June 30, 2022

Dear Councillors,

In 2015 I was a member of the last iteration of Downtown Eastside Neighbourhood Council. At that time an issue was brought forward by a neighbour named Karen Ward, who was later appointed the mayor's drug policy advisor. Based on that issue, received by our humble neighbourhood council, I would like to share what we discovered with respect to the design of this building and what is proposed here as a program that the building is designed to facilitate.

The issue that Karen brought forward was that the Supportive Housing as it is called has an effectively coercive element: people live in Supportive Housing because they are given no other choice within a near zero vacancy rate and further that within that environment in order to make that system function at all there is arguably a violation of the tenants basic human rights and violations of the Rental Tenancy Act. I personally believe this is why we are seeing such mayhem on our streets, because it's a manifestation of people's pent up anger they can't easily express in words.

Even though we did not hear from Karen Ward after that initial meeting, the Neighbourhood Council were alerted and myself and the secretary, who was a lovely person who also happened to have Substance Use Disorder as a disability, dutifully investigated and documented the human rights issue and Rental Tenancy Act violations that Karen had brought to us as an issue. We found that when confronted the Supportive Housing housing provider argued they must impose arguably illegal policies on the tenants by necessity in order to make this program function in a congregate setting despite having arguably no authority to impose such policies

In a case that is typical, the Supportive Housing provider had a blanket policy of surveilling all tenants through a security check at the door for visitors and even family members and the tenant took this issue to the Rental Tenancy Branch. The judge found that this surveillance violated the RTA. The judge said the management had no authority to impose a blanket policy to monitor the tenants. Tenants like these are covered by the Rental Tenancy Act. Supportive Housing tenants are to be treated like any other tenants under the RTA.

And yet because the BC Supreme Court ruling came up from the RTB the ruling only applied to that one tenant, though we can presume it should apply to all tenants of these buildings

because that is what it states in Section 9 of the RTA that landlords may not unreasonably restrict visitors. In fact in people's rental agreements within the so-called Supportive Housing buildings we found that it actually stated in those standard agreements that the landlord may not impede their visitors, and then the landlord had a blanket policy of doing that anyway in opposition to the agreement. So we found that Supportive Housing providers continue to operate systematically in violation of the RTA.

During my visit to a friend, each time I visited I had to show my government ID at the security desk. The staff had me stand in front of the camera like they have at ICBC, took my picture, and I believe uploaded it to the HIFIS system, which is a federal database.I was never given an option to decline if I wanted to visit my friend in his home. Information is taken by the government for every visitor to the building, but we don't know what it is used for or where it is kept. What we do know based on the BC Supreme court ruling is that it is against the RTA for Supportive Housing providers to carry out a blanket policy surveillance process like this on tenants, yet they do it anyway. In addition, such surveillance is arguably a form of discrimination because it stereotypes all the tenants.

And YET, according to one prominent Supportive Housing provider, there is no other way for the Supportive Housing Provider to run these institutional congregate settings safely except by imposing this blanket policy surveillance on their tenants that violate the RTA and arguably human rights. I think we can presume this is because of the large institutional setting that arguably puts vulnerable people at risk from others within the building.

In this case this illiberal make shift set up within an institution has a bad effect on the rest of society because such settings are not only operating against the RTA in an illegal or illiberal manner but also ~~in~~ that illiberal process is dependent for ~~their~~ justification on the suppression of a whole comprehensive housing system. This system so-called 'Supportive Housing' shoves an illiberal 'spoke' if you will into what should otherwise be a comprehensive regulated housing plan. A comprehensive regulated housing plan provides a structural guarantee that such institutions with their illegal policies are not necessary as there is inclusivity built in the comprehensive housing plan for all code groups. This illiberal building design and program shouldn't be the panacea for a lack of housing.

In 2016 I wrote an article with the help of some law professors to describe other aspects of the arbitrary policies that we argued were then, and still are, human rights violations and Rental Tenancy Act violations that we witnessed in the so-called 'Supportive Housing' regime that were inflicted on its tenants.

