

Sample Chambers Record

What is in this guidebook?

This guidebook is an example of a chambers record in a judicial review case, where the application is heard in chambers. It assumes that you have prepared all the necessary court documents for your case and have arranged the hearing date. If you are just commencing legal proceedings, read the guidebook called "Starting a Civil Proceeding in Supreme Court." It will give you important information about the type of documents you need to prepare and the people who should be part of your lawsuit.

The sample case in this chambers binder involves a petitioner's application to the Supreme Court to review the arbitrator's decision in a residential tenancy dispute. The petitioner and respondent were both representing themselves in court.

Note that you can bring a chambers application in other types of legal proceedings started with a writ of summons instead of a petition. You should consult with a lawyer to learn about the kind of information to include in your chambers record. Information about where you can get legal advice is provided on the next page.

How can this guidebook help me?

This guidebook provides you with blank forms to help you prepare a chambers record in a judicial review case. Each blank form is followed by an example of a completed form. Of course, the facts of your own case will be different and you will have to complete your own forms based on those facts. However, this guidebook provides you with an example of how other unrepresented litigants prepared a chambers record in a residential tenancy dispute.

You can find other information about judicial review of residential tenancy arbitration hearings in the publication section of the Community Legal Assistant Society's website (<http://www2.povnet.org/clas>).

What is a chambers record?

A chambers record must be prepared for any hearing in chambers that will last more than 30 minutes. The person bringing the chambers application is responsible for preparing and filing the chambers record.

A chambers record is used by the judge hearing your case. It helps the judge understand the history and facts of your case and find material that you are referring to during the hearing. It is a bound book (usually a 3-ring binder, with numbered tabs) that includes all the court documents that are relevant to your chambers application.

Warning

This is an example of a chambers record. It is an example only – it contains information that is not relevant to your case and it will be misleading if you follow it exactly.

This example does not provide you with legal advice in your particular case and is not intended to be a substitute for legal advice. If you are representing yourself in court, you should consider getting legal advice about your case (information provided below).

The law (Acts, Regulations, Rules of Court, court procedures) can change. You should always check with the court registry or a lawyer to confirm that the information contained in this example is current.

The Supreme Court Self Help Information Centre does not guarantee the accuracy of the information contained in this guidebook and is not responsible for errors that may occur when you prepare your own chambers record.

The binder – use a plain coloured, sturdy 3-ring binder, with tabs.

On the cover, paste a page with the following information:

- the style of proceeding;
- the words “chambers record” of the party who prepared the record (i.e., the petitioner, respondent, plaintiff, or defendant);
- on the bottom, put your name, address, telephone number, and statement that you are representing yourself. Also put the name of the other party (or his or her solicitor);
- the date of the hearing;
- the place of the hearing;
- the name of the person who prepared the chambers record.

The contents – include each of these documents, on consecutively numbered pages, behind separate tabs:

- an index;
- outlines from both parties;
- a copy of the notice of motion or petition;
- a copy of each respondent’s response;
- a copy of each party’s affidavits and exhibits;
- written legal arguments, if any (note: they are mandatory if the hearing is estimated to take over 2 hours);

Do not include copies of court cases or statutes.

File the chambers record – you must file the chambers record in court. In the Vancouver court registry, you must file the chambers record between 9:00 a.m. on the second day before the hearing and noon on the day before the court hearing. Check with other registries for filing requirements.

Certain documents should be attached to the chambers record that is filed in the court registry (usually attached by an elastic band). Attach two copies of:

- the filed copy of the notice of hearing; and
- a copy of the relief claimed in the petition or notice of motion, marked or highlighted to show what relief will be sought in court.

Deliver the index – you must deliver a copy of the chambers record index to each respondent by noon the day before the hearing. You do not have to provide them with a copy of the entire chambers record.

Additional copies – make an extra copy of the chambers record for yourself so that you can use it in court.

Where can I get information about court procedures?

You can learn about procedures in the Supreme Court by reading these other guide-books. They are available at the Supreme Court Self Help Information Centre and on its website at www.supremecourtsselfhelp.bc.ca:

- *Guide to a Successful Interview with a Lawyer*
- *Common Supreme Court Terms*
- *Overview of the Supreme Court Civil Process*

- *Starting a Civil Proceeding in Supreme Court*
- *Defending a Civil Proceeding in Supreme Court*
- *Alternatives to Trial*
- *Preparing for Trial and Trial in Supreme Court*
- *Discovery Process*
- *Summary Judgment and Summary Trials in Supreme Court*
- *Fast Track Litigation in Supreme Court — Rule 66*
- *Expedited Litigation in Supreme Court — Rule 68*
- *A Guide to Preparing Your Affidavit*
- *Chambers Applications*
- *Judicial Review*

You can also get information about preparing affidavits and chambers records by looking on the Community Legal Assistant Society’s website (<http://www2.povnet.org/clas>).

Where can you get help with your case?

This guidebook provides general information about preparing a chambers record. It does not explain the law. Court staff (and this guidebook) can only give you legal information, not legal advice. They will tell you how to do something, but not whether you should do it or why you might want to do it. Legal advice must come from a lawyer.

The BC Supreme Court Self-Help Information Centre (www.supremecourt-selfhelp.bc.ca) provides legal information, education, and referral services for family and civil (non-family) cases for unrepresented litigants who are involved in civil actions in the Vancouver location of the Supreme Court of British Columbia.

