

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

Between:

Don Smith

Petitioner

And:

Betty Jones

Respondent

PETITION TO THE COURT

ON NOTICE TO:

Betty Jones
4321 GHI Drive
Vancouver, BC V1V 1V1

Director
Residential Tenancy Branch
400 – 5021 Kingsway
Burnaby, BC V5H 4A5

Deputy Attorney General
Ministry of Justice
PO Box 9290 Stn Prov Govt
Victoria, BC V8W 9J7

This proceeding has been started by the petitioner for the relief set out in Part 1 below.

If you intend to respond to this petition, you or your lawyer must

- (a) file a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) serve on the petitioner
 - (i) 2 copies of the filed response to petition, and
 - (ii) 2 copies of each filed affidavit on which you intend to rely at the

hearing.

Orders, including orders granting the relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) if you reside anywhere within Canada, within 21 days after the date on which a copy of the filed petition was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed petition was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed petition was served on you, or
- (d) if the time for response has been set by order of the court, within that time.

(1) The address of the registry is:

Law Courts, 800 Smithe Street, Vancouver, BC, V6Z 2E1

(2) The ADDRESS FOR SERVICE of the petitioner is:

Don Smith,
1234 ABC Street
Vancouver, BC V1V 2V2

Fax number address for service (if any) of the petitioner: N/A

E-mail address for service (if any) of the petitioner: N/A

(3) The name and office address of the petitioner's lawyer is: N/A

Claim of the Petitioner

Part 1: ORDER(S) SOUGHT

1. The petitioner applies for an order setting aside the June 25, 2010 decision of Arbitrator H. Hetter (the "Decision"), which upheld a Notice to End Tenancy respecting 1234 ABC Street, Vancouver, BC (the "Rental").

2. The petitioner applies for an Order setting aside the Order of Possession issued by Arbitrator H. Hetter, dated June 25, 2010, respecting the Rental (the "Order of Possession").
3. The petitioner applies for an Interim Order staying the Decision and the Order of Possession until the final disposition of this judicial review, pursuant to s. 10 of the *Judicial Review Procedure Act*.
4. Costs.
5. Such other order as the court deems just.

Part 2: FACTUAL BASIS

1. The petitioner is a tenant and resides at 1234 ABC Street, Vancouver, BC. He pays \$575 per month in rent.
2. The petitioner's landlord is the respondent Betty Jones (the "Landlord").
3. On May 13, 2010 the petitioner was served with a 1 Month Notice to End Tenancy for cause.
4. The petitioner did not know why he was being evicted.
5. The petitioner applied to the Residential Tenancy Branch to cancel the Notice to End Tenancy on May 17, 2010.
6. The petitioner never received any documents or evidence from the Landlord.
7. A dispute resolution hearing was held by telephone conference call on June 25, 2010. Shortly after the hearing started, the Arbitrator and the Landlord started discussing documents submitted as evidence by the Landlord.
8. The Arbitrator indicated that the Landlord had submitted copies of letters sent to the petitioner requesting that he stop smoking in the Rental.
9. The petitioner had never received any such letters. During the June 25, 2010 hearing, the petitioner told the Arbitrator that he did not have copies of the warning letters and had not received the Landlord's evidence.
10. The petitioner testified that he was never told that he was not allowed to smoke, and never received any warnings or requests to stop smoking.
11. The Arbitrator issued the Decision on June 25, 2010 upholding the Landlord's 1 Month Notice to End Tenancy for cause and granted the Landlord an Order of Possession, effective July 31, 2010.

Part 3: LEGAL BASIS

1. The petitioner will rely on the following:

- (a) *Residential Tenancy Act*,
- (b) *Judicial Review Procedure Act*,
- (c) *Administrative Tribunals Act*,
- (d) Rules of Court, and
- (e) The inherent jurisdiction of the court.

2. The legal grounds on which this petition is brought are as follows:

- (a) The Arbitrator failed to act fairly in all the circumstances by making a decision based on evidence that was not disclosed to the petitioner. As a result, the petitioner did not know the case against him or have an opportunity to respond to it.
- (b) By doing so, the Arbitrator made a reviewable error and breached the rules of procedural fairness.

MATERIAL TO BE RELIED ON

1. Affidavit #1 of Don Smith made July 5, 2010.

The petitioner estimates that the hearing of the petition will take 90 minutes.

Date: July 5, 2010



Signature of
 petitioner lawyer for petitioner
 Don Smith

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this petition

with the following variations and additional terms:

.....

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Date:

.....
Signature of [] Judge [] Master