Please find attached:

1) Transcript of case law Richardson vs Atira (the court ruled that blanket policy security surveillance was illegal)
2) Megaphone article written by myself, dated October 2016 (describing that people who use controlled drugs are discriminated against as they are required to sign illegal addendum agreements not to use drugs, again a violation of the RTA, and as people who use controlled drugs within the privacy of their home were not treated with equality with alcoholics in the same building)

I close with a quote from a Housing First expert named Iain Atherton. He writes the following:

"Beliefs and attitudes suggesting that homeless people with multiple needs cannot maintain tenancies of their own are unsustainable in light of current research. Such assumptions perpetuate stereotypes, essentially blaming individuals where wider structural deficiencies in welfare services and housing markets may be at fault. The explicit recognition of people's abilities that is central to Housing First would act as a direct challenge to those who continue to believe otherwise, encouraging the development of more appropriate, humane, and effective services." (Atherton et al. (2008)

Atherton I. and McNaughton Nicholls, C (2008) Housing First as a Means of Addressing Multiple Needs and Homelessness, European Journal of Homelessness, 2, 289-303"

Thank you for your time and I hope you will review the material,

Amanda Boggan
Former president of the Downtown Eastside Neighbourhood Council 2015
"s.22(1) Personal and Confidential"

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Atira Property Management v. Richardson,* 2015 BCSC 751

Date: 20150507
Docket: S147698
Registry: Vancouver

Between:

Atira Property Management

Petitioner

And:

Jamie Stuart Richardson

Respondent

And:

Residential Tenancy Branch

Respondent

Before: The Honourable Mr. Justice McEwan

Reasons for Judgment

Counsel for the Petitioner:	L.M. Lyster
Counsel for Respondents:	A. Vulimiri
Place and Date of Trial/Hearing:	Vancouver, B.C. April 15, 2015
Place and Date of Judgment:	Vancouver, B.C. May 7, 2015

I

[1] The petitioner manages social purpose properties, which are single room occupancy buildings located in the Downtown Eastside neighbourhood of Vancouver. The London Hotel is one of its holdings.

[2] The respondent James Richardson is a tenant in the London Hotel.

[3] Starting on March 31, 2014 the petitioner introduced a policy requiring guests of tenants in its buildings to produce government issued identification in order to visit.

[4] The previous policy required identification but non-government identification, including a "Life Skills ID", and photocopied ID was accepted. Mr. Richardson felt that the new policy was unduly restrictive and effectively prevented many of his guests from visiting because they did not have, and could not afford, government identification.

[5] Accordingly he applied to the Residential Tenancy Branch for an exemption from the guest identification Policy.

[6] On May 12, 2014 a hearing by conference call took place in the absence of the petitioner, although it had filed materials. No enquiry appears to have been made as to why it was not in attendance.

[7] P.J. Nadler, the Arbitrator, alluded to the petitioner's submission:

> The landlord claimed in its materials that the City of Vancouver Single Room Accommodation By-Law No. 8733 by law 5.2 supports this requirement. That by-law states:
>
> Maintenance of records
>
> 5.2 An owner must maintain within the building, for the then current calendar year and three immediately preceding calendar years, records pertaining to each designated room including:
>
> (c) guest ledgers

[8] The Arbitrator referred to s. 30 of the *Residential Tenancy Act*, which reads:

> 30 (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
> (b) a person permitted on the residential property by that tenant.

[9] Arbitrator Nadler referred to another decision RTB Miller, No. 775605 which included the following observations:

> I accept the tenant's undisputed testimony. The tenant has a right to have guests and section 30(1)(b) of the *Act* prohibits the landlord from restricting access to the tenant's guests.
>
> I find that the landlord has no right to restrict access to the rental unit and I order the landlord to permit access by all of the tenant's guests. I further find that the landlord has no right to retain the ID of the tenant's guests. I order the landlord to stop his practice of seizing ID and I further order him to return either to the tenant or his guests, the ID of the tenant's guests which he currently has in his possession.

[10] He found that decision persuasive:

> While I am not bound by this decision because the facts and parties are not identical, I do however find it very persuasive. I too find that the requirement of the applicant/tenant's guests to produce "government-issued photo identification" is an unreasonable restriction of the tenant's guests access pursuant to section 30(1)(b). I further find that the City of Vancouver by-law 5.2 does not require that a tenant's guests must produce photo ID. The by-law only makes it mandatory for a landlord to keep a guest ledger.
>
> I order the landlord to permit the tenant to have guests without any requirement that they produce photo or any identification.
>
> Conclusion
>
> The landlord is ordered to stop restricting access to the tenant's guests by requiring any form of identification documents.

[11] The petitioner sought a review on the grounds that the London Hotel had experienced a water leak on the day of the hearing that made it impossible for its representative to attend.

[12] A review hearing was ordered. In the particular world of the Residential Tenancy Branch, a hearing that proceeds in the absence of one of the parties, although that party was prevented from attending for good reasons, is not set aside, but continues as an order subject to review, not a new proceeding.

[13] On August 5, 2012, Arbitrator Vaughan convened a Review Hearing. This hearing proceeded in person. Things got off to a rocky start with the Arbitrator proceeding in the absence of Mr. Richardson, who was 12 minutes late.

