

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA**

**CIV-2018-044-001526
[2019] NZDC 7890**

BETWEEN

CITY SPACE REALTY LIMITED
Appellant

AND

MICHAEL ALBERT McCALLUM
Respondent

Hearing: 30 April 2019

Appearances: M Chen for the Appellant
Respondent in person

Judgment: 1 May 2019

RESERVED JUDGMENT OF JUDGE G M HARRISON

[1] By notice of appeal dated 7 November 2018, City Space Realty Limited, as the agent for Sumin Yu appealed against a decision of the Tenancy Tribunal of 31 October 2018.

[2] That was a decision in which the Tenancy Tribunal adjudicator declined an application for re-hearing.

[3] The initial hearing took place on 24 April 2018 and was concluded by a later decision of 15 August 2018.

[4] The essence of the decision was that the landlord was ordered to pay Mr McCallum the sum of \$3054.66, the majority of which was a finding that Mr McCallum had lost income of \$2235.72 as a consequence of being unable to move into the tenancy address at [address deleted] because of methamphetamine

contamination, and the necessity for Mr McCallum to take time off work to locate and move into other accommodation.

[5] Mr Chen complained that the decision of the tribunal of 15 August 2018 was not received by City Space Realty Limited until 16 days later. It seems that on the day of receipt, being 31 August 2018, the application for re-hearing was made.

[6] The adjudicator noted that the grounds on which the re-hearing was sought were:

- (a) There was no evidence to support the claim for unpaid leave.
- (b) It was not given enough time to check the evidence provided by the tenant.
- (c) The finding that the tenant moved to the tenancy address is not supported by the evidence.

[7] The adjudicator noted that s 105(1) of the Residential Tenancies Act 1986 provides that the tribunal has the power to order a re-hearing where “a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur”.

[8] He noted that to succeed in obtaining a re-hearing, a party must show that something was amiss with the tribunal’s procedure, for example, that they did not receive notice of hearing or they were not able to properly present their case. He noted that a re-hearing may also be granted where new evidence is discovered that was not reasonably available at the time of the first hearing and which could have an effect on the outcome.

[9] The adjudicator then noted that this court has previously held that if the tribunal was simply wrong in its findings of fact or its application of the law, that is not sufficient to establish a miscarriage of justice. A re-hearing is not an alternative to an appeal.

[10] It was quite apparent that although the appeal was against the refusal to grant a re-hearing, the true concern was the tribunal's finding of loss of income suffered by Mr McCallum.

[11] Section 117 of the Act provides that there may be an appeal against a decision of the tribunal, and that a decision includes a decision to refuse a re-hearing. Subsection (6) provides:

Every such notice of appeal shall be filed within ten working days after the date of the decision to which the appeal relates.

[12] There is no provision in the Act to extend time for the bringing of an appeal.

[13] There is consequently no appeal against the effective order of the tribunal of 15 August 2018. An appeal could have been brought on receipt of the tribunal's decision within ten days of receipt of it, but instead, the appellant sought a re-hearing.

[14] No basis on which a re-hearing should be directed was made out. It is clear that the appellant's concern related to the finding of the adjudicator with regard to the income Mr McCallum lost as a result of the landlord's breach of contract.

[15] Even if a valid appeal had been brought, I am not satisfied that it has been demonstrated that the adjudicator erred in any way. Mr Chen's concern was at the quality of the evidence accepted by the adjudicator in assessing the loss of income. The adjudicator relied upon a letter from Mr McCallum's employer indicating what time he had had off work and for which he was not paid. Indeed, minor deductions were made by the adjudicator in respect of two half days where the evidence did not establish, in his view, that payment of income had not been made, and so there was a minor benefit to the appellant in that regard.

[16] There was no real challenge to the other items such as storage, moving costs and truck hire which the adjudicator had allowed which, in any event, seem to me to be appropriate.

[17] No basis has been established for any error on the adjudicator's part in declining to grant a re-hearing. Even if that were so, I am satisfied that the adjudicator

reached correct decisions in respect of items allowed in favour of Mr McCallum and that a re-hearing would have been unsuccessful in any event.

[18] The appeal is consequently dismissed.

G M Harrison
District Court Judge