



COURT OF APPEAL FILE NO. CA48501  
City of Vancouver vs. Pender Lodge Holdings Ltd.  
Intervener's Memorandum of Argument

**COURT OF APPEAL**

ON APPEAL FROM THE ORDER OF THE HONOURABLE JUSTICE DOUGLAS OF  
THE SUPREME COURT OF BRITISH COLUMBIA PRONOUNCED AUGUST 3, 2022

BETWEEN:

CITY OF VANCOUVER

APPELLANT  
(Respondent)

AND:

PENDER LODGE HOLDINGS LTD.

RESPONDENT  
(Petitioner)

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**MEMORANDUM OF ARGUMENT FOR LEAVE TO INTERVENE**  
**Rental Housing Council of B.C. doing business as LandlordBC**

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## Part 1: Argument

### Overview

1. The Rental Housing Council of B.C. doing business as LandlordBC (“**LandlordBC**”) seeks leave to intervene in the present appeal pursuant to Rule 61 of the *Court of Appeal Rules*.
2. LandlordBC is an established stakeholder in the residential housing sector in British Columbia with a broad membership base of landlords and property managers across the province. The appeal deals with important public law issues involving the intersection of the *Residential Tenancy Act*, [S.B.C. 2002, c. 78](#) (the “**RTA**”) and municipal law, and whether the City of Vancouver may enact bylaws which could have a significant impact on LandlordBC’s membership. LandlordBC seeks to provide principled submissions on these issues that will differ from the parties and assist the Court.
3. The case under appeal concerns whether three municipal rent control bylaws enacted by the appellant, the City of Vancouver (the “**Bylaws**”), are outside of its legislative mandate and unreasonable in the administrative law sense.
4. The Bylaws impose new licensing requirements on landlords who own single room occupancy buildings, as designated by the municipality, and restricts such landlords from increasing the rent charged to a tenant of a rental unit between tenancies.
5. The *RTA* already establishes a form of rent control which applies to all forms of residential property across the province, subject to specific exclusions relating to, for example, emergency and transitional housing. It restricts landlords from increasing rent under existing tenancies, except as permitted under Part 3. It does not restrict the increase of rent between tenancies. It is intentionally designed to function this way, and it balances the interests of landlords and tenants across the province. Its consistent province-wide application also allows landlords and tenants to anticipate that rent control will apply in the same way,

regardless of where they live in British Columbia.

6. The respondents, owners of single room occupancy buildings, brought a petition to quash the Bylaws on the ground that they were *ultra vires* and outside of its legislative mandate. Justice Douglas allowed the petitions and quashed the Bylaws in reasons indexed at *0733603 B.C. Ltd. v. City of Vancouver*, 2022 BCSC 1302.
7. In her reasons, Justice Douglas did not accept the City of Vancouver's submission that the principle of subsidiarity, first discussed by the Supreme Court of Canada in *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 ["Spraytech"] applied because the Bylaws were not complementary to the *RTA* and conflicted with it, as set out at paragraphs 78-83 of her reasons for judgment. In this appeal, the City of Vancouver relies upon the principle in support of its position on appeal, as set out at paragraphs 35 and 36 of its factum. The principle of subsidiarity was referred to by this Court in *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 which also concerned a municipality enacting a rent control bylaw. The relevancy and application of the principle of subsidiarity to this appeal is the issue LandlordBC intends to intervene upon if granted leave to intervene.

### **Position on leave to intervene**

8. Applications for leave to intervene are governed by Rule 61(1) of the *Court of Appeal Rules*, which provides that a "person, other than a party, interested in an appeal may apply to a justice for leave to intervene in the appeal."
9. LandlordBC applies to intervene in this appeal on the basis that it represents a public interest in a public law issue and can make a valuable contribution or bring a different perspective to the proceeding.

*Friedmann v. MacGarvie*, [2012 BCCA 109](#) at para. 12  
(Bennett J.A. in Chambers)

10. When deciding whether to grant leave to intervene, the Court will consider:
- (a) the nature of the group seeking intervenor status;
  - (b) the directness of the group's interest in the matter; and
  - (c) the suitability of the issues in the appeal to an intervention.

