

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**CIV-2017-044-000282  
[2017] NZDC 20851**

BETWEEN MADHAV HARI KARMARKAR  
Appellant

AND SHASHIDHAR MANDA  
Respondent

Hearing: 11 September 2017

Appearances: Appellant appears in Person  
Respondent appears in Person

Judgment: 18 September 2017

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**RESERVED JUDGMENT OF JUDGE L I HINTON**

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[1] The appellant landlord, Mr Karmarkar, appeals the decision of the Tenancy Tribunal dated 27 February 2017 that a tenancy arrangement between Mr Karmarkar and the respondent, Mr Manda, was a boarding house and not fixed term tenancy. This meant that Mr Karmarkar's claim for alleged rental arrears outstanding and owing by Mr Manda under a fixed term agreement failed, because Mr Manda had rather, under a boarding house tenancy, paid the required rent outstanding and given sufficient notice of termination.

[2] Mr Karmarkar's claim at the Tenancy Tribunal was that Mr Manda was a joint tenant with eight other residents on a fixed term basis for the period 7 November 2016 to 15 April 2017.

[3] In his notice of appeal document filed in this Court, Mr Karmarkar raises various alleged errors on the part of the Tribunal. However, essentially his main concern with the Tribunal's decision is that the adjudicator erred in the conclusion there was a boarding house tenancy rather than a fixed term tenancy. Mr Karmarkar sought an order for rental arrears accordingly.

[4] In his submissions at the appeal hearing in this Court, Mr Karmarkar referred to his assumption or presumption that there was a fixed term tenancy in existence and that this had been agreed to by Mr Manda. He referred to the role of a Mr Pendem, who was an agent on behalf of Mr Karmarkar who had some dealings with Mr Manda. Mr Karmarkar had hoped to have some evidence from Mr Pendem given at the appeal hearing, even though none was given by him at the Tenancy Tribunal – in the event, Mr Pendem was not available. I had not given any indication further evidence was permitted and did not need to decide the issue. In any event, I do note there was some documentary material before the Tribunal concerning Mr Pendem.

[5] Mr Manda submitted at the appeal hearing that he had answered an advertisement for accommodation to suit his particular needs on arrival in Auckland for what could be temporary work. He thought he was renting a room, not a big house. He said he knew nothing of supposed joint tenants and a supposed fixed term extended tenancy. The arrangement was temporary boarding only. He had not ever agreed to a longer or fixed term tenancy with supposed joint tenants or otherwise.

### **Relevant law**

[6] In this case, Mr Manda had given 48 hours' notice of his intention to vacate the property. Whether in law that was valid, thus meaning he is not liable for rental arrears, depends on a factual finding that the arrangement was a boarding house tenancy as opposed to a fixed term joint tenancy which would conclude on 15 April 2017.

[7] A fixed-term tenancy is a tenancy for a fixed term and generally does not include a tenancy that is terminable by notice.<sup>1</sup>

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<sup>1</sup> Section 2 Residential Tenancies Act.

[8] A boarding house tenancy is a distinct type of tenancy governed by provisions contained in part 2A of the Residential Tenancies Act 1986 (RTA). Notably, a tenant may end a boarding house tenancy on 48 hours' notice. No reason is required to be given and the notice may be given orally or in writing.<sup>2</sup>

[9] A boarding house tenancy is a residential tenancy that is intended to, or that does in fact, last for 28 days or more, and under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house and has the right to the shared use of the facilities of the boarding house.<sup>3</sup> In effect, the tenancy agreement relates to a particular room.<sup>4</sup>

[10] Section 66B of the RTA provides the following additional definitions relevant to boarding house tenancies:

**66B Interpretation for this Part**

In this Part, unless the context otherwise requires,—

**boarding house** means residential premises—

- (a) containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and
- (b) occupied, or intended by the landlord to be occupied, by at least 6 tenants at any one time

[...]

**boarding house tenancy agreement** means a tenancy agreement (as defined in section 2(1)) relating to a boarding house tenancy

**boarding room** means a room in a boarding house that is used as sleeping quarters by 1 or more tenants of the boarding house, and that is for use only by a tenant whose tenancy agreement relates to that room

[...]

**facilities** means the facilities provided by the landlord of a boarding house for the shared use by tenants of the boarding house, such as—

- (a) toilet and bathroom facilities:
- (b) cooking facilities:
- (c) general living, dining, or recreational areas:

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<sup>2</sup> Section 66V.

<sup>3</sup> Section 66B.

<sup>4</sup> *Saunders v Chou* DC Christchurch CIV-2014-009-733, 19 November 2014 at [18].

- (d) laundry facilities:
- (e) lifts and stairways:
- (f) rubbish storage and rubbish disposal facilities:
- (g) appliances for heating or cooling premises:
- (h) communication facilities:
- (i) lawns, gardens, and outhouses:
- (j) any land or buildings intended for use for storage space or for the parking of motor vehicles

**premises** means the boarding house, comprising the boarding rooms and all the facilities of the boarding house; and includes any part of any premises.