Legal Advice

You may be eligible for free (pro bono) legal advice. Services are listed under legal advice on the website for the BC Supreme Court Self-Help Information Centre.

Rules of Court

The Rules of Court govern the conduct of litigation in the Supreme Court of BC. Not only do they ensure fairness to all parties involved in a lawsuit, they will guide you through every step of your case and set time limits for when certain steps must be done. You can find these Rules at the courthouse library, or on the court’s website at www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms.)

Forms

Official court documents (called court forms) must be used when you bring a dispute to court. You can print out blank forms for use in your lawsuit from the Supreme Court website. Go to www.courts.gov.bc.ca. (Once you are on the Supreme Court page, click on the link for Supreme Court Act, Rules and Forms).

For information about family law claims, go to www.familylaw.lss.bc.ca.

Before you start your claim, you should consider talking to a lawyer to help you understand the law and the procedures that might apply to your case. You may be eligible to obtain free (pro bono) legal advice.

If you do not have a lawyer, you will have to prepare your case and do the legal research to represent yourself. You will have to do all the things a lawyer would do and it will not be easy. You will need to learn about:

- the court system;
- the law that relates to your case;
- what you and the other side need to prove;
- the possible legal arguments for your case.

You will also need to know about the Rules of Court and the forms that must be used in your lawsuit. If you do not understand these things, you might miss something (i.e. a deadline) and hurt your case.

If you sue and lose, you might be ordered to pay the costs of the other party.

*This is a blank form that you can use to prepare a chambers record index.
It is not available in the forms section of the Supreme Court Rules.*

No. *[action number]*

[location of court registry] Registry

In the Supreme Court of British Columbia

Re: *[describe topic of your case]*

Between:

[name of petitioner]

Petitioner

and

[name of respondent(s)]

Respondent

CHAMBERS RECORD INDEX

Outline

1. Petitioner's outline *[date]*
2. Respondent's outline *[date]*

Petition

3. Petition *[date]*

Responses

4. Response of *[name and date]*
- 5., etc.

Affidavits

6. *[list affidavits by name of deponent and date]*
- 7., etc.

This is an example of a completed chambers record index.

No. X1234
Vancouver Registry

In the Supreme Court of British Columbia

Re: *Judicial Review Procedure Act*

Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE
(Landlord)

Respondent

**CHAMBERS RECORD
INDEX**

Outline

1. Petitioner's outline dated August 24, 2005.
2. Respondent's outline dated August 30, 2005.

Petition

3. Petition to the court dated May 4, 2005.

Response

4. Response of John Doe filed June 6, 2005.

Affidavits

5. Affidavit of Tammy Tenant, dated May 4, 2005
6. Affidavit of John Doe filed June 6, 2005.

This is a blank form for the chambers record outline.

FORM 125 (RULE 51A(12))

No. *[action number]*
[location] Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Re: *[describe topic of your case]*

Between:

[Name]

Petitioner

and:

[Name]

Respondent

OUTLINE

PART I

The following relief will be sought at the hearing:

[Set out the relief to be sought in numbered paragraphs, numbering each paragraph with the same number as is used for the paragraph that claims that relief in the petition or notice of motion, as the case may be].

PART II

Basis for seeking relief:

[Set out briefly the factual and legal basis for the relief that is sought. Citations of relevant case law may be given without extracts].

Dated: *[date]*

[name]

This is an example of a completed outline, prepared by the petitioner.

No. X1234
Vancouver Registry

In the Supreme Court of British Columbia
Re: *Judicial Review Procedure Act*
Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondents

OUTLINE

PART I

The following relief will be sought at the hearing:

1. That the decision under the *Residential Tenancy Act* of the first Respondent (the "Arbitrator") dated March 8, 2005 be set aside and the matter remitted back to the Arbitrator with directions;
2. An order for costs;
3. Such other order as seems just.

PART II

Basis for seeking relief:

Facts – Tenancy

4. The Petitioner, Tammy Tenant, resided at # 1 - 123 Main Street in the city of Vancouver, in an apartment building owned by the Respondent Landlord, John Doe, from September 1, 2000 until February 15, 2005.
5. The tenancy was governed by a residential tenancy agreement (the “Tenancy Agreement”).
6. During the term of the tenancy, the Petitioner paid her rent to the Landlord by uncertified personal cheque each and every month, and none of those cheques was ever dishonoured by her bank.
7. On Tuesday, February 1, 2005 the Petitioner forgot to pay her rent on the day it was due.
8. On Wednesday, February 2, 2005 the Landlord posted a document called “Notice to End Tenancy” on the door of the Petitioner’s apartment.
9. The Petitioner immediately wrote a cheque to the Landlord for the full amount of the rent (\$800) and placed it in the special mail slot for rent payments.
10. On Thursday, February 3, 2005 the Landlord returned the Petitioner’s cheque to her.
11. The Petitioner was advised that the Landlord would not accept a personal cheque after the first day of the month. A late fee was also demanded.
12. Section 6 of the *Residential Tenancy Act* pertains to payment of rent. Section 6 provides that “the tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the notice is given.”
13. Section 8 of the Tenancy Agreement provides that “late payment, returned and non-sufficient fund cheques are subject to a minimum service charge of \$20 each.”
14. Neither sections 6 nor 8, nor any provision in the Tenancy Agreement provides that the Landlord can require payment by a particular method if rent is tendered late.
15. The Notice to End Tenancy is a form prescribed for use by the Residential Tenancy Office and is, pursuant to section 12(4) of the Residential Tenancy Regulation, required to be used by landlords for this purpose.
16. Paragraph 7(b) of the Tenancy Agreement states: “The Landlord may end the tenancy only for the reasons and only in the manner set out in the *Residential Tenancy Act*. The landlord must use the prescribed Notice to End Tenancy form available at the Residential Tenancy Branch.
17. The prescribed Notice to End Tenancy form advises tenants receiving such notices: “You are advised of your right to pay all rent due within 5 days after you are given this notice. This notice is void only if rent is paid in full within 5 days. If rent is not paid within 5 days the tenancy is ended on the date established by this notice.”

