

**IN THE DISTRICT COURT
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE
KI WHANGĀREI-TERENGA-PARĀOA**

**CIV-2018-088-000814
[2019] NZDC 6746**

BETWEEN

NICOLE RUWHIU
CODY O'BRIEN
Appellants

AND

PETER DUNN
MARGARET DUNN
Respondents

Hearing: 29 January 2019

Appearances: Appellants appear in person
Respondents appear in person

Judgment: 12 April 2019

RESERVED JUDGMENT OF JUDGE D J McDONALD

Application to the Tenancy Tribunal

[1] On 8 March 2017 the landlords Mr and Mrs Dunn filed an application with the Tenancy Tribunal against Mr O'Brien and Ms Ruwhiu the tenants seeking orders that the tenants pay to them \$9,013.60 for rent arrears together with \$6,138 for damage and cleaning required they claimed at the end of the tenancy. They also sought \$1,440 for loss of four weeks' rent being the time they contended it took to repair and clean the house before it could be rented again.

[2] The landlord sought a total of \$16,591.60.

Hearing before the Tenancy Tribunal

[3] On 26 October 2017 the adjudicator heard from the parties. He decided that the rental agreement provided for weekly rental of \$395 per week which included an allowance of one cat, two dogs, two large horses and two small horses. He rejected the Dunn's contention that the rent fluctuated by the number of horses the tenants had at the property. He accepted the rent summary produced by Mr and Mrs Dunn from the start of the tenancy as an accurate record of rent arrears. At paragraph 9 he said:

Mr and Mrs Dunn's rent records show that the tenants made rent payments totalling \$8,620 during the tenancy. Although this review and Mr O'Brien question whether the rent record accurately showed all the payments made during the tenancy, they have not provided me with any evidence to challenge the landlord's rent record.

[4] On 15 November 2017 he found the tenants, the Appellants in this Court, liable for rent arrears amounting to \$7,790.

[5] The adjudicator made further findings on a claim for damages and cleaning amounting to \$950.

[6] Mr O'Brien and Miss Ruwhiu sought to appeal.

The notice of appeal

[7] The notice of appeal was filed in the District Court on 30 October 2018. The appeal was accepted even though it was out of time. Judge de Ridder on 2 November 2018 made the following decision:

The issue is when did the applicants receive the order including advice as to appeal rights. The 10 days runs from then. There is no right of appeal out of time. The appeal should be accepted but the issue of when time runs from will be a matter to be considered on the appeal; section 136(6) applies.

[8] He granted a stay of application in relation to enforcement.

Appeal out of time

[9] There is no right to appeal out of time.

[10] Section 171(6) of the Residential Tenancies Act 1986 states:

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- (6) Every such notice of appeal shall be filed within 10 working days after the date of the decision to which the appeal relates.

[11] Section 117(6) is mandatory in its terms. The appeal must be filed within 10 working days after the decision to which the appeal relates. There is no provision under the Act for time to be enlarged or extended. In calculating when the 10 days start, the date of the decision is not necessarily the date on the face of the judgement, here 15 November 2017. A decision is not perfected or given until the Tribunal has perfected its functions under section 104(2) including giving “written notice of the rights of appeal (if any) against its decision, including any time limits on those rights”.

[12] The issue therefore becomes when, if at all, the appellants were given a copy of the decision in writing together with their rights of appeal.

[13] Section 136 sets out how documents are to be served. It gives a number of ways. The relevant provision in this case is section 136(1)(b) which states:

It may be sent by post addressed to the landlord or the tenant at the address or the post office box given by the landlord or the tenant as the address for service in accordance with this Act.

6. Where any document is sent by post in accordance with any of the foregoing provisions of this section, it shall be deemed, in the absence of evidence to the contrary, to have been given or served on the fourth working day after the date on which it was posted; and, in proving service, shall be sufficient to prove that the letter was properly addressed and posted.

[14] Section 13AB sets out the meaning of address for service. It states

For the purposes of this Act, an address for service means an address given by the landlord or tenant under this Act as an address at which notices or other documents relating to the tenancy will be accepted by or on behalf of the landlord or tenant as the case may be.

[15] On the application the address for the Appellants is given as [residential address deleted] Onerahi, Whangarei. That same address is the address that the Registry at the Whangarei Court posted documents concerning dates of hearing and the like to the Appellants. At the hearing on 16 October 2017 both the Appellants gave

their address to the adjudicator as [the same address], Onerahi. That is clear from the evidence given before the adjudicator.

[16] The decision together with appeal rights including time limits was posted to the Appellants address for service on 15 November 2017.

[17] That is considered to be service under the Act. The Appellants were required to file their appeal within 14 working days of that date. They did not. In fact they were well outside that period.

[18] There being no jurisdiction for me to extend the time for the filing of an appeal I must dismiss the appeal on the basis that it was filed out of time.

D J McDonald
District Court Judge