



the sum of \$72.02 claimed by Ms Scott, being half the cost of repair to a light fitting, and \$1,767.87 related to the costs of carpet replacement, were all refused.

[3] Regarding the carpet replacement cost, the adjudicator noted Ms Scott had insurance. The insurance company accepted her claim. Ms Scott claimed the insurance excess. The adjudicator detailed reasons why, in the circumstances, s 269 of the Property Law Act applied to preclude recovery where a landlord has any insurance cover. Clearly that assessment of that provision is correct.

[4] Ms Scott's claim of exemplary damages of \$1,000 for failure to remove rubbish was likewise dismissed. Some allowance was made of Ms Scott's claim for time and travel expenses.

[5] In all the circumstances, the adjudicator agreed the rental bond was to be paid to Ms Scott.

[6] Applications by Ms Scott for rehearings were dismissed. In this appeal, focus is upon the adjudicator's decision fixing rental payable from the deemed date of abandonment, and because of Ms Scott's refusal to acknowledge the adequacy of the sums ordered for payment to her by Mr Rangi.

### **Background**

[7] On 23 January 2018, the Tribunal made an order for compensation in favour of Ms Scott.

[8] On 29 January 2018 Ms Scott applied for rehearing. Her application comprised 26 pages of handwritten submissions. In essence, it was her claim that a serious miscarriage of justice had occurred. She considered the award was insufficient.

[9] The arbitrator noted that by s 105(1) of the Residential Tenancies Act 1986 (RT Act) the Tribunal had the power to order a rehearing where "a substantial wrong or miscarriage of justice has or may have occurred or was likely to occur".

[10] Ms Scott mentioned a number of concerns including the manner in which hearings were conducted and, Ms Scott says, the behaviour of the adjudicator towards her. She said he was terse, grizzly and that the transcript did not show his body language. She considered his manner towards her was not impartial.

[11] She states that the adjudicator decided to hear Mr Rangi's claim first when it was her claim as well that had been scheduled. She objected to this. The particular matter of concern was (regarding Mr Rangi terminating his tenancy agreement) his claim of it being due to "unforeseen circumstances"; and she said she did not have full details of the mitigating circumstances being referred to.

[12] She submits that the Tribunal had no jurisdiction to hear about Mr Rangi's sick son because it did not affect the tenancy obligations and it was not a proper reason for ending the tenancy.

[13] Ms Scott says the adjudicator should have run through the claims and to outline how the hearing was to be managed and heard.

[14] Ms Scott complains that at the first hearing she was "forced" to hear irrelevant information.

[15] In the result she believed the adjudicator had made up his mind on what his decision would be.

[16] She disagrees with the adjudicator's acceptance of unforeseen circumstances. She has concerns including that the adjudicator was not prepared to hear some of her claims.

[17] Ms Scott was concerned about "the approach he had"; and about the way the adjudicator wanted to run the hearing; that it appeared designed to favour the tenant. In her view the adjudicator had already "conceived what he wanted to say".

[18] Ms Scott stated the adjudicator should have written to her to say what information he required of her. She considered that the adjudicator "ran" Mr Rangi's

case. She does not accept the adjudicator's conclusions regarding relevant causes of damage.

### **Mr Rangi's case**

[19] Referring to Ms Scott Mr Rangi said that at the last hearing Ms Scott was constantly trying to overrule and over speak the adjudicator. He considered her manner "way out of line" and consistent with "talking over him". Ms Scott he said was trying to dictate the path on which the proceedings to be heard. He said she spoke a lot of false accusations. Regarding Ms Scott's claim for carpet repair, Mr Rangi stated that he had found a copy of Ms Scott's property inspection when he moved in and that had referred to there being three existing stains in the carpet.

[20] Mr Rangi says he has had enough of these issues; that he says Ms Scott has caused him enough stress. For reasons she cannot explain, it seems Ms Scott believes that Mr Rangi's son is not sick. Indeed Mr Rangi says his son remains ill and under constant attention. As is clear from the decision, the adjudicator found proper reason for Mr Rangi to have provided Notice of Termination of Tenancy.

