

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV-2017-004-001927
[2018] NZDC 4714**

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| BETWEEN | LEXIA VINCENT Appellant |
| AND | JOHN HERRING Respondent |

Hearing: 7 March 2018

Appearances: Both parties appeared in Person

Judgment: 14 March 2018

DECISION OF JUDGE G M HARRISON

[1] Ms Vincent appeals a decision of the Tenancy Tribunal of 31 July 2017 whereby her tenancy of [address deleted], Onehunga, was terminated as from 31 August 2017.

[2] Mr Herring, as owner of the property, sought vacant possession because of significant remedial work required to the premises, particularly plumbing.

[3] Having heard the evidence the Tribunal Adjudicator determined that the property was uninhabitable and that it would be unreasonable to require Mr Herring as landlord to reinstate it while maintaining the tenancy.

[4] Ms Vincent vacated the property and now resides elsewhere.

[5] In the course of the hearing before me, Ms Vincent accepted that at the time of the order of the Tribunal the property was uninhabitable.

[6] This then raises the question of what relief Ms Vincent seeks. The property has now been remediated and is let to other tenants. As Ms Vincent now accepts that

the property was uninhabitable at the time of the Tribunal's order, there is no prospect of the court overturning that factual finding of the Tribunal.

[7] That being the case, the finding of the Tribunal must stand, and so must its order granting vacant possession.

[8] That leaves for determination lesser issues raised before the Tribunal.

[9] Because of the state of the premises, the Tribunal allowed a rent rebate for the period of notice up to 31 August 2017 when vacant possession was required. I did not understand Ms Vincent to disagree with that part of the decision.

[10] Ms Vincent also sought compensation. She gave evidence before the Tribunal of various costs she incurred personally, which she maintained were properly the landlord's costs, drapes in particular which she paid for and are still there but which have black mould apparently caused by shortcomings in the plumbing to the property, and now have to be destroyed.

[11] She also seeks exemplary damages which she says were claimed before the Tribunal, although no claim in that regard is mentioned in the Tribunal's decision.

[12] One matter of concern to Ms Vincent was that at the commencement of the hearing before the Tribunal she was handed a 67-page document prepared by Mr Herring which she says took her by surprise and prejudiced her ability to present her case properly before the Tribunal.

[13] In that regard the Adjudicator said:

[4] This matter was first called in the Tribunal on 19 June 2017. At hearing today, Mr Herring confirmed that he has provided additional written evidence to the Tribunal since that date. It appears this submission was not provided to Ms Vincent before this hearing. The Tribunal has allowed Ms Vincent time to consider this submission before the hearing proper commenced. Ms Vincent has confirmed that she is aware of the information supplied in this submission and that she does not require nor seek an adjournment to further consider Mr Herring's submission.

[5] Both parties have confirmed that they are in a position to proceed today. The Tribunal has considered all written and oral submissions provided before determining this matter.

[14] On the basis of that statement from the Tribunal I cannot hold that Ms Vincent was unfairly prejudiced by the submission of this further evidence from Mr Herring. It is clear that Ms Vincent was offered an adjournment, but she advised that she did not require nor seek that and the hearing proceeded.

[15] As to her claim for compensation, at [21] of the Tribunal's decision the Adjudicator said:

Ms Vincent also seeks work orders and compensation for the state of the property prior to the period the above rebate relates to. As the tenancy has been terminated there is no profit in considering the requested work orders. That leaves the matter of compensation.

[16] The Tribunal then said:

[24] I have carefully considered this claim and the extensive written evidence put before me today. I am persuaded on this evidence that the dwelling did have a number of ongoing issues, but equally I am persuaded that Mr Herring has been attempting to deal with each issue as it arose. ...

[17] The Tribunal concluded:

[27] I am not persuaded that Ms Vincent is entitled to any further compensation as claimed. Ms Vincent has been clear with Mr Herring that she wished to maintain the tenancy notwithstanding the major problem with the water supply, notwithstanding Mr Herring's offer and indeed desire to end the tenancy. Further Ms Vincent was clearly given a discount to below the market rent to reflect the reduced amenity value of the property. Further all matters raised by Ms Vincent were attended to by Mr Herring, albeit on an ad hoc basis in relation to the water leak issue and at some delay at times given the access issues referred to above. This part of the application is dismissed.

[18] I am in no position to disagree with that finding. The Adjudicator referred to taking into account the extensive evidence put before her. I am conscious, too, that the Tribunal is an expert Tribunal hearing claims of the same nature on a daily basis and is clearly conversant with situations where claims for compensation are appropriately made. The determination of the Tribunal that no compensation should

be paid has not been demonstrated to have been arrived at on any incorrect assessment of the applicable law, or in its factual findings, and so that part of the appeal fails.

[19] As far as any claim for exemplary damages is concerned, as I have said it is not clear that that was raised at all before the Tribunal. Such a claim cannot of course be raised on an appeal as a fresh claim, where this court is confined solely to determining whether the Tribunal erred in reaching the decisions it did.

[20] There are other proceedings before the Tribunal whereby Ms Vincent is seeking to recover her bond. Those proceedings were apparently adjourned to await the outcome of this appeal. It is of course inappropriate for me to say anything further regarding that claim.

[21] That I believe covers all matters raised by Ms Vincent and for the reasons given the appeal is dismissed.

G M Harrison
District Court Judge