18. The Notice to End Tenancy given by the Landlord to the Petitioner on February 2, 2005 included the words "Payment by Interac, money order or certified cheque only." These words were added by the Landlord and are not part of the prescribed form.
19. Nowhere in the Tenancy Agreement does it say that the tenant will be liable for rent after the tenancy is ended, unless the tenant remains in possession.
20. The Notice to End Tenancy given to the Petitioner directed her to vacate and give up possession of the apartment by February 15, 2005.
21. Nowhere in the Notice to End Tenancy did it state that if the Petitioner vacated the rental unit on February 15, 2005 that she would be liable for further rent after that date.
22. On Monday, February 7, 2005 the Petitioner notified the Landlord in writing that she had found other accommodation and would comply with the Notice to End Tenancy.
23. The Petitioner moved to new premises on February 15, 2005.

Facts – Arbitration

24. On February 11, 2005 the Landlord made an application for arbitration to the Residential Tenancy Branch of the Ministry of Public Safety and Solicitor General, seeking \$1620 in damages, as follows:
 - February rent: \$800
 - February rent late fee: \$20
 - March rent: \$800
25. On March 8, 2005 a hearing was conducted before the Respondent, Bill Black (the "Arbitrator").
26. On March 8, 2005 the Arbitrator released his decision. He decided that the Petitioner was responsible to pay rent from February 1 to March 15, 2005, plus a late rent fee, as follows:
 - February 2005 rent: \$800
 - March 1-15 rent: \$400
 - Late rent fee: \$ 20
27. The Decision and Reasons indicate that the Arbitrator made his decision on the basis of the following findings:
 - a) The Petitioner tendered her February rent late, in breach of the Tenancy Agreement.
 - b) The Notice to End Tenancy directed the Petitioner to pay by one of several secure methods.
 - c) The Landlord's policy of requiring late rent payments to be made by a secure method was appropriate.
 - d) The Tenancy Agreement entitled the Landlord to issue a Notice to End Tenancy if rent was tendered late.
 - e) The Landlord did not breach the Tenancy Agreement.
 - f) The Petitioner breached the Tenancy Agreement by not paying rent in the manner required by the Notice to End Tenancy.

- g) The Landlord took reasonable steps to mitigate its damages.
- h) The Petitioner was required to compensate the Landlord for rent during the notice period under the BC Residential Tenancy Policy Guideline No.3.

Issues

- 28. What is the standard of review?
- 29. Did the Arbitrator base his decision on irrelevant factors?
- 30. Did the Arbitrator fail to take the requirements of the *Residential Tenancy Act* into account?
- 31. Did the Arbitrator make a finding of law that was patently unreasonable?
- 32. Did the Arbitrator err in jurisdiction or law in awarding the Landlord rent for a period of time after the Petitioner vacated the rental premises?

Argument

What is the Standard of Review?

- 33. Section 78.1 of the *Residential Tenancy Act* incorporates portions of the *Administrative Tribunals Act*. Section 78.1 states:
Sections 1, 30, 44, 56-58, and 61 of the Administrative Tribunals Act apply to an arbitration and an arbitrator.
- 34. Section 58(1) of the *Administrative Tribunals Act* deems an administrative tribunal to be an “expert tribunal” if its enabling legislation contains a privative clause relative to the courts. Section 84.1 of the *Residential Tenancy Act* is such a privative clause, thus the Arbitrator is deemed to be an expert tribunal.

Did the Arbitrator base his decision entirely or predominantly on irrelevant factors?

- 35. The Decision and Reasons for Arbitration Award show that the Arbitrator based his decision on a number of factors, many of which were irrelevant.
- 36. The Arbitrator based his decision on the finding that the Notice to End Tenancy directed the Petitioner to pay “by Interac, Money Order, or Certified Cheque Only” and the Petitioner tendered a personal cheque.
- 37. This payment direction was not part of the Notice to End Tenancy form prescribed by the Residential Tenancy Office, nor was it authorized by the *Residential Tenancy Act* or Regulation, or by the Tenancy Agreement.
- 38. The fact that the Landlord added this requirement to the prescribed form and that the Petitioner tendered a personal cheque instead are irrelevant to the issue of whether the Landlord was entitled to refuse the personal cheque.

39. The relationship between the Landlord and the Petitioner was governed by the Tenancy Agreement and by the *Residential Tenancy Act* and the Residential Tenancy Regulation. It was not governed by the Landlord's unpublished policy.
40. The issue of late rent and the Landlord's recourse are specifically dealt with in the Tenancy Agreement as well as the *Residential Tenancy Act* and Residential Tenancy Regulation. None of these authorized the Landlord to require late payments to be made in a particular way.
41. Whether or not the Petitioner's not paying the rent in the manner stipulated by the Landlord in the Notice to End Tenancy constituted a breach of the Tenancy Agreement is irrelevant. What is relevant is that the Notice to End Tenancy was not voided, and thus the tenancy was ended by the Landlord.

