IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2020-004-000764
[2021] NZDC 14114

BETWEEN	JOSEPHINE RAWSTORNE Appellant
AND	WESTSIDE MANAGEMENT LTD T/A QUINOVIC PROPERTY MANAGEMENT Respondent

Hearing: 18 March 2021

Appearances: H Bush for the Appellant
W Endean for the Respondent

Judgment: 20 July 2021

DECISION OF JUDGE NICOLA MATHERS

---

[1] Westside Management trading as Quinovic entered into a fixed term tenancy agreement in May 2018 with the tenant (appellant), Miss Rawstorne. It was for a single occupant. Later, by agreement, the tenant's partner was permitted as a second occupant.

[2] The appeal by Miss Rawstorne before me relates to a decision of the Tenancy Tribunal which found that Quinovic had unlawfully discriminated against Miss Rawstorne in breach of the Human Rights Act 1993 by requiring her to leave the property, but refused her claim for exemplary damages under the Residential Tenancies Act 1986.

[3] The appeal relates only to the refusal to grant exemplary damages. At the start of the hearing I ruled that Quinovic could not cross appeal the discrimination finding due mainly to the fact that they had withdrawn an earlier cross appeal and in relation to correspondence between them and the Court registry. Nevertheless I have had to consider the discrimination issue to be able to assess the level of the breach.

[4] The facts are well set out in the Tribunal's decision but, briefly, the issue before the Tribunal related to correspondence and communication between the parties after Miss Rawstorne advised Quinovic that she was 36 weeks pregnant. The Tribunal found on the facts that Quinovic had unlawfully required Miss Rawstorne to leave the tenancy. But in refusing to award exemplary damages the Tribunal was of the view that Quinovic had merely mistakenly considered that the birth of a baby would breach the terms of the lease.

[5] In my view the Tribunal was in error when it considered what it called the mistaken belief of Quinovic. There is no doubt in my mind that Quinovic unlawfully discriminated against Miss Rawstorne when they became aware that she was pregnant. The conduct complained of related to the pregnancy. Any breach of the terms of the lease as to numbers of occupants could only be dealt with after the birth on 1 October 2019, as stated by the Tribunal and by the appropriate issuing of breach notices and an ultimate decision of the Tribunal.

[6] In my view the so-called mistaken belief by Quinovic was not relevant. They had a legal duty not to discriminate. The discrimination all relates, at the time, to the fact of pregnancy. They are specialist landlords. Ignorance of the law is no excuse. They advised Miss Rawstorne that they were filing an application to the Tribunal the next day. The conduct of the landlord must, in my view, be considered in its totality.

[7] I have not overlooked that in the end they were prepared to let Miss Rawstorne, and by then, the baby stay until the end of the tenancy. Also, I have not overlooked the notes of evidence as to Miss Rawstorne's plans or lack of them. However, by the end the die was cast, and Miss Rawstorne vacated the premises as a result of the persistent acts of discrimination due to her pregnancy. Put another way she had simply had enough.

[8] I now turn to the relevant law. The Human Rights Act specifically refers to "pregnancy and childbirth". It refers to "differential treatment" and it provides for where the differential treatment imposes a material disadvantage. The Tribunal considered the relevant test and found there had been discrimination. I disagree with the Tribunal's consideration of the facts to some degree, as I have said, but I have no disagreement with the finding of discrimination.

[9] The Residential Tenancies Act is at the heart of this appeal. Section 12 of the Act provides that an act of discrimination in relation to an extension or termination of a tenancy agreement in contravention of the Human Rights Act is an unlawful act.

[10] Then under s 109 Residential Tenancies Act Miss Rawstorne can apply for exemplary damages. The section provides:

> **109 Unlawful acts**
>
> (1) Any of the following persons (A) may apply to the Tribunal for an order requiring any other person (B) to pay to A an amount in the nature of exemplary damages on the ground that B has committed an unlawful act:
>
> (a) a landlord:
>
> (b) a tenant:
>
> (c) the chief executive acting as the person responsible for the general administration of this Act or in the place of a landlord or a tenant under section 124A.
>
> (2) A landlord or a tenant may not apply under subsection (1) later than—
>
> (a) 12 months after the termination of the tenancy in the case of—
>
> (i) an unlawful act to which section 19(2) refers; or
>
> (ii) a failure to keep records in respect of bonds that is an unlawful act to which section 30(2) refers; or
>
> (b) 12 months after the date of commission of the unlawful act in the case of any other unlawful act.
>
> (2A) The chief executive may not apply under subsection (1) (whether acting as the person responsible for the general administration of this Act or in the place of a landlord or a tenant) later than 12 months after the date on which the chief executive first became aware of the unlawful act.
>
> (3) If, on an application under subsection (1) (other than one referred to in subsection (3A)), the Tribunal is satisfied that the person against

whom the order is sought committed the unlawful act intentionally, and that, having regard to—