*Friedmann* at para. 13.

11. The first factor requires the applicant to demonstrate that it has a "broad representative base". Where an applicant does not have a direct interest in the appeal, the second factor requires the applicant to demonstrate that the appeal deals with "public law issues" that legitimately engage the applicant's interests. Finally, under the third factor, the applicant must demonstrate that it "will bring a new or different perspective to the consideration of the issues, or will make a useful contribution towards resolving the issues".

*Friedmann* at paras. 14-19

12. LandlordBC is a non-profit association incorporated under the *Societies Act*, [S.B.C. 2015, c. 18](#), which is engaged in advocacy, law reform and education. The primary purpose of LandlordBC is to facilitate the provision of safe, secure and sustainable long-term rental housing for British Columbians. It was formed in 2013 through the amalgamation of three predecessor associations with similar objectives, the oldest of which dates back to the 1960's. LandlordBC's membership consists of over 3,000 landlords and property managers across the province, who own and operate more than 150,000 residential units in British Columbia, including in New Westminster.
13. LandlordBC seeks leave to intervene in this appeal on behalf of its broad representative base. It is by far the largest organization of its kind in British Columbia. However, LandlordBC has no members who own or manage single room occupancy buildings, and LandlordBC does not purport to advocate on behalf of City of Vancouver based single room occupancy owners in particular.

14. LandlordBC's interest in this appeal is because single room occupancy buildings are a form of residential property under the RTA, and the operation of such buildings shares the same regulatory scheme – the RTA – as with other residential properties. The Bylaws represent a substantial expansion of municipal legislation in the subject matter of residential tenancy law. Therefore, LandlordBC's other members will be impacted if other municipalities adopt bylaws similar to the Bylaws, or if the City of Vancouver expands the application of the Bylaws to other residential property it designates on the basis of similar policy objectives which grounded the decision to enact the Bylaws.
15. LandlordBC was previously granted leave to intervene in two other appeals that dealt with the interpretation and application of the *RTA*:
  - (a) under the name of one of its predecessors, LandlordBC intervened in *Ganitano v. Metro Vancouver Housing Corporation*, [2014 BCCA 10](#). In that case, this Court accepted the position supported by LandlordBC that the *RTA* provides a comprehensive scheme for dealing with the non-payment or late-payment of rent in residential tenancy situations such that equitable relief from forfeiture does not apply; and
  - (b) in *1193652 B.C. Ltd. v. New Westminster (City)*, 2021 BCCA 176 [“New Westminster”], LandlordBC's position before the Court was that the *Residential Tenancy Act* was an all-inclusive scheme in respect of renovations and the manner in which tenancies may end, and that municipalities could not legislate in the same subject matter as a result.
16. LandlordBC consults with both provincial and municipal governments across the province on legislation and policies that concern the rental housing industry, including the *RTA*. While LandlordBC's membership is comprised of landlords and property managers, LandlordBC takes a balanced approach to issues affecting the industry. As such, LandlordBC has supported legislative changes that provided greater protection to tenants where those changes were deemed appropriate.

17. LandlordBC also works closely with the Residential Tenancy Branch of British Columbia (the “**RTB**”) as an important member of the RTB’s stakeholder group. The stakeholder group meets quarterly with the RTB to discuss operations, current and impending legislation and other matters of concern to residential tenancies in British Columbia. Through its membership in the stakeholder group, LandlordBC helps the RTB develop policy and guidelines.
18. Recent relevant work includes LandlordBC being part of a stakeholder committee which provided submissions to the RTB along with other stakeholders regarding the creation of section 23.1 of the Regulation to the RTA. This regulation expanded a landlord’s ability to increase rent beyond the usual rent controlled limit, and allows a landlord to apply for an additional rent increase to recover the costs of capital expenditures.
19. LandlordBC has also specifically advocated to The Select Standing Committee on Finance and Government Services that the Province should prevent municipalities from using business licensing bylaws to create residential tenancy legislation.

