

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**TT-15-2973-CH
[2016] NZDC 7282**

BETWEEN

FAY BIRCH
Plaintiff

AND

CHRISTCHURCH CITY COUNCIL
Defendant

Hearing: 19 April 2016

Appearances: Plaintiff appears in Person
O Peers for the Defendant

Judgment: 19 April 2016

ORAL JUDGMENT OF JUDGE R E NEAVE

[1] This is an application for a stay of an order of the Tenancy Tribunal dated 28 January whereby the applicant appellant's tenancy was terminated, essentially on the grounds of arrears of rent having been owing. The appellant did not appear at that hearing. She subsequently applied for a rehearing of that decision and that was dismissed. She has now appealed against the refusal to grant a rehearing in terms of s 117 Residential Tenancies Act 1986. There seems to be no dispute that that appeal was filed within time, albeit it on the last day.

[2] Her application for a stay relates to the original decision of the Tribunal. She did not appear at the Tribunal and the decision was made in her absence. Clearly, her application for stay does not relate to the decision refusing the rehearing but to the underlying proceedings terminating the tenancy because in terms of the application for a rehearing, there is essentially nothing to stay.

[3] Section 117, subs (11) Residential Tenancies Act makes it plain. I have no jurisdiction to grant a stay regardless of any argument about the merits unless it is

supported by a receipt or other written evidence tending to show that the rent was not, in fact, in arrear at the date of the hearing before the Tribunal. I think the word tending is important in that regard. Clearly, if there is evidence suggesting that the tenant had in fact paid the rent at the date of the hearing in the Tribunal so that there were no arrears outstanding and evidence is provided of it, I am entitled to grant a stay.

[4] Ms Birch has provided details firstly of the printout of what I understand to be her account with the rental unit of the Christchurch City Council. It shows as at the date of 28 January her balance, although it appears as a current balance in credit is, in fact, in debit of \$259.20. There had been an earlier payment on 24 January of \$129.70. She has provided evidence from her bank which shows that on 24 January Westpac were authorised and seemed to have made a payment of \$264.68 to the Christchurch City Council. Had that sum been credited it would have put Ms Birch in credit and, therefore, not in arrears as at the date of the hearing. That payment seems to have arrived in the Council's account, or at least it is as a credit on 1 February. For some reason, which at the moment is unexplained, this transfer took a week to process.

[5] On the face of it, there is at the very least, evidence which suggests that Ms Birch or someone on her behalf had done all that could possibly be done to ensure that as at the date of the hearing she was in credit. There is evidence, in my view, which has a tendency to show that the rent was not in arrears at the date of the hearing before the Tribunal. Ultimately that may or may not be relevant to the consideration of the decision to grant a rehearing.

[6] In those circumstances, I consider it appropriate that there be a stay pending the determination of the appeal in relation to the rehearing. The Council's position is really not significantly prejudiced. I understand there has been a history of difficulties with this account and essentially, the Council seems to have lost patience with delayed or non-payments, missed payments, reversed payments, and so on, which perhaps explains the attitude of the Council, but ultimately are matters that need to be determined in the context of the rehearing, if such is granted.

[7] There will be problems in relation to the appeal in relation to the rehearing because Ms Birch, for reasons which are as yet unexplained, simply chose not to appear but those will be matters that will have to be determined by the Judge when he or she deals with the appeal against the refusal to grant the rehearing.

[8] There is a live issue at the moment. There is evidence which shows that the appellant was not in arrears and I am satisfied it is appropriate to grant a stay of proceedings pending the appeal before the Court.

[9] Mr Peers is anxious to ensure any such stay does not interfere with the Council's ability to enforce the possession order which it obtained. Section 64 Residential Tenancies Act notes that an order terminating the tenancy has effect as a possession order, however, if the Council wishes to enforce it, it seems it has to file it under s 106 Residential Tenancies Act to seek what would amount to a warrant for the recovery of the land. There is a 90 day time limit and Mr Peers is anxious to ensure that the Council is not prejudiced. I would have thought that a stay tends to stop time running because any other interpretation would render these time limits a complete dead letter. But for the avoidance of any doubt, I believe I can attach conditions to this stay. The stay does not seem to be a statutory provision under Residential Tenancies Act and I can only infer that it is, whilst contemplated by the legislation, a power to be exercised in accordance with the Court's general powers to regulate its own procedure. The District Courts Rules do not appear to apply in this regard either.

[10] The stay is granted on condition that the Council is permitted to file the possession order under s 106 to obtain the warrant. It may take no further steps to act upon that warrant until resolution of the appeal, currently before the Court, and/or any subsequent hearing of the matter in the event a rehearing is granted.

R E Neave
District Court Judge