Did the Arbitrator fail to take the requirements of the Residential Tenancy Act into account?

42. The *Residential Tenancy Act* is public interest legislation designed to protect the rights of landlords and tenants. Along with the Residential Tenancy Regulation, it comprises a complete code with respect to residential tenancies. It is applicable to virtually all residential tenancies in British Columbia and cannot be contracted out of (Section 2, 3 and 5 of the Act).
43. Part 4 of the *Residential Tenancy Act* creates a comprehensive set of rules and procedures for the ending of residential tenancies.
44. Section 46(1) of the *Residential Tenancy Act* provides for the giving of a notice to end a tenancy by a landlord if rent is paid after it is due.
45. Section 46(4) of the *Residential Tenancy Act* enables a tenant given such a notice to pay the overdue rent within 5 days after receiving the notice, in which case the notice has no effect.
46. Rent is defined in section 1 of the *Residential Tenancy Act* and specifically excludes late fees.
47. It can be inferred from section 46(4) of the *Residential Tenancy Act* that the intention of the legislation's creators was that if a tenant tendered the overdue rent within 5 days of receiving a Notice to End Tenancy, the Landlord would accept payment, and so allow the Tenant to void the notice.
48. Nothing in Part 4 of the *Residential Tenancy Act* authorizes a landlord to require payment by a specific method if rent payment is late.
49. Section 6(3) of the *Residential Tenancy Act* states:
 - A term of a tenancy agreement is not enforceable if*
 - (a) *the term is inconsistent with this Act or the regulations*
 - (b) *the term is unconscionable, or*
 - (c) *the term is not expressed in a manner that clearly communicates the rights and obligations under it.*
50. It is not apparent that the Landlord's requirement for a specific method of payment can be regarded as a term of the Tenancy Agreement, since it is not included in the Tenancy Agreement. However, even if it is regarded as such, it is unenforceable by virtue of section 6(3)(a) and 6(3)(c) of the Act.
51. The Arbitrator did not refer to section 6(3) of the *Residential Tenancy Act* in his decision.

52. Nothing in Part 4 of the *Residential Tenancy Act* entitles a landlord to payment of rent for the period after a tenancy is ended unless the tenant remains in possession after it ends.
53. The Arbitrator appears to have given no consideration to the fact that the Landlord ended the tenancy and the Petitioner did not overhold.

Did the Arbitrator make a finding of law that was patently unreasonable?

54. The Arbitrator decided that the Landlord was entitled to loss of rental income for February and March 2005. Implicit in that decision was a finding of law that a landlord is entitled to receive rent after the landlord has ended a tenancy and where the tenant does not overhold, on the same basis as if no Notice to End Tenancy has been given.
55. The Arbitrator stated in his decision that the Landlord was entitled to loss of rent during what would have been the notice period had the Petitioner ended the tenancy. No reference was made to the *Residential Tenancy Act* in making this decision.
56. In determining that the Landlord was entitled to rent for a period of one month after the Petitioner vacated the rental premises, the Arbitrator made a finding of law that was patently unreasonable.

Did the Arbitrator err in jurisdiction or law in awarding the Landlord rent for a period of time after the Petitioner vacated the premises?

57. The jurisdiction of arbitrators under the *Residential Tenancy Act* is set out in sections 62-72 of the Act. Section 62(3) states:
“An arbitrator may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement and an order that this Act applies.”
58. The Arbitrator’s award to the Landlord of rent for a period of one month after ending the tenancy was not authorized by any provision in the *Residential Tenancy Act*, the Residential Tenancy Regulation, or the Tenancy Agreement. The Arbitrator exceeded his jurisdiction, and erred both in jurisdiction and in law in doing so.

Conclusion

59. The Arbitrator violated paragraphs 58(2)(a) and 58(3)(a), (c), and (d) of the *Administrative Tribunals Act* by:
- a) basing his decision entirely or predominantly on irrelevant factors;
 - b) failing to take the requirements of the *Residential Tenancy Act* into account;
 - c) making a finding of law that was patently unreasonable;
 - d) applying policy without due reference to the *Residential Tenancy Act*, and

e) acting arbitrarily,

each and all of which have the effect of making the arbitration award patently unreasonable.

61. Lastly, the Arbitrator erred both in law and in jurisdiction in making an award that was not authorized by the legislation.

Dated: August 24, 2005

Tammy Tenant, Petitioner

In the Supreme Court of British Columbia

Re: *Judicial Review Procedure Act*

Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondent

OUTLINE

Tammy Tenant
456 Grand Street
Vancouver, BC, V1J 2C3
604-123-4567

This is an example of a completed outline prepared by the respondent.

No. X1234

Vancouver Registry

In the Supreme Court of British Columbia

Re: *Judicial Review Procedure Act*

Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondent

OUTLINE

PART I

The following relief will be sought at the hearing:

1. That the petitioner's application be dismissed.
2. That the decision under the *Residential Tenancy Act* of the first Respondent (the "Arbitrator") dated March 8, 2005 be upheld.
3. An order for costs.
4. Such other order as seems just.

