IN THE DISTRICT COURT
AT WELLINGTON

CIV-2017-085-001137
[2018] NZDC 9097

BETWEEN	CHERYL SCOTT Appellant
AND	CORAL DE CENT and DANIEL EATON Respondents

Hearing: 9 May 2018

Appearances: Appellant in person
No appearance for Respondents

Judgment: 10 May 2018

RESERVED JUDGMENT OF JUDGE C N TUOHY

---

[1] This is an appeal by Ms Scott against the refusal of the Tenancy Tribunal to grant a rehearing of a hearing before the Tribunal which resulted in a decision dated 1 August 2017 awarding $750 in exemplary damages against Ms Scott for breach of her tenants' quiet enjoyment. The hearing which resulted in that award was itself a rehearing held following a successful appeal by Ms Scott against an earlier award of $1750 in exemplary damages for that breach. So in a sense the decision of 1 August 2017 was a victory for her. It is obvious, though, that she does not see it in that way.

[2] The decision refusing a rehearing, against which the present appeal has been filed, was dated 17 November 2017. In that decision, the Adjudicator summarised the long history of litigation between the parties which led up to the decision of 1 August 2017. It is unnecessary to repeat it here. Suffice to say that the series of hearings, applications for rehearing, rehearings and appeals continuing up till now is out of all proportion to the sums involved. Recognising that, the tenants have understandably limited their involvement in this present appeal to the filing of a brief two page submission.

[3] Ms Scott's Notice of Appeal, by contrast, initially had 51 handwritten pages attached to the form, to which another eight pages were added. I have not read them. Instead, I made directions at an Appeal Conference held on 2 March 2018 that the parties were to have half an hour each to make oral submissions and were permitted also to file written submissions beforehand. Limits to the format and length of those written submissions were imposed because of the Court's experience of Ms Scott's extreme prolixity, which detracts from the Court's ability to identify and address the merits of her case. I am pleased to say Ms Scott has complied with these directions.

[4] While her written submissions were consequently easier than before to assimilate, it would have been more helpful if they had been in a structured form, perhaps by the insertion of headings and numbered paragraphs for each separate topic. As it is, they read as continuous monologue of random observations from which it is difficult to discern a coherent theme.

[5] Ms Scott also made oral submissions at the hearing. These occupied about an hour. It was not easy to isolate relevant points because they were so rambling and diffuse. In the end, I had to bring the submissions to a somewhat abrupt end.

[6] The issue on the application for rehearing was not whether the decision of 1 August 2017 awarding the exemplary damages was right or wrong. The issue, as the Adjudicator correctly identified, was whether *"a substantial wrong or miscarriage of justice may have occurred or is likely to occur"*[1]. The Adjudicator referred to my decision in *WCC v McMillan*[2] in which I discussed the meaning of that phrase.

[7] The Adjudicator then dealt with each of the broad grounds raised by Ms Scott in considerable detail, rejecting each of them with full reasons. I have read the Adjudicator's decision and the reasons she gave for rejecting each ground identified by her. I find those reasons unimpeachable and agree with them.

[8] However, in deference to Ms Scott, I will also give my views on some particular matters which seemed to be prominent in her submissions.

---

1 s 105 Residential Tenancies Act
2 [2003] DCR 50

[9] First, she complained about being under some misapprehension about what the rehearing on 1 August 2017 was about. She indicated that the import of Davidson DCJ's judgment on her appeal was unclear to her and that she had received communications from the Tribunal prior to the rehearing which confused her.

[10] I see nothing unclear or confusing about Davidson DCJ's judgment. I consider that the understanding of the Adjudicator as to the scope of the rehearing, as expressed in paragraph 5 of her decision of 1 August 2017, was correct. A miscarriage of justice does not arise simply because Ms Scott may have anticipated a broader rehearing.

[11] Nor do I think that the procedure adopted by the Adjudicator was in any way unfair. The Tribunal has the power to regulate its own procedure provided, of course, that natural justice is observed. Nor did the Adjudicator rely on any material not properly before her. All of it related to prior hearings between the parties relating to the current dispute which Ms Scott had participated in. While Ms Scott may not have anticipated the way in which the Adjudicator proceeded or her reference to earlier hearings, I am unable to see that that detrimentally affected her right to be heard.

[12] Finally, the complaint that no hearing should have been held until after the time for appealing Davidson DCJ's decision had expired, is without merit. If Ms Scott wanted to keep that option open, she could have both filed an appeal and proceeded with the rehearing. She chose not to file an appeal and has no basis for later complaint about her choice.

[13] Ms Scott also sought to relitigate before me various aspects of the appeal decided by Davidson DCJ on which she did not succeed. Those matters cannot be relitigated on this appeal against a different decision.

[14] I am quite satisfied that the Adjudicator's decision to refuse Ms Scott's application for a rehearing of the 1 August 2017 hearing was correct. The present appeal is dismissed.

C N Tuohy
District Court Judge