[21] Mr Rangi feels that he has overpaid compensation. He says Ms Scott's concerns and claims keep "going on and on ...".

### **Ms Scott's Appeal**

[22] By her Notice of Appeal dated 5 February 2018 Ms Scott filed 75 handwritten pages providing her reasons in support of her appeal.

[23] Three days prior to the hearing she provided a 12 page closely typed summary of her submissions. This judgment has already noted some of the observations of the Court regarding Ms Scott's presentation of her case. As earlier noted her appeal is in essence a challenge to the adjudicator's refusal to order a rehearing.

[24] By the adjudicator's decision of 3 August 2017 he fixed the date of 7 June 2017 as the date of Mr Rangi's abandonment of the tenancy. Ms Scott sought arrears of rental totalling \$4,394.28. The adjudicator awarded \$1,950 for arrears. The

adjudicator directed the termination of the tenancy occur as at 7 June 2017, and permitted a continuation of the hearing and an application for compensation to determine the balance of rent due in lieu of notice having been given.

[25] The adjudicator dismissed Ms Scott's claim for exemplary damages. He also dismissed Mr Rangi's cross application for a reduction of the fixed term period.

[26] The adjudicator added that he would not hear argument on the question of compensation because it involved speculation. Neither would he grant an adjournment to enable proper quantification of Ms Scott's claims.

### **The Adjudicator's assessment**

[27] Mr Rangi had resided in Australia. He returned to New Zealand his son having, he said, suffered head injuries and was not expected to live. Shortly before Mr Rangi had entered into a tenancy of Ms Scott's property on a fixed term of one year from 31 January 2017.

[28] Mr Rangi says that when told that his son would survive and required care in the community, he looked for a suitable property and sought to be released from Ms Scott's tenancy. She refused. She says Mr Rangi had not told her he bought a property when a week later he told her he needed to break the tenancy and then offered to pay reletting costs including rent until replacement tenants were found.

[29] Mr Rangi says Ms Scott did not respond and so he stopped paying rent and moved out.

[30] The adjudicator considered the matter as an application for reduction of a fixed term or as an abandonment.

[31] Mr Rangi's position was of an unforeseen change in circumstances. Ms Scott's position was that no proper evidence of injury or of a need for rehabilitation had been provided. Having heard the parties the adjudicator agreed with Mr Rangi's account.

[32] The adjudicator commented that Mr Rangi's hardship needs were greater than Ms Scott's; that severe hardship had been established by Mr Rangi and in the circumstances it was inevitable that the tenancy would be broken. He found that Ms Scott had been aware of the changes of circumstances since the end of April. Mr Rangi chose to abandon but did not apply for a term reduction until 9 June 2017, after Ms Scott's application for abandonment. The adjudicator concluded that 6 June 2017 was the abandonment date.

[33] The adjudicator noted that having determined there was an abandonment, Mr Rangi would be liable to meet rent until the next tenancy commenced if the abandonment had occurred without reasonable excuse. In those circumstances it was noted Mr Rangi may be liable for exemplary damages. The adjudicator noted Mr Rangi's frustration with Ms Scott was not sufficient reason for abandoning the tenancy; and further Mr Rangi could have applied for a term reduction.

[34] The adjudicator considered Ms Scott was largely the author of her own misfortune; that despite Mr Rangi indicating preparedness to make payments and also because he has proved his case for a reduction of a term of the tenancy, the adjudicator did not believe that exemplary damages were reasonable in the circumstances.

[35] As earlier noted also challenged by Ms Scott on appeal is the refusal of the adjudicator by decision dated 10 August 2017 to grant a rehearing. In brief it is Ms Scott's contention that her application for rehearing was supported inter alia by the adjudicator's bias, lack of partiality, and objection to her being a woman landlord.

[36] She complained the abandonment of the tenancy was intentional. She says the adjudicator failed to search for correct answers instead of thinking about the "facts presented by the parties".