### **Interest in the appeal**

20. The appeal deals with public law issues which go beyond the parties to the appeal, impact LandlordBC’s membership, and engage LandlordBC’s expertise. It raises a broader issue regarding the appropriate interpretation and scope of the *RTA*, and the ability of the City of Vancouver to enact bylaws which conflict with it, and in the case of section 23.1 of the Regulation to the RTA, render portions of it inoperative by granting the City of Vancouver a veto over a rent increase authorized by the Director.
21. LandlordBC seeks to intervene to address the role the principle of subsidiarity plays when the Legislature has intended that the subject matter at issue, rent control, be regulated at the provincial level, or where the municipal bylaw conflicts with or renders the provincial legislation inoperative. It is submitted that

LandlordBC's long-standing involvement in the rental housing industry in British Columbia and extensive experience making submissions to government authorities concerning rent control will enable LandlordBC to bring a broader perspective to the issues than the parties in this appeal.

*Kwicksutaineuk/Ah-Kwa-Mish First Nation v. British Columbia (Agriculture and Lands)*, [2011 BCCA 294](#) at paras. 21 and 23 (Hinkson J.A. in Chambers) *Gehring v. Chevron Canada Limited*, [2007 BCCA 557](#) at paras. 30-32 (Rowles J.A. in Chambers)

22. Landlords across the province, thousands of whom are members of LandlordBC, may be affected by the resolution of this issue if this appeal concerns what LandlordBC says it does – incremental intrusion by municipalities into provincially regulated residential tenancy law. LandlordBC's membership operates residential tenancy units to which the *RTA* applies, and conduct their businesses in a marketplace governed by the parameters set out in the statute. They have an interest in the consistent and uniform application of the *RTA*, including being able to anticipate that rent control laws in one municipality are not substantively different, or enforced differently, than in another municipality.
23. British Columbia's rent control laws are the product of balancing the interests of landlords and tenants through consultation with stakeholders, and they are specifically intended not to function as vacancy control. LandlordBC, as an advocate for the provision of safe rental housing in British Columbia which draws on the diverse viewpoints of its membership and which is experienced with the *RTA*, has a genuine interest in this appeal and is capable of providing the Court with "an idea of the broader implications of any decision it may make".

*Western Industrial Clay Products Ltd. v. Keeping*, [1997 CanLII 2989 \(BC CA\)](#) at para. 6 (Newbury J.A. in Chambers)

### **Position on the appeal**

24. LandlordBC submits that it would bring a useful and unique contribution to resolving the public law issues on the appeal.

25. LandlordBC's proposed submissions would centre on the principle of subsidiarity. LandlordBC intends to submit as follows.

- (a) The RTA itself is not an exhaustive code, but the Court in *New Westminster* did not preclude the possibility that portions of the RTA are a complete code. The RTA's rent control regime is an exhaustive code carefully crafted by the Province after consultation with stakeholders. The City of Vancouver is not a third order of government and cannot use subsidiarity to override legislative intent. *Spraytech* did not involve subject matter which a legislative body intended be exhaustively governed by another enactment. In fact, it involved the opposite – a collection of complementary laws that established a tri-level regulatory regime, and an explicit finding by the Supreme Court of Canada that the provincial legislation was not exhaustive, nor was there any plausible evidence that it was intended to have that effect. Ultimately, subsidiarity does not override the status of municipalities as creatures of the province. LandlordBC will firstly submit that the analysis stops here – *i.e.*, given the evidence of legislative intention to have provincial-wide regulation of rent control, subsidiarity plays no role in the statutory interpretative question before the Court in this appeal. In order to apply subsidiarity, this Court necessarily must first consider whether Part 3 of the RTA is exhaustive in the subject matter of rent control for residential properties to which it applies.

*Spraytech* at paras. 39-40.  
*Reference re Assisted Human Reproduction Act*, 2010 SCC 61 at  
paras. 72 and 183.

