

**IN THE DISTRICT COURT
AT PORIRUA**

**CIV-2017-091-000435
[2018] NZDC 4128**

UNDER	THE RESIDENTIAL TENANCIES ACT 1986
BETWEEN	IAN CLAYTON-BRAY Appellant
AND	FLETCHER CONCRETE AND INFRASTRUCTURE LIMITED Respondent

Hearing: 1 March 2018

Appearances: Appellant in person
Ms R L Pinny for Respondent

Judgment: 9 March 2018

RESERVED JUDGMENT OF JUDGE C N TUOHY

[1] This is an appeal against the decision of the Tenancy Tribunal dated 19 July 2017 granting possession to Fletchers of the property at 67 Te Roto Road, Otaki. Mr Clayton-Bray had been occupying the property as tenant under a tenancy agreement which had been terminated by notice. As Fletchers had agreed to provide Mr Clayton-Bray with a further two week period to vacate, the order stipulated that possession should be given to Fletchers on 2 August 2017, two weeks after the date of the decision.

[2] The history of the tenancy was set out in detail in the Tribunal's decision¹. In his decision the Adjudicator stated:

10. Having reviewed the communications on file, my impression of the tenant's position is that:

¹ At para 2.

- a. the tenant does not dispute the legality of the landlord's notice to terminate the tenancy.
- b. The reason the premises have not been vacated, is because the tenant has been unable to find alternate accommodation that meets his needs, financial reasons, and ill-health.²

[3] At the appeal hearing before me, Mr Clayton-Bray essentially presented the same case³. While strongly criticising the conduct of Fletchers, both in the way it purchased the property in a mortgagee sale and as his landlord, he did not dispute that Fletchers is entitled to possession. What he is seeking is a delay of up to six months before any possession order comes into effect. This is because he considers that he needs that amount of time to remove himself, his belongings and his horses from the property, given his age and the state of both his health and his finances. He provided full details of his difficulties at the appeal hearing.

[4] Mr Clayton-Bray also complained in his Notice of Appeal about the refusal of the Adjudicator to adjourn the Tribunal hearing on the grounds of his ill-health. As a result, he was unable to appear at that hearing. It is not necessary to resolve the appropriateness of that decision. This is an appeal by way of rehearing at which all issues may be raised which could have been raised at the Tribunal. Further, the delay between the Tribunal hearing and this appeal hearing is far longer than any adjournment which might have been granted to Mr Clayton-Bray.

[5] Fletchers points out that Mr Clayton-Bray has, through the filing of the appeal, achieved a practical suspension of the possession order for six months. It is not agreeable to further delay in the effecting of the possession order any longer than two weeks from the date of this decision. Its submission is that Mr Clayton-Bray has no legal right to remain any longer in the property and it has a legal right to an order for immediate possession.

[6] While the Court has sympathy for Mr Clayton-Bray and the practical problems which face him in vacating the property, the legal position is that Fletchers is entitled to immediate possession because it is the owner of the property and Mr Clayton-Bray's

² Mr Clayton-Bray did not appear at the Tribunal hearing.

³ His written submission is intituled "*Penury and Misery*".

tenancy was lawfully terminated by valid notice given on 27 May 2016 which, after extensions, expired on 11 May 2017.

[7] It is questionable whether the Court has the legal power to suspend the operation of the immediate possession order which Fletchers is entitled to. Arguably, such a power might arise from s 85(2) of the Residential Tenancies Act 1986⁴ which provides:

85 Manner in which jurisdiction is to be exercised

...

- (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[8] However, even if there is such a power, I do not think that it would be in accord with the substantial merits and justice of this case to exercise it in the manner sought by Mr Clayton-Bray. He has been aware that he had been required to vacate the property since May 2016, nearly two years ago. His legal right to remain expired finally a year later in May 2017. Fletchers had given him a number of extensions in the interim. Fletchers should not be deprived of its legal right to possession any longer by reason of Mr Clayton-Bray's personal difficulties.

[9] I record in this respect, that Mr Clayton-Bray has adult children, who visited him recently and will help him to relocate. He intends to move to [location deleted] and is able to live with his daughter there, at least in the short term.

[10] The appeal is dismissed. The possession order is confirmed. It is to take effect at 9.00 am on 16 March 2018.

C N Tuohy
District Court Judge

⁴ Which is applicable on appeal to the District Court pursuant to s 117(4) of the Act.