PART II

Basis for seeking relief:

Facts – Tenancy

5. The Petitioner, Tammy Tenant, resided at # 1 - 123 Main Street in the city of Vancouver, in an apartment building owned by the Respondent, John Doe (the “Landlord”) from September 1, 2000 until February 15, 2005.
6. The tenancy was governed by a residential tenancy agreement (the “Tenancy Agreement”).
7. During the term of the tenancy, the Petitioner paid her rent to the Landlord by uncertified personal cheque each and every month, and many of those cheques were dishonoured by her bank.
8. On Tuesday, February 1, 2005 the Petitioner did not pay her rent on the day it was due.
9. On Wednesday, February 2, 2005 the Landlord posted a document called “Notice to End Tenancy” on the door of the Petitioner’s apartment.
10. The Petitioner wrote a cheque to the Landlord for the rent (\$800) and placed it in the special mail slot for rent payments.
11. On Thursday, February 3, 2005 the Landlord returned the Petitioner’s cheque to her.
12. The Landlord advised the Petitioner that he would not accept a personal cheque after the first day of the month. A late fee was also demanded.
13. Section 6 of the *Residential Tenancy Act* applies to payment of rent. Section 6 provides that “the tenant must pay the rent on time. If the rent is late, the landlord may issue a Notice to End Tenancy to the tenant, which may take effect not earlier than 10 days after the date the Notice is given.”
14. Section 8 of the Tenancy Agreement provides that “late payment, returned and non-sufficient fund cheques are subject to a minimum service charge of \$20 each.”
15. The Notice to End Tenancy given to the Petitioner on February 2, 2005 included the words “Payment by Interac, money order or certified cheque only.”
16. The Notice to End Tenancy given to the Petitioner directed her to vacate and give up possession of the apartment by February 15, 2005.
17. On Monday, February 7, 2005 the Petitioner notified me in writing that she had found other accommodation and would comply with the Notice to End Tenancy.
18. The Petitioner moved out of the rental unit on February 15, 2005.

Facts – Arbitration

19. On February 11, 2005 the Landlord made an application for arbitration to the Residential Tenancy Branch of the Ministry of Public Safety and Solicitor General, seeking \$1620 in damages, as follows:
- | | |
|-------------------------|-------|
| February rent: | \$800 |
| February rent late fee: | \$ 20 |
| March rent: | \$800 |
20. On March 8, 2005 a hearing was conducted before the Respondent, Bill Black (the “Arbitrator”).
21. On March 8, 2005 the Arbitrator released his decision. He decided that the Petitioner was responsible to pay rent from February 1 to March 15, 2005, plus a late rent fee, as follows:
- | | |
|---------------------|-------|
| February 2005 rent: | \$800 |
| March 1-15 rent: | \$400 |
| Late rent fee: | \$ 20 |
22. The Decision and Reasons indicate that the Arbitrator made a correct decision based on the following findings:
- (a) The Petitioner tendered her February rent late, in breach of the Tenancy Agreement.
 - (b) The Notice to End Tenancy directed the Petitioner to pay by one of several secure methods.
 - (c) The Landlord’s policy of requiring late rent payments to be made by a secure method was appropriate.
 - (d) The Tenancy Agreement entitled the Landlord to issue a Notice to End Tenancy if rent was tendered late.
 - (e) The Landlord did not breach the Tenancy Agreement.
 - (f) The Petitioner breached the Tenancy Agreement by not paying rent in the manner required by the Notice to End Tenancy.
 - (g) The Landlord took reasonable steps to mitigate its damages.
 - (h) The Petitioner was required to compensate the Landlord for rent during the notice period under the BC Residential Tenancy Policy Guideline No.3.

Issues

23. Did the Arbitrator make a finding of law that was patently unreasonable?

Argument

What is the Standard of Review?

24. Section 78.1 of the *Residential Tenancy Act* incorporates portions of the *Administrative Tribunals Act*. Section 78.1 states:

Sections 1, 30, 44, 48, 56-58 and 61 of the Administrative Tribunals Act apply to an arbitration and arbitrator.

25. Section 58(1) of the *Administrative Tribunals Act* deems an administrative tribunal to be an “expert tribunal” if its enabling legislation contains a privative clause relative to the courts. Section 84.1 of the *Residential Tenancy Act* is such a privative clause, thus the Arbitrator is deemed to be an expert tribunal.

Did the Arbitrator base his decision entirely or predominantly on irrelevant factors?

26. The Decision and Reasons for Arbitration Award show that the Arbitrator based his decision only on relevant matters.
27. The Arbitrator based his decision on the finding that the Notice to End Tenancy directed the Petitioner to pay “by Interac, Money Order, or Certified Cheque Only” and the Petitioner tendered a personal cheque.
28. The Petitioner ended the tenancy agreement when she failed to pay her late rent in the manner specified by the Landlord.

Did the Arbitrator make a finding of law that was patently unreasonable?

29. The Arbitrator decided that the Landlord was entitled to loss of rental income for February and March 2005. This covered the same notice period that would have applied if the Petitioner ended the tenancy.
30. It was found that the Petitioner ended the tenancy by failing to pay rent in the specified manner.
31. There was nothing unreasonable in the Arbitrator’s finding of fact or law.

