EDITORIAL NOTE: NO SUPRESSION APPLIED.

IN THE DISTRICT COURT
AT PALMERSTON NORTH

CIV-2017-054-000237
[2017] NZDC 13262

BETWEEN	AARON STEPHEN JUDD Appellant
AND	LEANNE DAVIDSON Respondent

Hearing: 12 June 2017

Appearances: Appellant appears in Person
Respondent appears in Person

Judgment: 12 June 2017

ORAL JUDGMENT OF JUDGE L C ROWE

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[1] This is an appeal brought by Aaron Judd in relation to an order of the Tenancy Tribunal made on 28 April 2017 refusing a rehearing.

[2] The respondent is Mr Judd's former landlord, Ms Leanne Davidson. Both parties are present in Court.

[3] Mr Judd previously rented a flat in Ferguson Street from Ms Davidson. It was one of a number of flats owned by Ms Davidson. At the end of January 2017, Ms Davidson served Mr Judd with a 90–day notice terminating the tenancy under s 51 Residential Tenancies Act 1986. Mr Judd applied within the time required for the notice to be declared invalid on the grounds that it was retaliatory[1]. He also sought other orders from the Tenancy Tribunal relating to whether his quiet enjoyment of his flat had been interfered with.

[1] Residential Tenancies Act 1986, s 54

[4] On 5 April 2017, the Tribunal issued a decision dismissing Mr Judd's application and, in particular, finding that the termination notice was not retaliatory.

[5] Mr Judd, within the time prescribed in the Act, applied for a rehearing of that decision. Importantly, he did not appeal that decision to the District Court. The application for rehearing was dismissed by the Tenancy Tribunal on 28 April 2017 after hearing from the parties.

[6] Mr Judd now brings an appeal which purports, on its face, to be an appeal against the refusal of the Tribunal to find that the s 51 notice was retaliatory or that there had been loss of quiet enjoyment. The relief that Mr Judd seeks on the appeal is to have the notice overturned and for compensation in accordance with Schedule 1A Residential Tenancies Act.

[7] I have pointed out to Mr Judd that my jurisdiction is limited in the sense that any appeal has to be brought within 10 working days after the date of the decision to which the appeal relates.[2] That means I cannot sit on appeal against the original decision delivered on 5 April. The time for bringing an appeal against that decision expired in April. There is no provision in the Residential Tenancies Act for an extension of that 10–day time limit and the relevant rule[3] does not allow me to extend the time for bringing an appeal where no provision is made for extending the time for bringing an appeal in the Act concerned.

[8] This appeal therefore is confined to whether or not I ought to set aside the Tribunal's refusal of a rehearing being the decision of 28 April.

[9] In that decision, the Tribunal found that Mr Judd had not raised any new issue beyond what he had argued, and been given the opportunity to present evidence about, at the original hearing. The issues arising from that first hearing, which were revisited on the rehearing application, were traversed by the Tribunal. They concerned the following (in no particular order):

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[2] Section 117(6) Residential Tenancies Act 1986.
[3] District Court Rules 2014, r 18.4

(a) Firstly, Mr Judd's care of a cat that eventually had to be re-homed. That occurred some three months or so prior to the s 51 notice was delivered.

(b) Secondly, communications that the landlord had with Mr Judd's parents and whether that breached Mr Judd's privacy.

(c) Thirdly, items of maintenance that Mr Judd had raised with the landlord; and

(d) Fourthly, the installation of spotlights or a spotlight to act as a deterrent to trespassers.

[10] At the 28 April hearing, Mr Judd also raised an issue that the landlord had been misleading as to her reasons for issuing the s 51 termination notice at the previous hearing.

[11] As I read the evidence, and the matters that were discussed, that issue was traversed at some length and in detail during the 28 April hearing. Mr Judd was given a full opportunity to put his case as to why he considered the landlord had been misleading in their previous evidence on this point.

[12] The Tribunal, of course, was required to proceed on the somewhat more limited basis under s 105, namely that a rehearing will only be ordered where a substantial wrong or miscarriage of justice may have occurred. It was therefore not a matter of asking whether the previous decision was wrong or that a party disagrees with the previous decision. It would not be sufficient for the previous decision to be merely erroneous, s 105 requires a higher standard than this[4]. The Tribunal would need to examine, for example, whether there had been some procedural error, where there had been the improper admission or rejection of evidence, or there was some form of misconduct by the parties or a witness, or by the Tribunal themselves. Also, if there had been new and important evidence discovered that had not been previously available.

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[4] *Wellington City Council v McMillan* [2003] DCR 50

[13] All of these matters were traversed by the Tribunal Member in her decision to find that a rehearing ought not be granted to Mr Judd. The previous points that had been raised by Mr Judd that I have summarised were also discussed and Mr Judd was given an opportunity on the rehearing application to restate his arguments in relation to each of those points.

[14] Given the high standard that needs to be met before a rehearing can be granted, the question for me is whether it was not open to the Tribunal, on the evidence she heard on the rehearing, to refuse the application for the rehearing. I find it was plainly open to the Tribunal to find that a rehearing should not be granted. Essentially, what was occurring at the rehearing application was a restatement of the previous arguments, with the added assertion by Mr Judd that the landlord had been misleading as to her grounds for giving the s 51 notice in the first place.

[15] The Tribunal, which heard directly from the parties on oath twice in relation to this issue, found that the notice was not retaliatory. There was an evidential basis to make that finding that ought not be revisited on a rehearing application when both parties had been given a full and proper opportunity to be heard on the point. Secondly, the Tribunal was not plainly wrong in the conclusion it reached. It was a decision the Tribunal was entitled to reach on the evidence it heard.

[16] It is not for me now, as I have said, to revisit the original decision. I have no jurisdiction to do so. But I certainly cannot find, on the information before me, and the way the Tribunal dealt with the issues, that the Tribunal was plainly wrong to reject the application for a rehearing. In other words, it was not plainly wrong to say that Mr Judd had not established that a substantial wrong had occurred, or that a miscarriage of justice had occurred. In particular, he had been given the opportunity to put his case. The fact that his evidence, or his point of view, was not accepted is not an answer to either this appeal or the previous application.

[17] One final matter has been raised by Mr Judd and Ms Davidson today and that is whether the Tribunal ought to have had a different adjudicator hear the application for rehearing. Relevant commentary about s 105 notes that the Act does not require

a rehearing to be before a different Tenancy Adjudicator but it is "preferable"[5]. It is preferable in the sense that the parties could be more readily assured that the application for rehearing is being dealt with in a way that is completely uninfluenced by decisions that an adjudicator may have reached previously. But here, the Tribunal has carefully revisited all of the grounds that have been raised – and the grounds that were raised by Mr Judd fell, in my view, well short of the standard required to bring about a rehearing – so I do not consider an independent adjudicator would have made any difference. Indeed, the Tribunal Member was in the best position to assess the main point raised by Mr Judd that Ms Davidson had been misleading in her earlier evidence. In many ways, the position of a new set of eyes is achieved on this appeal anyway.

[18] That being the case, I find that I have no basis to uphold the appeal. I, accordingly, dismiss Mr Judd's appeal.

L C Rowe
District Court Judge

[5] *Westlaw NZ, Civil Procedure: District Courts and Tribunals,* RT105.07