[37] Ms Scott submitted that the adjudicator's grant of only \$1,950 in compensation, and not the \$4,354.28 she claimed, was misconduct by the adjudicator.

[38] As earlier noted the rehearing application was dismissed by decision dated 10 August 2017. The application comprised 33 pages, and as the adjudicator noted it

“can be summarised as a submission that the Tribunal did not listen to the evidence, substituted its opinion for evidence, intervened unfairly, was not even-handed and was biased. Also got the law wrong”.

### **Considerations**

[39] It is clear it is not enough if the Tribunal forms wrong conclusions on the facts. A rehearing will not be granted because a party is unhappy.

[40] In the case before him the adjudicator noted, inter alia:

- (a) the Tribunal did the best it could on the facts before it;
- (b) termination is about damages, and obligations to mitigate will apply;
- (c) orders made do not preclude Ms Scott seeking further rent – and usually this will be to the date the premises are relet;
- (d) Mr Rangi said he was willing to pay compensation if ordered, and the adjudicator noted with respect to exemplary damages claims that this required a s 109 assessment;
- (e) the adjudicator noted that a rehearing would unlikely result in an outcome more favourable to Ms Scott.

[41] For these reasons the rehearing application was declined.

[42] The conclusion of the parties' issues were dealt with upon Ms Scott's application for rental from the date of abandonment until the commencement of a new tenancy of Ms Scott's premises. As earlier noted the Court had awarded rent until the date of abandonment on 7 June 2017, reserving the question of what further rent Ms Scott might be entitled to.

[43] Ms Scott claimed a total of \$6,434.82, less \$64.75 which she recovered from her insurer. This was rental for the period 8 June 2017 to 14 September 2017 when a new tenancy commenced.

[44] Ms Scott also claimed:

- (a) letting costs \$511.75;
- (b) \$200 in respect of Mr Rangi's 'failure' to notify his change of address;
- (c) compensation for damage including a light fitting, carpet stains, and a failure to remove rubbish.

[45] The claim for property damage, and in particular relating to carpet stains was the focus of Ms Scott's concerns in the outcome of the adjudicator's decision. The adjudicator awarded half the cost of \$72.02 in relation to the repair of a light fitting. The adjudicator said that damage was not intentional.

[46] The insurance company had accepted Ms Scott's claim for carpet damage. An insurance excess cost was incurred and Ms Scott sought to recover this from Mr Rangi.

[47] The adjudicator's clear view was that any damage was not intentional nor acceptable on the balance of probabilities. There was no evidence of animals on the premises and the adjudicator said Mr Rangi did not present as one who would urinate on the carpet. Also and as earlier noted Mr Rangi provided a copy of a report supplied by Ms Scott indicating there had been three stains pre his tenancy. The adjudicator said he could not discount that the original staining was old.

[48] The claim for carpet damage was therefore dismissed.

[49] The adjudicator awarded the payment of the rental bond to Ms Scott. Ms Scott's claim for a repayment of the application was declined, the adjudicator noting that a great deal of the Tribunal's time had been to consider claims by Ms Scott that she did not succeed with.



[50] In that outcome Ms Scott applied for rehearing on the grounds that a serious miscarriage had occurred.

### **Decision**

[51] A Tribunal has a power to reorder a rehearing where “a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur”.

[52] For her purposes upon this hearing Ms Scott has presented earnestly and sincerely. However these appeals must fail. While presenting as one who understands the relevant legislation it is clear these appeals are misconceived. Frequently Ms Scott interrupted the process by speaking over the conversations of others, including this Court’s.

[53] In this Court’s view Ms Scott has no margin at all for complaint regarding orders ruled in her favour. The adjudicator has correctly interpreted and applied the law. His assessment of the evidence is without margin or fault. The focus was on Mr Rangi’s reasons for abandonment of the tenancy. No question was raised by the Adjudicator regarding the cause of Mr Rangi’s decision to vacate, nor should there have been any.

[54] All applications/appeals of Ms Scott are dismissed.

A P Christiansen  
**District Court Judge**