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Wang v. Chen, 2025 BCCA 153

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COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Wang v. Chen,*
2025 BCCA 153

Date: 20250429
Docket: CA50359

Between:

Tiecheng Wang

Appellant
(Petitioner)

And

Xuting Chen

Respondent
(Respondent)

Before: The Honourable Madam Justice Fenlon
The Honourable Justice Griffin
The Honourable Justice Winteringham

On appeal from: An order of the Supreme Court of British Columbia, dated January 8, 2025 (*Wang v. Chen*, Vancouver Docket S248125).

Oral Reasons for Judgment

The Appellant, appearing in person:	T. Wang B. Wang (Interpreter)
The Respondent, appearing in person:	X. Chen S. Lu (Interpreter)
Place and Date of Hearing:	Vancouver, British Columbia April 29, 2025
Place and Date of Judgment:	Vancouver, British Columbia April 29, 2025

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Summary:

The appellant appeals the dismissal of his application for judicial review of a decision granting his landlord an order of possession. The appellant says the Reviewing Arbitrator erred by not accepting his evidence that he was never served with the notice to end tenancy, and that time-stamped photographs of the notice on his unit door were fraudulent. Further the appellant says there was no legal basis for eviction as he paid his rent even if it was received by the landlord a day late. The landlord provided evidence to the RTB that the rent was paid late 37 times. On judicial review, the judge found that the reviewing arbitrator's decision was not unreasonable. Held: Appeal dismissed. The appellant has not shown that the initial or reviewing arbitrator made patently unreasonable decisions.

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[1] **FENLON J.A.**: The appellant Tiecheng Wang asks this Court to correct what he says is an injustice done to him by the Residential Tenancy Branch (the "RTB") and a review arbitrator. He says the RTB was wrong to grant his landlord, the respondent Xuting Chen, a possession order for the rental suite he has lived in since January 2021. Mr. Wang says that he always paid his rent, even if the e-transfer was sometimes received by the landlord a day late, and the RTB had no legal basis to evict him.

[2] Ms. Chen has a very different view of the situation. She provided evidence to the RTB showing Mr. Wang was late 37 times in paying his rent, despite her repeated requests for timely payment.

[3] As a result, on September 16, 2024, Ms. Chen issued a 30-day Notice to End Tenancy as of October 31, 2024 (the "Notice"). She served the Notice by attaching it to the door of Mr. Wang's rental unit. Mr. Wang did not vacate the premises, nor did he file a dispute resolution to challenge the end of his tenancy—a step that must be taken within ten days of service of a notice if the tenant wants to challenge the eviction.

[4] Mr. Wang says that he was never served with the Notice or any of the other three ten-day notices that Ms. Chen says she attached to his door. He says that the time stamped photographs of the notices attached to his door were all fakes. He

contends that at most the Notice was put there, the photo taken, and the Notice removed before he could see it.

[5] Because no dispute was filed, the landlord was able to use a simplified process under ss. 47(4) and (5) of the *Residential Tenancy Act*, S.B.C. 2002, c. 78 [*RTA*] to obtain an order for possession from the RTB without a participatory hearing. She simply filed proof of service of the Notice, and other records showing late payment. The order of possession was granted on November 12, 2024. As noted, a tenant is not required to attend and participate in a hearing before an order of possession is granted because a tenant is conclusively presumed to have accepted the end of the tenancy and the requirement to vacate if they do not file an application for dispute resolution within ten days of receiving a notice to end tenancy.

[6] The landlord served the possession order on November 18, 2024. Mr. Wang applied two days later for a review of the RTB decision. He raised three grounds for review:

> 1. The decision was obtained by fraud because Mr. Wang was never served with the Notice;
>
> 2. Mr. Wang was denied a hearing because he did not even know about the Notice, and had no chance to dispute it; and
>
> 3. The adjudicator did not verify that the landlord had served him with the required documents, which he says is a loophole in the *RTA*.

[7] On November 22, 2024, the Review Arbitrator dismissed the application for review, rejecting Mr. Wang's grounds for review and finding that he was conclusively presumed to have accepted the end of the tenancy as set out in the Notice.

[8] Mr. Wang then applied to the BC Supreme Court for judicial review of that decision. He largely repeated his arguments before the Review Arbitrator, asserting

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that he had been denied a hearing and that the possession order should not have been made in this way. The reviewing judge found that the Review Arbitrator's decision was not unreasonable.

[9] Mr. Wang now appeals. He is still in his rental unit, having obtained stays of the order of possession pending the outcome of this appeal.