[14] The Arbitrator noted that the question to be decided was whether the May 12, 2014 decision should be confirmed, varied or set aside. He described the petitioner's case as follows:

> In support of this policy, the landlord submitted that the neighbourhood was known for high levels of unemployment, homelessness, drug use, crime and violence. The landlord submitted further that this requirement was necessary as they were unique in providing a supportive housing environment designed to ensure safety and security, and that-they provided a harm reduction zone in a dangerous neighbourhood. The landlord argued that many of their residents struggle with addiction and are habitual drug or alcohol users and that they provide safe housing to the "hard to house" population.
>
> The landlord submitted that this policy was put into place, in part, due to a double shooting in one of the properties managed by the landlord.
>
> The landlord further supported their position by submitting that there has been a marked decrease in violence in their residential properties and that the policy was enacted in conjunction with the Vancouver Police Department, with the support of BC Housing who provides funding.
>
> The landlord submitted further that the City of Vancouver passed a bylaw regarding single room occupancy accommodations, to protect this vulnerable part of the city, which required the property owners to maintain a guest ledger registry. The landlord provided a copy of this bylaw.
>
> The landlord argued that they do not consider the new policy to be restrictive or unreasonable, given the composition of the area and the "unique demographic" they house.
>
> The landlord's relevant documentary evidence included, but was not limited to, a letter from BC Housing information about the landlord's services and mission, a critical incident report, a copy of the house rules, and guidelines for safe and secure living in a single room occupancy accommodation.

[15] The Arbitrator described Mr. Richardson's case as follows:

> The tenant made clear he was seeking only relief from this new policy for himself and his guests.
>
> The tenant argued that the requirement to provide an identification card was an undue hardship on his guests, due to the structure of their lifestyle, which made possession of their identification card difficult. The tenant submitted further that the identification cards were not free and that it was difficult to obtain duplicates.

The tenant submitted further that there has not been any issues regarding his guests, but they have now been blocked from visiting him as their Life Skills card was no longer acceptable.

[16] The Arbitrator ruled as follows:

Analysis

The tenant has requested an order requiring the landlord to comply with the Act, in this case, section 30(1)(b). The landlord argued that restricting or limiting all tenants' guests to individuals who are able to present a government issued identification card a reasonable requirement considering the location and composition of the neighbourhood, due to what the landlord called a "unique demographic".

I, however, find that this "unique demographic" is entitled to and to receive all rights and privileges afforded tenants under the Act. I therefore find the landlord has submitted no evidence supporting that restricting this tenant's guests to be reasonable. I also accept the evidence of the tenant that it would create a hardship for his guests to produce a government issued identification card each visit to further conclude that the restrictive access is unreasonable.

I also do not accept that the City's bylaw required that the tenant's guest produce a government issued identification card, only that they maintain records of guests.

I therefore find the landlord's policy of requiring the tenant's guests to produce a government issued identification card upon each visit infringes upon the tenant's right to have guests visit him at his place of residence, and I therefore do not accept that the landlord's restrictions are reasonable.

On this basis, I confirm the original Decision of the original Arbitrator dated May 12, 2014, pursuant to section 82(3) of the Act, and it remains valid and enforceable, It must be noted that I have not reinstated the original Decision of May 12, 2014, as the reviewing Arbitrator in their Decision of June 2, 2014, granting this 'review hearing, did not suspend the Decision of May 12, 2014.

As I have confirmed the original Decision, the landlord remains ordered to permit the tenant to have guests without any requirement that they produce a photo or identification.

Conclusion

The original Decision of May 12, 2014, is confirmed and it remains valid and enforceable.

II

[17] The petitioner submits that:

The Arbitrator exercised her discretion under s. 30(1)(b) of the *Residential Tenancy Act* in a patently unreasonable fashion, in particular, by arbitrarily

finding that the Petitioner submitted no evidence supporting the reasonableness of the Policy.

The Arbitrator exercised her discretion in a patently unreasonable fashion by failing to consider or apply the statutory requirement of reasonableness in s.30(l)(b) of the *Residential Tenancy Act*, which states that a landlord must not unreasonably restrict access to the residential property by a person permitted on the residential property by the tenant.

The Arbitrator failed to take the statutory requirement in s. 77(l)(c) of the *Residential Tenancy Act* into account when reaching her decision, as she did not include the reasons for her decision.

[18] The petitioner notes that at the Review Hearing it was permitted to submit new evidence including:

(a) background information about the Petitioner and the demographics of its tenants. The evidence established the Petitioner's role in providing safe, secure and respectful housing, including single room occupancy hotels, for hard-to-house tenants.

