated:

> Critically, I note that there are discrepancies in the three photos submitted by the Purchasers with reference to these marble tiles. The tile patterns in Image 2A differ from the photos submitted by the Tenant, but they also differ from the tile patterns seen in the Purchasers' other two photos (Exhibit "D" and Image 1A). In fact, I find the other two photos to show marble tile patterns that are consistent with the Tenant's submitted photos. The inconsistency in the Purchasers' own photos regarding the tiles, and the fact that two out of three photos are actually consistent with the short-term rental, has reduced the credibility of their claim that the tiles in the rental unit are different from the ones seen in the short-term rental listing.

[52] First, I find that the Arbitrator's comment was not a definitive conclusion on the credibility of the key issue regarding whether the petitioners had listed their unit on Airbnb. Instead, the Arbitrator's remarks responded specifically to the petitioners'

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claim that the tiles in the rental unit were different from the ones in the short-term rental listing. Notably, the Arbitrator also observed that two of the photos submitted by the petitioners seemed to align with the tiles in the images included in the Airbnb listing, which the Arbitrator considered as weakening that part of their defence.

[53] A fundamental flaw in the petitioners' argument is that the tile photos they rely on to support their argument were taken after the tenant vacated and the Airbnb listing was removed. The weight given to evidence depends on the strength of the inference it reasonably supports. The Arbitrator was entitled to treat these later photos cautiously and to assess their limited probative value accordingly. His remark about inconsistencies in the tile patterns—while possibly inaccurate—was made in the context of evaluating their reliability as rebuttal evidence. The Arbitrator was entitled to assess the weight of that evidence accordingly. It did not materially affect the central issue: whether, on a balance of probabilities, the unit shown in the Airbnb listing was the same unit previously occupied by the tenant.

[54] Even if the Arbitrator erred in observing inconsistencies in the tile photos, I find that the error was minor and did not materially affect the outcome. I am not persuaded that this remark formed the basis of the Arbitrator's conclusion, which rested on the overall weight of all the circumstantial evidence.

B. Procedural Fairness

[55] The petitioners contend that the Arbitrator's suggestion—that they may have intentionally altered or staged the unit for their rebuttal photos, including by removing the black markings and changing the furniture—showed bias and was never put to them during the hearing. They argue that this theory was developed independently by the Arbitrator and relied upon without allowing them to respond. They further note that the tenant did not explicitly advance such an allegation.

[56] While the comment may have been speculative, it was also made within the limited context of assessing the probative value of the petitioners' post-tenancy photos. These photos were submitted to rebut the tenant's evidence. However, they were taken long after the tenancy ended and had no direct link to the timeline of the

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alleged Airbnb rental. The Arbitrator was justified in evaluating whether this late-acquired evidence was reliable, relevant, or potentially self-serving. Procedural fairness does not require that every evaluative remark in that context be previewed—especially when it concerns the credibility and weight of evidence already before the tribunal.

[57] Moreover, the Arbitrator's comment did not introduce a new or decisive theory of the case. In their submissions before the RTB, the petitioners relied on rebuttal photos of their Condo taken after the relevant time to argue that its later appearance meant it could not be the unit shown in the Airbnb listing. That argument, however, overlooked the critical issue: whether the Airbnb listing depicted the Condo in the period after the tenant vacated but before those later photos were taken.

[58] As the reasons reflect, the Arbitrator's conclusion rested on the totality of the circumstantial evidence establishing that connection. In these circumstances, I am not satisfied that the comment gave rise to a breach of procedural fairness or materially affected the outcome.

DISPOSITION

[59] I find that the Arbitrator's central inference—that the unit shown in the Airbnb listing was the same Condo previously occupied by the tenant—was supported by multiple circumstantial indicators. These included the matching balcony view, window markings, tile pattern in the shower, layout, furnishings, the Airbnb host name and profile photo, as well as the timing of the listing's creation and removal, The Arbitrator also noted the consistency between a Facebook photo of the Condo, posted by the petitioners, and the Airbnb listing—both of which depicted a table located in the same position and adorned with an identical floral tablecloth.

[60] The Arbitrator concluded that the cumulative weight of the circumstantial evidence supported a finding that the petitioners used the Condo for short-term rental during the relevant period. As the Arbitrator's line of reasoning shows, based on the evidence available, and applying the correct legal standard of the balance of probabilities, that inference was both available and within the Arbitrator's authority.

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[61] While the Arbitrator commented on inconsistencies in the petitioners' post-tenancy tile photos, I am satisfied that those comments were made in the context of assessing the reliability and weight of the photos and did not materially affect the outcome. The images in question were taken after the tenancy ended, were not linked to either the Airbnb listing or the final inspection and were of limited value in the determination of the core issue.

[62] I am also not persuaded that there was a breach of procedural fairness. The Arbitrator's comment about possible staging was similarly made in the context of assessing the weight given to the rebuttal photos introduced by the petitioners. These photos were not central to the Arbitrator's determination. The remark, though speculative and arguably unnecessary, did not introduce a new theory requiring notice or rebuttal, nor did it form the basis of the Arbitrator's decision. The petitioners had a full opportunity to present their case, and no breach of procedural fairness arises when the Arbitrator's reasoning is considered in its full context.

[63] The petition is dismissed. The respondent tenant is entitled to her costs.

"Sukstorf J."

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