(a) the intent of that person in committing the unlawful act; and

(b) the effect of the unlawful act; and

(c) the interests of the landlord or the tenant against whom the unlawful act was committed; and

(d) the public interest,—

it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the Tribunal may make an order accordingly.

(3A) In the case of an application in respect of an unlawful act under section 54(3), the Tribunal may order the landlord to pay a sum in the nature of exemplary damages if the Tribunal is satisfied that it is just to do so having regard to the matters referred to in subsection (3)(b) to (d).

(4) The maximum amount that a person may be ordered to pay under this section for any unlawful act referred to in any section shown in column 1 of Schedule 1A is the amount shown opposite that section in column 3 of that schedule.

(4A) The Tribunal may make an order against a person on the ground that the person committed an unlawful act even though the conduct that formed part of that act also formed part of an offence or an alleged offence against section 109A(4) in respect of which the person has been charged, convicted, or acquitted.

(5) Any amount ordered by the Tribunal to be paid under this section on the application of a landlord or a tenant, or on the application of the chief executive acting in place of a landlord or a tenant, shall be paid to that landlord or that tenant, and shall be in addition to any sum payable to that landlord or that tenant by way of compensation in respect of the unlawful act.

(6) Any amount ordered by the Tribunal to be paid under this section on the application of the chief executive acting as the person responsible for the general administration of this Act shall be paid to the Crown.

[11] I have been advised by counsel that this is the first such claim to come before this Court, but the High Court in *Noble v Simons*[1] has considered the approach to be taken when applying s 109(3), although in that case the breach was pursuant to ss 38 and 48 of the Act. However, the reasoning of Dunningham J is nevertheless relevant. In para 16 of her decision she says

> The Act makes it clear that such damages are available where the unlawful act is committed intentionally.

[1] *Noble v Simons* [2019] NZHC 3242.

[12] When having regard to s 109(3) Her Honour said further:

> Those do not require the party to have acted in "flagrant" disregard of the other party's rights, simply that the unlawful act was at least intentional.

[13] Then in fixing the amount of damages her Honour added:

> However, clearly the more serious the breach is, the greater the amount of damages which is likely to be awarded.

[14] I now consider the factors specified in s 109(3). As I have indicated earlier I am entirely satisfied that Quinovic acted intentionally in its various attempts to make Miss Rawstorne leave the premises. The fact that later they indicated that she could in fact stay until the end of the tenancy does not, in my view, remove the earlier intentional act of intentional discrimination due to her pregnancy. The intent was clear in that Quinovic attempted to make Miss Rawstorne leave, which she eventually did, thus committing an unlawful act. The effect of the unlawful act continued over several months and caused uncertainty and distress to Miss Rawstorne when she was already 36 weeks pregnant. The midwife advised Miss Rawstorne not to engage further with Quinovic due to the stress it was causing.

[15] Finally, I am required to consider the public interest and whether it would be just to require Quinovic to pay a sum in the nature of exemplary damages. In my view it is in the public interest that landlords recognise that the mere fact of pregnancy is not a justifiable reason to remove a tenant. The Human Rights Act specifically mentions pregnancy and, in my view, it is just that Quinovic be required to pay a sum in the nature of exemplary damages. It was a continuing breach and taking into account all the circumstances and s 109(3) itself I am of the view that the breach was in the realms of medium to serious. Having reached this view it follows that I agree with the appellant that the Tribunal did not adequately address the factors specified in s 109(3).

[16] The maximum amount that can be awarded is $4,000.00. which in itself is not a great amount. Quinovic is a professional landlord and I therefore fix the sum to be paid at $2,500.00.

[17] Miss Rawstorne having been successful is entitled to costs and I fix those on a 2 B basis.

_____
Nicola Mathers
District Court Judge