(b) evidence that its housing provides a harm reduction zone in a neighbourhood with high levels of homelessness, unemployment, crime, violence, sex work and drug use. It presented evidence that it developed the Policy to ensure the safety of all at-risk individuals living in its SRO buildings while also adhering to the *Residential Tenancy Act,* and that many tenants were relieved that the Policy protects them from drug dealers, sex offenders or other predators.

(c) evidence that it had implemented a predecessor identification policy for guest before the current Policy came into effect Under the old policy, guests were allowed to present photocopies of I.D. or Life Skills identification cards acquired from the Life Skills Resource Centre, which could be obtained from the Centre without proof an individual's actual name or birthday. The Petitioner gave evidence that an underage visitor had accessed the Petitioner's buildings in contravention of its rules with a fake identification card from the Life Skills Resource Centre.

(d) evidence that it provided tenants with three months' advance notice of the Policy and of the types of identification that would be accepted. The Petitioner also presented evidence that it gave information to tenants on ways they and their guests could obtain free identification cards from the B.C. government.

(e) a letter from B.C. Housing, which provides operating funding to the Petitioner through Operating Agreements that address key operational metrics, including tenant selection, and the nature and scope of the support services provided by the Petitioner. In the letter, B.C. Housing affirmed its support for the Policy as a measure to protect tenants who may be vulnerable, to being preyed upon because of drug and alcohol addictions, mental illnesses, or other concurrent disorders.

> (f) evidence from [from BC Housing] that the Policy was updated to require government-issued I.D. (rather than any type of I.D., as previously required by the Petitioner) in response to a number of serious incidents, including a shooting in a building managed by the Petitioner in which a guest provided false identification. A Critical Incident Report regarding this crime was included in the evidence.

[19] The Petitioner submits that the Arbitrator acted arbitrarily in the face of such evidence in saying that the petitioner "submitted *no evidence* supporting that restricting this tenant's guests to be [sic] reasonable"; that the Arbitrator exercised her discretion in a patently unreasonable fashion in failing to consider the statutory requirement of reasonableness in s. 30(1)(b) of the *Residential Tenancy Act,* and that the Arbitrator failed to take the statutory requirements of s. 77(1)(c) into account by failing to give reasons for her decision.

[20] I think the petitioner's submission is almost entirely at cross-purposes to what the Arbitrator decided.

[21] It is clear from the Arbitrator's reasons that the issue was, in her view, narrow. She considered that the question posed by the tenant was whether he and his guests should have to live with this restriction in light of s. 30(1)(a) and (b) of the *Residential Tenancy Act.* The Arbitrator focussed on the fact that there was no evidence that restricting "*this* tenant's guests" was reasonable. That was a fair summary of the evidence if the focus was on Mr. Richardson. There was no evidence that he or his guests were ever a problem. The evidence was all directed toward justifying a blanket policy based on general concerns and certain anecdotal examples of trouble in the neighbourhood. The Arbitrator's decision can only have been unreasonable if her focus on the individual circumstances of Mr. Richardson was wrong, in one or more of the myriad ways the decisions of Administrative tribunals can be described as reviewable.

[22] I think it most useful to look at the context in which the decision is set. Among the materials Mr. Richardson had submitted were a RTB decision in the matter of the Bourbon Hotel July 18, 2014 file No. 821231. The case considered s. 30(1)(a) and (b):

> With respect to the dispute before me, the tenant is largely relying upon section 30(1) of the Act which provides:
>
> Tenant's right of access protected
>
> 30 (1) A landlord must not unreasonably restrict access to residential property by
>
> (a) the tenant of a rental unit that is part of the residential property, or
> (b) a person permitted on the residential property by that tenant.
>
> [my emphasis added]
>
> In interpreting legislation, each word has meaning and must be considered. Included in section 30(1) is the word "unreasonably". I interpret the inclusion of this word to mean that a landlord may restrict access if it is reasonable to do so in the circumstances.

[23] The Arbitrator in that case was concerned about a requirement of identification, in the absence of a reasonable basis for the restriction.

> Nevertheless I am concerned about the requirement for a guest to produce identification in any form so as to gain access to the residential property. It was acknowledged by the landlord that the request for identification is based upon an internal policy and not based upon a legal requirement. While I appreciate the issues the landlord contend with at the property, I find the requirement to produce photographic identification unreasonably restricts access to guests who wish to visit a tenant residing at the property and do not have identification with them. Therefore, I order the landlord to cease requiring guests to produce identification before they may be permitted access to the residential property.