[11] In *Cutlers Ltd v Olivia* Judge Crosbie held that s 66B is an enabling provision and not a deeming provision, and therefore simply falling within the definition under s 66B is not determinative. Rather, all of the circumstances, including the tenancy agreement and, if necessary, the intention of the parties, must be considered.<sup>5</sup>

[12] In *Saunders v Chou* Judge Neave summarised the relevant principles for this determination:<sup>6</sup>

[27] Without being an exhaustive list, it seems to me that among the matters that will be relevant in determining what kind of tenancy one has will be:

- (a) The nature of the property (obviously the smaller the property and the fewer rooms there are, the less likely it is to be a boarding house).
- (b) The number of tenants (i.e. are there more than six? Any less than that will be excluded from being a boarding house tenancy by virtue of the Act).
- (c) The nature of the agreement and, in particular, does the agreement grant a right of exclusive occupancy to a particular room but with a right to use the rest of the house, or is it an agreement to occupy the house solely or in common with others?
- (d) The terms of the agreement. In other words, are the terms of the agreement more consistent with those required by a boarding house tenancy or those which relate to an ordinary residential tenancy under the Act?
- (e) This, to a certain extent, follows on from the previous point - What is the provision for notice, what rights of entry does the landlord have, does the agreement provide for house rules?

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<sup>5</sup> *Cutlers Ltd v Olivia* DC Dunedin CIV-2013-012-000410, 1 November 2013 at [21]. Referred to in memorandum of appellant dated 1 June 2017.

<sup>6</sup> *Saunders v Chou*, above n 4.

- (f) The intention of the parties. While that cannot be crucial if the other indicia of a boarding house tenancy, as opposed to a normal residential or periodic tenancy, are present, but a clearly expressed intention one way or the other will be of assistance.

[13] In *Saunders v Chou* Judge Neave held that the particular tenancy agreement had features consistent with either kind of tenancy, but on balance the agreement was more consistent with being a boarding house tenancy. His Honour considered that the intention of the parties will always be best illustrated by the agreement and the “net effect of what the parties have agreed is that a boarding house tenancy has been created”.<sup>7</sup> The renting of a particular room was found to be significant.

### **Discussion**

[14] It seems that Mr Manda occupied a room in the house from 19 November 2016, when he arrived in New Zealand. He had moved from Australia for work and had made an enquiry on a TradeMe advertisement on or around 17 November 2016. Mr Manda’s initial contact was with Mr Pendem, the appellant’s agent.

[15] There was no *signed* tenancy agreement between the parties. A fixed term rental agreement was emailed to the respondent. The respondent’s name is listed, following the names of 8 other tenants. It is not signed by any tenants. It is for the period commencing 7 November 2016 and ending 14 April 2017. There is an annexure of terms and conditions. This was also not signed. In an email dated 20 November 2016, Mr Karmarkar stated the rent was \$125 per week, and the bond of \$375 was payable immediately. Mr Manda was advised to “accept by return email”.

[16] Mr Karmarkar considers there was “email acceptance” of that agreement.<sup>8</sup> However, there was no explicit written record of the respondent agreeing to the terms of that fixed term agreement. Mr Manda confirms he never signed or agreed to a fixed term joint tenancy.

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<sup>7</sup> At [31].

<sup>8</sup> Transcript of Tribunal hearing dated 27 February 2017 at page 3 line 16.

[17] Mr Manda said he was shown the house by Mr Pendem and knew it was a boarding house. He said there were six bedrooms, 14 people living there, each room had two to three beds and locks, there were shared facilities, he never knew any of the people before he moved in, he gave notice when he left, and he paid for all rent while he was there. He says beds were being rented to people as they came. More specifically, he says he was sharing the bedroom, toilet and shower with two other people and things like the kitchen, fridge, dining table and chairs. He says the house was overcrowded, the internet was not working and the facilities were insufficient for the number of people living there.

[18] In an affidavit, Mr Karmarkar describes the nature of the dwelling as follows:<sup>9</sup>

- (a) 11 bedrooms, 8 toilets, 2 kitchens, decks, living rooms etc (per floor plans);
- (b) the house is not rented room wise;
- (c) flatmates are bound by their own internal management; and
- (d) all flatmates have agreed to live like a family and have developed familial relationships.

[19] On 25 January 2017, Mr Manda emailed Mr Pendem his “vacant notice”, indicating he would vacate his bed before 28 January 2016 and that he had paid two weeks of rent in advance.<sup>10</sup> In the email he notes problems at the house, including that the “house is not as when I joined or took position on bed in the room”.

[20] It seems to me the view taken by the adjudicator that this was a boarding house tenancy was correct having regard to these factors:

- (a) The number of occupants in the house – there were at least nine tenants at the time Mr Manda moved in, six bedrooms and Mr Manda advised there were actually 14 people living there.
- (b) Mr Manda was assigned a room, which had a lock, with facilities then shared with others whom he did not know.

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<sup>9</sup> Affidavit of appellant dated 24 May 2017.

<sup>10</sup> Memorandum of the respondent filed 4 July 2017, exhibit 11.

- (c) Mr Karmarkar's attempted joining of Mr Manda to a fixed term tenancy, which purportedly commenced on 7 November 2016, was before Mr Manda had made any enquiry about the property, or was in NZ. Mr Manda did not know the alleged joint tenants. There is no evident consensus amongst the tenants, who are purportedly jointly and severally liable.
- (d) There is no signed fixed tenancy agreement or other evidence that Mr Manda accepted the terms of any fixed term tenancy agreement.
- (e) Mr Manda was charged rent and bond for the individual room rate (rather than rent being charged as a single global amount to then be divided as agreed between the tenants).

[21] I agree with the decision of the adjudicator for the reasons set out in the decision dated 27 February 2017. The room rented by Mr Manda was rented "room wise", as the adjudicator put it, under a boarding house tenancy agreement.

[22] The appeal is dismissed accordingly.

L I Hinton  
District Court Judge