EDITORIAL NOTE: NO SUPRESSION APPLIED.

IN THE DISTRICT COURT
AT AUCKLAND

CIV-2017-004-000344
[2017] NZDC 17207

BETWEEN	JIMIN HWANG Plaintiff
AND	JOHN ALBERT Defendant

Hearing:	2 August 2017
Appearances:	Apellant appears in Person Respondent appears in Person
Judgment:	2 August 2017

ORAL JUDGMENT OF JUDGE G M HARRISON

---

[1] This is an appeal by Mr Hwang against a decision of the Tenancy Tribunal. The notice of appeal as drawn refers to the date of the tribunal's decision as 2 February 2017. There was a decision of the Tenancy Tribunal adjudicator of that day and that was a decision dismissing an application brought by Mr Hwang for a rehearing of the substantive decision of the adjudicator which was issued on 7 December 2016.

[2] On the face of it, therefore, the appeal relates only to the decision declining a rehearing. In that regard, the adjudicator has pointed out that a rehearing can only be granted under s 105(1) Residential Tenancies Act 1986 where a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur.

[3] The adjudicator went onto describe the requirements for the granting of a rehearing, such as where a party did not receive notice of the previous hearing, or was not able to properly present their case, or that there is new evidence that was not reasonably available at the first hearing.

[4] The adjudicator also noted that if it is alleged that the tribunal was simply wrong in its finding of fact, that of itself is not sufficient to establish a miscarriage of justice. The adjudicator also noted that a rehearing will not be granted just because a party is unhappy with the decision.

[5] The adjudicator dismissed the application for rehearing on the grounds that disagreement with the decision of the tribunal is not a ground on which to grant a rehearing. Neither is the fact that Mr Hwang regards the decision as incorrect or unfair, or that the monetary award, which I will come to shortly, is too little.

[6] The adjudicator noted that Mr Hwang wished to produce a copy of the recording of the hearing before an earlier adjudicator, Mr Hogan, in September 2016, but of course a rehearing had been granted in respect of the decision of 1 September 2016 because Mr Albert, the respondent in this appeal, had been unable to attend that hearing. Consequently, the record of the hearing before Adjudicator Hogan had no relevance to the application that was being considered by Adjudicator Day.

[7] Lastly, Mr Hwang wanted the tribunal to consider the evidence of his former girlfriend regarding an issue of the cleanliness of the premises, the subject of the application, but she was then living in Korea and was not available as a witness and the tribunal declined to admit that further evidence. Consequently, Mr Hwang has not demonstrated that the adjudicator erred in any way in declining to grant a rehearing and so his appeal in that regard cannot succeed.

[8] I did, however, hear Mr Hwang on his concerns regarding the substantive decision of the adjudicator of 7 December 2016. His major concern was an award of exemplary damages of $700 in his favour for harassment by Mr Albert and/or Maidstone Lodge Limited, which was, as I understand it, the company owning the premises that Mr Hwang had occupied. The adjudicator's finding was that exemplary damages should be awarded in the sum of $700. Mr Hwang claims that that amount was insufficient. He was concerned at the subject matter and content of some of the texts on which the adjudicator's award was made but was unable to demonstrate that the amount of damages fixed was inappropriate.

[9] I can see no error in the amount fixed. The maximum amount payable in respect of a claim for harassment is $2000, and so the amount awarded is approximately one-third of the maximum. I also take into account the fact that the adjudicators are sitting on a regular basis in the Tenancy Tribunal jurisdiction. They have developed an expertise in assessing appropriate amounts of damages to award as permitted by the Act, and in particular in respect of claims for damages for harassment and I cannot discern any error on the part of the adjudicator in her expert assessment of the proper amount payable.

[10] Another concern of Mr Hwang is related to an allegation by him that he had left various possessions behind on vacating the property. The adjudicator dealt with this matter by summarising Mr Hwang's evidence of what had been left, which included jewellery, a vacuum cleaner, two bottles of whiskey, clothing and a bag. The adjudicator noted that she found the evidence of Mrs Albert to be consistent and measured, and the most credible of the parties giving evidence. Her evidence was that when she entered the room on 18 July 2016 for a final inspection, it was empty except for a small box of clothes, half a bottle of alcohol and a vacuum cleaner. Everything else had been taken.

[11] The adjudicator, therefore, found on the evidence that Mr Hwang had not established on the balance of probabilities that the belongings claimed to have been left were indeed lost to them, and the claim for compensation in that regard was dismissed. Again, I can see no error on the part of the adjudicator in reaching that finding, it being a matter for her to make evidential findings on the evidence given, which she has clearly done.

[12] A further concern of Mr Hwang related to a bond that he had deposited on taking up occupation in the sum of $280. At paragraph 22 of the decision the adjudicator noted that, while the rent was paid to 7 June 2016, Mr Hwang failed to give notice to the landlord that he was vacating the room. This was discovered by the landlord on 18 June and the adjudicator determined that 11 days rent was owing to that date.

[13] She recorded that the landlord had retained the bond of $280 against that unpaid rent which they were entitled to do under s 66D(2)(a) of the Act. Again, I can discern no error on the part of the adjudicator in reaching that conclusion. Consequently, of the major matters of concern to Mr Hwang, even if his appeal had related to the substantive decision of the adjudicator of December 2016, I am of the view that the appeal would have been unsuccessful.

[14] For those reasons, therefore, the appeal against the decision declining to award a rehearing is dismissed.

G M Harrison
District Court Judge