[24] The Arbitrator determined that it would be reasonable to restrict a tenants' guest access on an individual basis if there was sufficient reasons:

> It is important to note that the orders issued in this decision deal specifically with the landlord's practice of requiring identification from guests. Despite these orders the landlord retains the right to restrict access to a tenant of a guest where it is reasonable to do so in the circumstances as provided under section 30(1) of the Act. To illustrate, where a landlord has sufficient reason to believe that a person is likely to cause harm to a person or property at the residential property, it may be reasonable for the landlord to restrict access to that person. As a caution to the landlord where the landlord's decision to restrict access is called into question, it is reasonable to expect that the landlord may be required to demonstrate the reason(s) for denying access.

[25] In the original decision in this case before Arbitrator Nadler, the quotation from a decision by Arbitrator Miller in file No. 775605 is to the same effect. While such decisions are not precedential, and each arbitrator is free to decide on his or

her own interpretation, consistency in the approach to a particular right or provision may be of assistance in determining the reasonableness of a given outcome.

III

[26] The *Residential Tenancy Act* has been described in *Berry v. British Columbia Residential Tenancy Act Arbitrator* 2007 BCSC 257 at para. 11 as a "statute which seeks to confer a benefit or protection upon tenants". In that case Williamson J. went on to say:

> While the *Act* seeks to balance the rights of landlords and tenants, it provides a benefit to tenants which would not otherwise exist. In these circumstances, ambiguity in language should be resolved in favour of the persons in that benefited group[.]

[27] It is clear from its text that s. 30(1)(a) and (b) are meant to place a tenant in a position that is free of unreasonable interference. Section 9 of the schedule to the *Residential Tenancy Regulation,* B.C. Reg. 249/208 reinforces this:

> Occupants and guests
>
> 9.(1) The landlord must not stop the tenant from having guests under reasonable circumstances in the rental unit.
>
> (2) The landlord must not impose restrictions on guests and must not require or , accept any extra charge for daytime visits or overnight accommodation of guests,
>
> (3) If the number of occupants in the rental unit is unreasonable, the landlord may discuss the issue with the tenant and may serve a notice to end a tenancy. Disputes regarding the notice may be resolved by applying for dispute resolution under the Residential Tenancy Act.

[28] This has been interpreted as a personal right. In RTB decision 1043, July 2010, the situation of a landlord attempting to put in place a systemic rule limiting access between certain hours was ruled to be unreasonable:

> I find that under the current process a tenant is at liberty to welcome any visitor but after hours this liberty is contingent upon the tenant having advanced knowledge that the individual would be arriving at the precise time and being on hand to escort the visitor. So the question before me now is:
>
> Is it reasonable to impose a system in which the tenant is required to know in advance who will be visiting and when the visitor is going to arrive and then,

> after that, be required to await in person at the entrance to "escort" their guest?
>
> On the other hand, the problem for this landlord if visitors were permitted to enter at will on their word, is that the landlord would have no means to ensure that a visitor arriving, particularly after hours, actually intended to visit the tenant identified or whether they were there for another nefarious purpose.
>
> However, the problem of preventing unauthorized entry to residential buildings is a universal issue for every landlord in the province operating multi-unit complexes. Concerns about thefts, assaults, vandalism, squatters, drug activity or gangs are not unique to this landlord nor this complex. Financial challenges are also a common limitation. However, landlords have been required to find a means by which security can be ensured without violating the Act or unreasonably restricting a tenants right to have visitors.
>
> I find that any system, however fairly and consistently administered, that entails having a third party send a tenant's arriving guest away without the tenant's knowledge, would constitute an unreasonable restriction unless the tenant was fully agreeable to this process. This tenant is not.
>
> I do not accept the landlord's argument that restricting visitors is critical to avoid disturbing other residents. "Business hours" are not necessarily applicable to every individual's lifestyle. Whether the tenant is a shift-worker or merely likes to keep odd hours, a tenant is entitled to possession of the rental unit for 24 hours of every day and under the Act is entitled to enjoy their rental unit as they see fit, provided they do not significantly interfere with or unreasonably disturb others. Under the Act, a tenant is also responsible for the conduct of his or her guests. If others are unreasonably disturbed by a tenant or by persons permitted in the unit by the tenant, there are provisions under the Act to deal with this.

[29] In *Rutherfoord v. Neighbourhood Housing Society*, 2012 BCSC 2177 this court addressed a situation where an Arbitrator accepted the proposition that the nature of the neighbourhood and the *tenants* affected the landlord's duty to ensure that tenants were afforded "quiet enjoyment" of their premises. The Arbitrator had said:

> The evidence of the landlord that I accept is that these individuals move into this building from shelters or on the recommendation of their outreach workers. They live in the neighbourhood because it is affordable to them and they are nearer to the services that can support them. Neighbours can find themselves in conflict in any type of accommodation but I find it reasonable and probable to assume that conflict may be exacerbated in a building where many of the tenants suffer from health problems and addictions. For this reason, the landlord warns prospective tenants as to the nature of tenants that reside in the building.