Conclusion

32. The Arbitrator made the correct decision based on the facts and law of the case.

Dated: August 30, 2005

John Doe, Respondent

In the Supreme Court of British Columbia

Re: *Judicial Review Procedure Act*

Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondent

OUTLINE

John Doe
123 Happy Street
Vancouver, BC, V1J 2C3
604-123-4567

This is a blank form for a petition

FORM 3 (RULE 10 (3))

No.

..... Registry

In the Supreme Court of British Columbia

Between

, Petitioner(s)

and

, Respondent(s)

[or, where there is no person against whom relief is sought:

Re (State the person by whom, or the entity in respect of which relief is sought).]

PETITION TO THE COURT

THIS IS THE PETITION OF:

[*Name and address of each petitioner*]

ON NOTICE TO:

[*Name and address of each person to be served*]

Let all persons whose interests may be affected by the order sought TAKE NOTICE that the petitioner applies to court for the relief set out in this petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court within the Time for Appearance and YOU MUST ALSO DELIVER a copy of the "Appearance" to the petitioner's address for delivery, which is set out in this petition.

YOU OR YOUR SOLICITOR may file the "Appearance". You may obtain a form of "Appearance" at the registry.

IF YOU FAIL to file the "Appearance" within the proper Time for Appearance, the petitioner may continue this application without further notice.

TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, where the time for appearance has been set by order of the court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the petitioner
 - (i) 2 copies of a response in Form 124, and
 - (ii) 2 copies of each affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other party of record
 - (i) one copy of a response in Form 124, and
 - (ii) one copy of each affidavit on which you intend to rely at the hearing.

(1) The address of the registry is: _____

(2) The ADDRESS FOR DELIVERY is: _____
Fax number for delivery (if any): _____

(3) The name and office address of the petitioner’s solicitor is: _____

The petitioner applies for an order that[set out orders sought in numbered paragraphs, or attach a draft order in numbered paragraphs]..... .

The petitioner will rely on[set out rule or enactment relied on]..... .

At the hearing of this petition will be read the affidavit(s) of[state names]....., copies of which are served herewith.

The facts upon which this petition is based are as follows:[set out briefly the relevant facts in numbered paragraphs]..... .

The petitioner estimates that the application will take minutes.

Dated
.....
Petitioner [or petitioner’s solicitor]

This is an example of a completed petition

No. X1234

Vancouver Registry

In the Supreme Court of British Columbia

Re: *Judicial Review Procedure Act*

Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondents

PETITION TO THE COURT

THIS IS THE PETITION OF:

Tammy Tenant
456 Grand Street
Vancouver, BC, V1J 2C3

ON NOTICE TO:

JOHN DOE
123 Happy Street,
Vancouver, BC V1J 2C3

AND TO:

BILL BLACK
Residential Tenancy Office
(address)

ATTORNEY GENERAL OF BRITISH COLUMBIA
Legal Services Branch
6th Floor,
1001 Douglas Street
Victoria, BC V8V 1X4

Let all persons whose interests may be affected by the order sought **TAKE NOTICE** that the Petitioner applies to the Court for the relief set out in this Petition.

APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, **YOU MUST GIVE NOTICE** of your intention by filing a form entitled "Appearance" in the above registry of this Court within the Time for Appearance and **YOU MUST ALSO DELIVER** a copy of the "Appearance" to the Petitioner's address for delivery, which is set out in this Petition.

YOU OR YOUR SOLICITOR may file the Appearance. You may obtain a form of Appearance at the registry.

IF YOU FAIL to file the Appearance within the proper Time for Appearance, the Petition may continue this application without further notice.

TIME FOR APPEARANCE

Where this petition is served on a person in British Columbia, the time for appearance by that person is **7 days** from the service (not including the day of service).

Where this petition is served on a person outside British Columbia, the time for appearance by that person, after service is **21 days** in the case of a person residing anywhere within Canada, **28 days** in the case of a person residing in the United States of America, and **42 days** in the case of a person residing elsewhere [or, where the time for appearance has been set by Order of the Court, within that time.]

TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an **APPEARANCE**,

1. deliver to the Petitioner
 - a) 2 copies of a response in Form 124, and
 - b) 2 copies of each affidavit on which you intend to rely on at the hearing, and
2. deliver to every other party of record
 - a) one copy of a response in Form 124, and
 - b) one copy of each affidavit on which you intend to rely on at the hearing.

- | |
|--|
| <p>(1) The address of the registry is:

The Law Courts
800 Smythe Street, Vancouver BC</p> <p>(2) The address for delivery is:
456 Grand Street, Vancouver, BC</p> <p>(3) The name and office address of the petitioner is:

Tammy Tenant
456 Grand Street
Vancouver, BC V1J 2C3</p> |
|--|

The Petitioner applies for:

1. An order setting aside a decision of the Arbitrator dated 8 March 2005;
2. An interim order staying the Arbitrator's decision until the final disposition of this judicial review (Section 10 of the *Judicial Review Procedure Act*);
3. An order for costs;
4. Such order as seems just.

The Petitioner will rely on:

At the hearing of this petition will be read the affidavit of:

1. Tammy Tenant, a copy of which is served herewith.

The grounds on which this application is brought are as follows:

1. The Arbitrator erred in law and jurisdiction and made a patently unreasonable decision by not deciding that the Tenant had paid her rent. All subsequent damages flowed from this error. The Landlord broke the Tenancy Agreement.
2. Such other grounds as the Tenant may address.

