

**IN THE DISTRICT COURT
AT AUCKLAND AUCKLAND**

**CIV-2016-004-002376
[2018] NZDC 3707**

BETWEEN MICHAEL NOEL GREENSMITH
Appellant
AND NANCY FONG-ANAE
Respondent

Hearing: 11 January 2018
Appearances: Appellant in Person
Respondent in Person
Judgment: 28 March 2018

RESERVED JUDGMENT OF JUDGE B A GIBSON

[1] The appellant brings an appeal against a decision of the Tenancy Tribunal given on 6 December 2016 alleging that the Adjudicator was prejudiced and biased in his decision. The decision concerned cross applications with Mr Greensmith, the applicant, challenging a 90 day notice of termination as retaliatory and seeking a refund of \$1,320 as an overpayment of the bond as well as seeking various expenses and compensation for alleged breaches of the tenancy agreement, together with a work order requiring the respondent, as landlord, to remedy an allegedly insecure handrail alongside some external steps. Ms Fong-Anae sought a possession order following the expiry of a 90 day notice of termination, rent arrears, and compensation and exemplary damages as well as other remedies for alleged breaches of the agreement by Mr Greensmith.

[2] The tenant, Mr Greensmith, succeeded before the Tribunal in his claim for a refund of the bond. The amount held at the Bond Centre as at the date of hearing was \$2,640. There were rent arrears deducted from the bond of \$1,093.65, with the balance of \$1,546.35, including the overpayment of \$1,320 ordered to be refunded to Mr Greensmith as tenant.

[3] The Adjudicator, Mr B Stephenson, found that the landlord's notice of termination was not retaliatory but was a notice Ms Fong-Anae was entitled to give, especially given that the landlord was motivated by complaints from other tenants that she could reasonably accept as genuine. After hearing the parties he held that the landlord's notice was not motivated by Mr Greensmith's exercise of any right, power, authority or remedy conferred on him by the tenancy agreement of the Residential Tenancies Act 1986 ('the Act').

[4] Having read the transcript of the proceedings I accept that finding was open to Mr Stephenson. He heard the witnesses and was best able to assess them, and I reject Mr Greensmith's allegations of bias and prejudice. There is nothing in the transcript that indicates that was so.

[5] The claims by Mr Greensmith concerning an alleged loss of supplementary benefits, lack of local authority approvals, and damage to an antique cabinet and other expenses failed for insufficiency of evidence to support them. The Adjudicator found that he was not persuaded by the evidence that the handrail was insecure or that the condition of the steps breached s 45 of the Act and, in any event, as the tenancy had ended and Mr Greensmith had moved elsewhere he found, even had Mr Greensmith been able to prove his allegations, that it would have been inappropriate to make an order.

[6] The landlord also sought damages from Mr Greensmith for unauthorised alteration to the tenancy and for disturbance to other tenants by noise caused by Mr Greensmith, as well as exemplary damages for "*excessive and abusive communication at all hours of the night and day*" and "*threatening behaviour*". These claims failed but there was no cross-appeal against Mr Greensmith.

[7] Overall, I am satisfied that the orders made were within the jurisdiction of the Adjudicator, there was no appealable error in the way the proceedings were conducted, and accordingly the appeal is dismissed.

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Gibson DCJ