[30] On review this court, per Bruce J. observed at para. 7:

> 7. It appears that the arbitrator, in violation of this provision of the Act, attached a proviso similar to that contained in s. 32 relating to the provision of decoration and repair of premises, that the right varies with the nature and character and location of the rental unit. In my view, that is a patently unreasonable interpretation of the Act and, on the face of the record, it appears rather discriminatory against the tenant. A tenant who has limited resources and is therefore forced into a neighbourhood that may have problems with neighbours is entitled to the same standard, according to s. 28 of the *Residential Tenancy Act,* that is accorded to all other tenants. It seems to me that the arbitrator, if he in fact interpreted s. 28 in this fashion, has engaged in patently unreasonable reasoning. More likely, it is apparent from the lack of reference to s. 28 and a reference to the right to be free from unreasonable disturbance that the arbitrator failed to consider s. 28 at all.

[31] Mr. Richardson submits that Arbitrator Vaughan's reasoning in this case is consistent with the reasoning of Bruce J. in *Rutherfoord*.

[32] While the examples drawn from other Residential Tenancy decisions are not binding, the illustrations given here show an approach to s. 30(1)(a) and (b) of the *Residential Tenancy Act* that is focussed on the individual, and on whether anything done by the *individual* justifies a reasonable restriction by the landlord. The *Rutherfoord* decision is of course, of binding effect.

[33] It is manifest that Arbitrator Vaughn understood the position of the petitioner. She set out the gist of the argument succinctly, but adequately. The issue in this case is simply whether a blanket "policy restriction" on tenants is a reasonable restriction under the *Residential Tenancy Act.* The Arbitrator's election to focus on the individual tenant is also clear. She says "I find that this 'unique demographic' is entitled to receive all rights and privileges afforded tenants under the *Act".* This is a clear rejection of the petitioner's principal submission that conditions in the area of the city justify, as "reasonable," a policy decision applicable to all tenants rather than the individualized approach taken by the Arbitrator.

[34] This approach in turn, if it is correct, justifies the finding that "the landlord has submitted *no* evidence supporting that restricting *this* tenant's guests [is] reasonable.

IV

[35] Mr. Richardson quotes from *Kinexus Bioinformatics Corp. v. Asad,* 2012 BCSC 33 at paras. 12-13 for a description of the role of the court on Judicial Review:

> 13. The court on judicial review does not sit as an appellate court. It does not retry the matters decided by the tribunal. It is not the court's role to review the wisdom of the tribunal's decision. The court cannot re-weigh the evidence, make findings of credibility or substitute its views of the merits for that of the tribunal. The court's role is limited to determining whether the tribunal has acted, and made its decision, within its statutory authority or jurisdiction: Ross v. British Columbia (Human Rights Tribunal) (1 May 2009), Vancouver L042211 (B.C.S.C.); Tse v. British Columbia (Council of Human Rights), [1991] B.C.J.
> No. 275 (QL) (S.C.). (paras 12-13)

[36] The parties appear to agree on the standard of review. The petitioner's submissions cast the Arbitrator's alleged errors as patently unreasonable exercises of discretion unsupported by adequate reasons. Section 78.1 of the *Residential Tenancy Act* provides that s. 58 of the *Administrative Tribunals Act* applies, and s. 84.1 is a clear privative clause. Section 58 reads:

> Standard of review if tribunal's enabling Act has privative clause
>
> 58 (1) If the tribunal's enabling Act contains a privative clause, relative to the courts the tribunal must be considered to be an expert tribunal in relation to all matters over which it has exclusive jurisdiction.
>
> (2) In a judicial review proceeding relating to expert tribunals under subsection (1),
>
> (a) a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction under a privative clause must not be interfered with unless it is patently unreasonable,
>
> (b) questions about the application of common law rules of natural justice and procedural fairness must be decided having regard to whether, in all of the circumstances, the tribunal acted fairly, and
>
> (c) for all matters other than those identified in paragraphs (a) and (b), the standard of review to be applied to the tribunal's decision is correctness.
>
> (3) For the purposes of subsection (2) (a), a discretionary decision is patently unreasonable if the discretion
>
> (a) is exercised arbitrarily or in bad faith,
> (b) is exercised for an improper purpose,
> (c) is based entirely or predominantly on irrelevant factors, or
> (d) fails to take statutory requirements into account.