The facts upon which this petition is based are as follows:

Residence:

1. I was a tenant of John Doe from September 1, 2000 to February 15, 2005.
2. I live at 456 Grand Street, Vancouver, B.C.
3. For the 4 _ years that I lived at this address as a tenant of Happy Management Ltd., I paid my rent by personal cheque every month.
4. None of my personal cheques has ever been dishonoured by my bank.

Circumstances of Arbitration Hearing:

5. On Tuesday, February 1, 2005 I forgot to pay my rent (on the day it was due).
6. On Wednesday, February 2, 2005 I found a "Notice to End Tenancy" attached to my door.
7. The first page of the Notice to End Tenancy told me "to vacate and give up possession of the rental unit located at #1 – 123 Main Street, Vancouver, BC.
8. I have always paid my rent on time and I was shocked by this notice.

9. I immediately wrote a cheque to the Landlord for the full amount of the rent (\$800), took it downstairs and placed it in the mail slot where rent payments were supposed to be put.
10. On Thursday, February 3, 2005 I received another communication from the Landlord. My rent cheque was returned to me by the Landlord and a note was attached to it.
11. The reason given for the cheque's return was that the Landlord would not take a personal cheque after the first day of the month (and he demanded payment of a late payment fee).
12. The Landlord had given me a "Notice to End Tenancy" for non-payment of rent but he refused my rent payment (because it was made 22 hours late). He gave the notice on February 2, 2005 to take effect on February 15, 2005.
13. On Monday February 7, I notified the Landlord in writing that I had found other accommodation and would comply with the Landlord's notice to vacate by February 15.
14. On Monday February 7, I also became aware that the Landlord intended to hold me responsible for rent after the date of my departure from February 16 to March 31. At this time, I contacted the Residential Tenancy Office (for the second time) and was (again) advised that the "Notice to End Tenancy" was still in effect if my rent cheque had been refused. On neither occasion was I advised that I might be held responsible for rent after that date.

Arbitration Hearing

15. During the hearing the Landlord requested that the Arbitrator grant him loss of rental income at least until March 15.
16. On March 8, 2005 the Arbitrator found that the Landlord was entitled to loss of rental income for the period February 16 to March 15, plus a late fee. He ordered me to pay \$1,200 (loss of rental income), \$20 (late fee for February rent) and \$50 (filing fee).

The Petitioner estimates that the application will take 1.5 hours.

Dated: _____

Petitioner's signature

No. X1234
Vancouver Registry

In the Supreme Court of British Columbia
Re: *Judicial Review Procedure Act*
Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE
(Landlord)

Respondents

PETITION TO THE COURT
OF TAMMY TENANT

Tammy Tenant
456 Grand Street
Vancouver, BC

This is a blank form of response for the respondent

FORM 124 (RULES 10 (5) AND 44 (6))

[Style of Proceeding]

RESPONSE OF *[name of respondent]*

The respondent does not oppose the granting of the relief set out in the following paragraphs of the petition (or notice of motion): *[set out paragraph numbers]*.

The respondent opposes the granting of the relief set out in the following paragraphs of the petition (or notice of motion): *[set out paragraph numbers]*.

The respondent consents to the granting of the relief set out in the following paragraphs of the petition (or notice of motion) on the following terms: *[set out paragraph numbers and any proposed terms]*.

The respondent will rely on the following affidavits and other documents: *[set out affidavits delivered with this response and any other affidavits or other documents already in the court file on which the respondent will rely]*.

The respondent estimates that the application will take minutes.

Dated:.....

.....

Respondent (or respondent's solicitor)

This is an example of a completed response

No. X1234
Vancouver Registry

In the Supreme Court of British Columbia
Re: *Judicial Review Procedure Act*
Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

JOHN DOE (Landlord)

Respondents

RESPONSE OF JOHN DOE

The respondent does not oppose the granting of the relief set out in the following paragraphs of the petition:

The respondent opposes the granting of the relief set out in the following paragraphs of the petition:

- #1
- #2
- #3
- #4

The respondent consents to the granting of the relief set out in the following paragraphs of the petition on the following terms:

The respondent will rely on the following affidavits and other documents:

Affidavit of John Doe, dated June 6, 2005

The respondent estimates that the application will take 60 minutes.

Dated: June 6, 2005

Respondent

This is an example of the petitioner's affidavit

No. X1234
Vancouver Registry

In the Supreme Court of British Columbia
Re: *Judicial Review Procedure Act*
Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

John Doe (Landlord)

Respondents

AFFIDAVIT OF TAMMY TENANT

I, Tammy Tenant, student of 456 Grand Street, in the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

1. I am the Petitioner in this matter and have personal knowledge of the matter herein referred to.

Background:

2. I am a student in the English Department at the University of British Columbia.

3. I was the tenant.

4. I lived at #1 – 123 Main Street, Vancouver from September 1, 2000 until February 15, 2005.

5. I rented the residential unit (an apartment) from John Doe, the Landlord.

6. I lived there alone.

7. I always paid my rent by personal cheque.

Circumstances of Arbitration Hearing

8. On February 1, 2005 I forgot to pay my rent.
9. On February 2, 2005 I was served with "Notice to End Tenancy" by February 15, 2005. A copy of the Notice is attached to this affidavit as Exhibit A.
10. On February 2, 2005 I paid the full amount of the rent by personal cheque.
11. On February 3, 2005 the Landlord returned my cheque to me with a note advising me that I had to pay by certified cheque, money order or Interac plus a late payment fee. A copy of the note is attached to this affidavit as Exhibit B.
12. None of my personal cheques has ever been dishonoured by any bank.
13. I considered the Landlord to have broken his agreement with me because he had refused my rent. I decided to look for new accommodation.
14. On February 6, 2005 I secured an apartment in a different building.
15. On February 7, 2005 I notified the Landlord that I would move out on February 15, 2005 as per the "Notice to End Tenancy." A copy of the letter is attached to this affidavit as Exhibit C. At no time did the Landlord retract the Notice to End Tenancy and agree to accept my uncertified cheque.
16. On Monday, February 7, I also became aware that the Landlord intended to hold me responsible for rent after the date of my departure from February 16 to March 31. At this time, I contacted the Residential Tenancy Office and was advised that the "Notice to End Tenancy" was still in effect if my rent cheque had been refused. On neither occasion was I advised that I might be responsible for the rent after that date.
17. On February 15, 2005 I moved out of my apartment.

Arbitrator's Hearing

18. The Arbitrator made a decision on March 8, 2005. I have attached all the documents that were in front of the arbitrator to this Affidavit as exhibits D – G. I have also attached the decision of the Arbitrator as exhibit H.

Exhibit	Date	Description
A	February 2, 2005	Notice to End Tenancy
B	February 3, 2005	Note refusing rent cheque
C	February 7, 2005	My letter agreeing to move-out date
D	February 8, 2005	Letter from Landlord
E	February 14, 2005	Notice of hearing of an Arbitration File No. 12345
F	February 11, 2005	Application for arbitration
G	August 25, 2000	Residential Tenancy Agreement
H	March 8, 2005	Decision of Arbitrator

19. The hearing lasted about 20 minutes.

SWORN BEFORE ME at the City of Vancouver
in the Province of British Columbia, this 4th day of
May 2005.

Tammy Tenant, Petitioner

A Commissioner for Taking Affidavits
in the Province of British Columbia

Name of commissioner

Attach exhibits A to H to this affidavit, with each exhibit on a separate page. Each exhibit should be labeled with its identifying exhibit letter.

In the Supreme Court of British Columbia
Re: *Judicial Review Procedure Act*
Residential Tenancy Act

Between:

TAMMY TENANT

Petitioner

and

BILL BLACK in the capacity as Arbitrator
under the *Residential Tenancy Act* and

John Doe (Landlord)

Respondent

AFFIDAVIT OF JOHN DOE

I, John Doe, of Happy Management Ltd., 123 Main Street, City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY AS FOLLOWS:

I am the Landlord in this matter and have personal knowledge of the matter herein referred to, save where stated to be on information and belief and where so stated I verily believe the same to be true.

Grounds upon which application was brought:

1. The Arbitrator did not err in law. The Arbitrator explained to the Tenant during the hearing the reasons that formed the basis for the order for damages.
2. I believe the Arbitrator's order was fair.

Circumstances of the Arbitration hearing:

3. The Notice to End Tenancy was served in accordance with the *Residential Tenancy Act* (their form) and our Tenancy Agreement with the Tenant. It also states that it will be void if paid within 5 days and that we would accept payment by Interac, money order or certified cheque.
4. The Tenant admitted she did not pay rent on the first of the month, which is when it is due under the *Residential Tenancy Act* and our agreement. It was therefore she who breached the agreement first by not paying rent on the due date.

5. The late payment fee is in accordance with the *Residential Tenancy Act* and our Tenancy Agreement with the Tenant.

Arbitration hearing:

6. It was explained to the Tenant at the hearing that the damages were up to the period of the hearing. It was not unusual for landlords to be granted an extra month's rent.

Response to Affidavit

Background

7. I am the Landlord and I have approximately 35 tenants. Due to constraints of the *Residential Tenancy Act* and the large number of tenants, all tenants must be treated equally.
8. The Tenancy Agreement with Tammy Tenant states that an eviction notice may be given for non-payment of rent on the due date as well as a charge for late payment.

Circumstances of Arbitration hearing:

9. Tammy Tenant admits she forgot to pay her rent on February 1, 2005 at which point she was in breach. After this, it is my duty to mitigate damages by issuing the Notice to End Tenancy.
10. The policy, as stated on the Notice to End is to only accept secure payment. The Tenant could have paid immediately by Interac, which is on site, but she refused to pay by anything but personal cheque.
11. The Notice to End Tenancy states that it is void if the rent is paid within 5 days.
12. The Tenant considers the Landlord to have broken the Tenancy Agreement with her, but it was the Tenant who breached the agreement when she did not pay her rent on the first of the month.

Arbitrator's Hearing:

13. The Tenant was given every opportunity to raise arguments under the *Residential Tenancy Act*.

Closing:

14. I followed the *Residential Tenancy Act* and our Tenancy Agreement. It was because the Tenant was in breach of the *Residential Tenancy Act* and our agreement that the Arbitrator found in favour of me at the hearing.

16. I request that the court set aside the Petition of Tammy Tenant.

Exhibit	Date	Description
A	August 25, 2000	Residential Tenancy Agreement

SWORN BEFORE ME at the City of Vancouver,
in the Province of British Columbia, this 6th day of
June 2005.

John Doe, Respondent

A Commissioner for Taking Affidavits
in the Province of British Columbia

Name of commissioner

Attach exhibit A to this affidavit, on a separate page. The exhibit should be labeled with its identifying exhibit letter