[10] Our role in this Court is not to re-hear the case. Instead, we are to step into the shoes of the reviewing judge and look at the Review Arbitrator's decision, asking whether that decision, which is in effect the decision of the RTB adjudicator, was patently unreasonable.

[11] On appeal, Mr. Wang identifies three fundamental errors in the way the RTB, the Review Arbitrator, and the judge dealt with this case:

> 1. All of the adjudicators ignored the evidence that the landlord fabricated proof that Mr. Wang had been served with the Notice;
>
> 2. The adjudicators misinterpreted the *RTA*, finding a direct request for a possession order could be made in circumstances where the tenancy is being ended for late payment of rent; and
>
> 3. The adjudicators failed to find that the procedure was unfair because Mr. Wang was not given a chance to defend himself at a hearing.

[12] I will address each of these in turn.

1. The Adjudicators Ignored Fabricated Evidence of Service

[13] This ground of appeal repeats the arguments Mr. Wang made to the Review Arbitrator, and the reviewing judge. He relies on the time stamped photographs of service provided by the landlord. He says it is evident that they are all fabricated because:

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1. They show his unit door with a light on when it is not his practice to leave the outside light on;

2. One of the photographs that was purportedly taken in July shows brown leaves on the ground, which would be unusual in the summer;

3. The pictures were taken in the dark just after midnight, which makes no sense when they could have been taken during the day; and

4. The backgrounds in the photos were all the same even though they were taken over a three-month period.

[14] This ground of appeal cannot succeed because it asks us to reweigh evidence, which is not our role on appeal. It was up to the Review Arbitrator to look at the evidence and decide whether service was properly effected. The Review Arbitrator was satisfied that it was. The Arbitrator did not accept Mr. Wang's arguments about the photographs and accepted Ms. Chen's evidence. It was open to the Review Arbitrator to make that finding.

[15] In summary on this ground of appeal, Mr. Wang has not established that it was patently unreasonable for the adjudicator to find that the photographs were valid evidence that he had been served with the Notice.

2. The *RTA* Does not Permit a Direct Request Order in the Circumstances of this Case

[16] Mr. Wang says the *RTA* allows direct request orders to be made only in specific situations and late rent payments are not included. Mr. Wang relies on the list on the RTB's website of the types of evictions where direct request for an order of possession may be sought. Although I agree that the list does not expressly refer to "late rent payments," Mr. Wang acknowledges that a direct request is available for non-compliance with the tenancy agreement. In addition, "violation of terms" is expressly listed at sub (i) of the website list. Since the tenancy agreement between Mr. Wang and Ms. Chen required the rent to be paid on the first of the month,

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payment on later dates was a violation of that term. The rent had to be paid to Ms. Chen on the first. There was evidence that Mr. Wang did not meet that requirement.

3. Mr. Wang Did Not Get a Chance to Defend Himself Before the Notice of Possession was Issued to the Landlord

[17] The *RTA* at s. 47 states that a landlord may issue a one-month notice to end tenancy and, if the tenant does not apply for dispute resolution within ten days after receiving the notice, they are conclusively presumed to have accepted that the tenancy is at an end on the notice date and they must leave the rental unit on that date.

[18] That is what the RTB and the Review Board found happened here. Mr. Wang did not apply for dispute resolution. I recognize that he says he did not dispute the Notice because he was never given the Notice at all, but the RTB and the Review Arbitrator (and the reviewing judge for that matter) found that he did receive it. I have already determined that was a reasonable decision on their part.

[19] So, when the RTB and the Review Arbitrator found a direct request for a possession order could be granted in these circumstances, that was open to them under the *RTA*. That process does not require a hearing. Put simply, Mr. Wang did have a right to have a hearing, but in order to trigger that right, he had to let the RTB know within the prescribed timeline that he disputed the landlord's notice of intention to end tenancy. When Mr. Wang failed to do that, he gave up his right to a hearing. That is what the *RTA* provides for and there is nothing procedurally unfair about that.

Conclusion

[20] Having considered all of Mr. Wang's submissions, even those I did not refer to directly in these reasons for judgment, I conclude that he has not established that the RTB and the Review Arbitrator made patently unreasonable decisions. I would therefore dismiss the appeal and grant Ms. Chen an order of possession effective

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May 7, 2025. For greater clarity, that means Mr. Wang must be out of the rental unit by midnight on May 6, 2025.

[21] **GRIFFIN J.A.**: I agree.

[22] **WINTERINGHAM J.A.**: I agree.

“The Honourable Madam Justice Fenlon”

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