[37] Mr. Richardson comments that the determination as to whether the petitioner's policy is reasonable or not is a discretionary call and cannot be interfered with unless it is patently unreasonable. He also submits that deference is owed a tribunal interpreting its "home" status, as stated in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association* [2011] S.C.J. No. 61:

> [...] unless the situation is exceptional [...], the interpretation by the tribunal of its own statute or statutes closely related to its function, with which it will have particular familiarity' should be presumed to be a question of statutory interpretation subject to deference on judicial review.

V

[38] I do not think it is necessary to spend much time on the arcane ins-and-outs of administrative law. The petitioners' complaint that the Arbitrator's finding that the petitioner had submitted no evidence was arbitrary or an error of law is untenable. The Arbitrator determined that the relevant evidence would be evidence that pertained to reasonable limitations on the tenant, based on his behaviour or that of his guests. This was, in my view, not a patently unreasonable, nor an unreasonable, nor, indeed an incorrect view of the law. Given the intent and purpose of the *Residential Tenancy Act* as described in *Berry* (see para. 26 above) a tenant specific view of the meaning of the statute was fully justified.

[39] In submitting that the Arbitrator failed to consider and apply the statutory requirement of "reasonableness" the petitioner is only arguing that the Arbitrator was wrong because she did not agree with the petitioner's position. The Arbitrator clearly rejected the notion that the statutory protection afforded to tenants under S. 30(1)(a) and (b) could be limited or abrogated by landlords implementing "policy" decisions. If the meaning of reasonable restrictions was intended to include general policies adopted by landlords, regardless of the individual situation or behaviour of the tenant, the statute could have said so. It does not, and I am of the view that the Arbitrator correctly assessed the intention of the statute to be to protect individual tenants and their guests from unreasonable interference by landlords. It would be wrong in principle to permit the protection offered by the statute to be eroded by *ad*

hoc non-statutory "policy" instruments promulgated by landlords, however well-intentioned.

[40] The fact that the Arbitrator did not address the petitioner's extensive reasons justifying the policy in any particular detail was not a failure to give adequate reasons in the circumstances. The reasons fully explained her substantive view of what was relevant to an outcome that was justified applying the law to the facts. Not only can I not say the Arbitrator was patently or otherwise unreasonable I cannot say she was wrong.

[41] The petition is accordingly dismissed with costs.

"T.M. McEwan"

THE GLOBE AND MAIL

B.C. court rules for tenant in ID dispute

SUNNY DHILLON >
VANCOUVER
PUBLISHED MAY 10, 2015

A newer building, left, with businesses on the street level and condos above stands next to an older building in Chinatown in Vancouver, B.C., on Thursday January 15, 2015.
DARRYL DYCK/THE GLOBE AND MAIL

A company that manages single-room occupancy buildings in Vancouver's Downtown Eastside has suffered a defeat in B.C. Supreme Court, but it says it will not change the policy that sparked the case.

Jamie Richardson, who was a resident of the London Hotel, an SRO run by Atira Property Management, challenged a policy that requires guests of tenants to show government-issued identification. He said the policy prevented many of his guests from visiting because they did not have and could not afford such ID.

Atira argued the neighbourhood is known for high levels of crime and violence and the policy was needed to ensure the safety of residents – though an arbitrator with the B.C. Residential Tenancy Branch ruled against it last May, and a second arbitrator upheld that decision in August.

Atira then petitioned B.C. Supreme Court, with a judge late last week also reaffirming the arbitrator's decision.

"… The petitioner is only arguing that the arbitrator was wrong because she did not agree with the petitioner's position," Justice Mark McEwan wrote.

Janice Abbott, Atira's chief executive officer, in an interview Sunday said the ruling only applied to one case and the policy itself will not be scrapped.

"It's not a ruling against the policy, it's a ruling with respect to that tenant. And so, nothing will change for us," she said.

When asked if the ruling could be seen as a precedent, allowing other tenants to seek the same recourse, she said, "We're not at this point concerned about the ruling."

Ms. Abbott said Mr. Richardson is also no longer residing at the building.

The policy requiring guests to produce government-issued ID was introduced on March 31, 2014. Atira had previously required guests to show some sort of ID but it did not have to be government issued, and photocopied ID was acceptable. Guests were also allowed to show a card known as a Life Skills ID, which could be obtained through a community resource centre.

Mr. Richardson applied for an exemption to the new guest-identification policy shortly after it was introduced.

At the arbitrator's hearing last May, Atira argued its policy was supported by a City of Vancouver bylaw that says an SRO owner must maintain guest ledgers.