- (b) The principle of subsidiarity, as stated by the Supreme Court of Canada, states that “law-making and implementation are often best achieved at a level of government that is not only effective, but also closest to the citizens affected and thus most responsive to their needs, to local distinctiveness, and to population diversity.” It will be submitted that



subsidiarity is difficult to apply in a legal proceeding because of its imprecise nature. It will be submitted that, if the Court intends to apply this as an interpretive principle in this appeal, as invited by the City of Vancouver, then it needs criteria and an evidentiary basis to determine when law-making in the subject matter at issue is best achieved at the local level, beyond a bare assertion of proximity to constituents, as set out in the City of Vancouver's factum.

*Spraytech* at para. 3.

Hoi L Kong, Subsidiarity, Republicanism, and the Division of Powers in Canada, 2015 45-1-2 *Revue de Droit de l'Université de Sherbrooke* 13, 2015 CanLII Docs 441, at 30.

Alexandra Flynn, Operative Subsidiarity and Municipal Authority: The Case of Toronto's Ward Boundary Review, 2019 56-2 *Osgoode Hall Law Journal* 271, 2019 CanLII Docs 4140, at 278-280.

- (c) In other words, it will be submitted that if this Court says this principle applies here when Justice Douglas said it did not, then to apply this principle, this Court must discern the complex question of whether law-making in this subject matter is best achieved at the local level, based upon the record of proceeding and the legislative scheme of the *Residential Tenancy Act* and the *Vancouver Charter*. In fact, LandlordBC submits that housing availability and affordability, the subject matter causing the City of Vancouver's decision to enact the Bylaws, affects people across municipal boundaries. Specifically, the decision of one municipality affects residents in another. Therefore, the Province is better placed to regulate the housing market for the general benefit of the public using consistent province-wide regulation. The record of proceeding does not establish that law-making in this subject area is best achieved at the local level. Province-wide regulation of rent control, as intended by the Province, balances the short-term benefits of tighter controls to the few current tenants with the medium and long-term benefits of looser controls to prospective tenants, especially when prospective tenants may not live

in the municipality now, and may never be able to live there, due to the effect of tighter rent control on the rental housing supply. Notably, the Bylaws are not complementary either; but rather, attack the existing rent control regime set out in the *RTA*, particularly in respect of section 23.1 of the Regulation to the *RTA*.

26. If granted leave to intervene, LandlordBC will not expand the scope of the appeal or duplicate the submissions of the parties. The interpretive question at the centre of LandlordBC's proposed submissions arises directly from the appellant's subsidiarity submissions and the manner in which that argument was addressed by the court below. LandlordBC's proposed submissions address the principle of subsidiarity specifically, whereas the respondents' factums presumably will focus upon the statutory interpretation issues which directly consider whether the Bylaw is an unreasonable bylaw outside of the legislative mandate of the *Vancouver Charter*.
27. LandlordBC's proposed submissions will assist the Court on the appeal. There is little case law considering municipal rent control bylaws in Canada, and their interplay with provincial legislation, and cases discussing subsidiarity in a significant way are few and far between. As an active participant in the creation and interpretation of the current *RTA* and a member of the RTB's stakeholder group, LandlordBC is well-positioned to provide submissions to the Court on the appropriate scope of the rent control provisions of the *RTA*.

## **Part 2: Order Sought**

28. For the foregoing reasons, LandlordBC seeks an order pursuant to Rule 36 of the *Court of Appeal Rules* that:
  - (a) LandlordBC be granted leave to intervene in this appeal and the style of cause be amended accordingly;
  - (b) LandlordBC be entitled to file a factum of not more than 10 pages on or before a date to be specified by this Honourable Court;

- (c) LandlordBC be permitted to apply to the division hearing the appeal for leave to make oral submissions at the hearing of the appeal; and
- (d) no costs be awarded for or against LandlordBC in respect of this application.

All of which is respectfully submitted.

Dated at the City of Vancouver, Province of British Columbia, this 8<sup>th</sup> day of December, 2022.



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Michael L. Drouillard