However, the arbitrator said the civic bylaw does not require guests to produce photo ID and the province's Residential Tenancy Act says a landlord must not unreasonably restrict access to a property. The arbitrator ordered Atira to let Mr. Richardson have guests without requiring them to produce ID.

Atira then sought a review hearing, which was held in August. The company, at the review hearing, cited the high levels of crime and violence in the neighbourhood. It said the policy was put in place, in part, because of a double shooting at another Atira building. It said the policy had led to a decrease in violence and was enacted in conjunction with the Vancouver Police Department and provincial agency BC Housing.

The second arbitrator, in upholding the first arbitrator's decision, said the landlord submitted no evidence that restricting Mr. Richardson's guests was reasonable.

Atira, in its B.C. Supreme Court petition, said the first arbitrator was patently unreasonable. It also said a visitor had accessed its buildings using a fake Life Skills ID, and many residents were relieved the new policy would better protect them.

Justice McEwan, in his ruling, said the arbitrator's decision focused on Mr. Richardson's circumstances and was not unreasonable or incorrect.

Atira manages 20 buildings in all.

'Equality for us all'

An arbitrary application of the law discriminates against drug users, says advocate

By Amanda Boggan

The Downtown Eastside holds an ignominious distinction in the public imagination—that of being home to a greater number of persons with disabilities than any other neighbourhood in Canada. But these people are often referred to by others, and sometimes by themselves, as "addicts." This term dehumanizes the person. It refers to them as someone with a perceived or diagnosed medical illness based on the substance they're dependent upon.

What is equality?

Canada was one of the first countries to include equality for persons with disabilities in its constitution. Section 15 (1) of the Charter of Rights and Freedoms provides that persons with disabilities are to be treated with equality to other persons.

And yet section 15 of the Charter is not as safely substantive as we would want the Canadian measure of equality to be.

In Andrews vs. Law Society—the first section 15 case to reach the Supreme Court of Canada—the court ruled that it requires a substantive equality approach, emphasizing the effects of laws and policies on individuals subject to stereotyping and historic disadvantage.

The substantive measure of equality as interpreted under the Charter demands that persons with disability be treated in accordance with a social model of disability—and in this light, persons with addiction are entitled to equality through the legal duty to accommodate their difference in employment, services, and housing as well.

It is contended here that respect for their basic human rights be in the context of equality before the law. When people's agency is restricted arbitrarily, this has a dire effect on how that person is viewed and treated by others in society.

It seems impossible not to perceive clearly that certain persons with disability as addiction have health problems—if we look. To ameliorate the onslaught of dehomed residents as a result of neighbourhood gentrification in the Downtown Eastside, some residents (not all, as there is a shortage of housing) have been provided with what is termed supportive housing. Under the city plan, a property developer must allocate 20 per cent of new developments to housing low-income residents. (Although there are always loopholes and how much time and energy can the city devote to the scrutiny of ameliorative programs?)

Tenancy rights

The government contracts non-profits to manage the supportive and low-income housing in the Downtown Eastside, in a privatization scheme whereby the non-profit is given subsidies and property in exchange for services. The funder requests that the non-profit agency impose rental policies that include such rules as not allowing the residents to have visitors in their own homes. If tenants are allowed visitors, their visitor must go through a security check point at the front desk, and this involves providing identification that is photocopied and kept as part of a government record database. These practices related to visitors are imposed on the tenants without being prescribed in law and are discriminatory. They are also illegal under the Residential Tenancy Act and in direct contradiction to the tenancy agreement the resident is requested to sign in order to obtain housing.

Residents who are desperate for housing end up agreeing to an unconscionable deal where they must live indefinitely under restrictions similar to those imposed on persons who have left j and are on a conditional release order or bail conditions. These rules are imposed whether they are peaceful persons or not. It i important to note that such a policy also goes against Vancouve Coastal Health policy directives that people who engage with harmful drugs should not use while alone as a result of risk of overdose. And there is currently a public health emergency orde imposed on the province as a result of the number of overdoses that have occurred, though no details have been provided yet.

The people who identify or who are diagnosed as have an addiction are being placed in supportive housing where they are compelled to sign a tenancy addendum form. It states they can be evicted without notice if they engage in activities with the substances that they have severe and chronic addiction to while in their housing units.

This arbitrary distinction puts drug users at a relative disadvantage to persons addicted to alcohol who may live in the unit next door by effectively stripping them of their rights.

The consequence of removing the notion of personhood from a class of persons has impacts beyond the actual effect on the pers

The issue impacts equality for us all.

Amanda Boggan is the former president of the Downtown Eastside Neighbourhood Council.