

**IN THE DISTRICT COURT
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA**

**CIV-2019-044-000415
[2019] NZDC 7897**

BETWEEN

DONG YUAN YANG
Appellant

AND

BENJAMIN FRANCIS
Respondent

Hearing: 30 April 2019

Appearances: Appellant in person
Respondent in person

Judgment: 1 May 2019

RESERVED JUDGMENT OF JUDGE G M HARRISON

[1] Mr Yang appeals against a decision of the Tenancy Tribunal of 19 March 2019 whereby he was ordered to pay Mr Francis \$1,243.32.

[2] Mr Yang was developing the rear of the property on which the tenancy at [residential address deleted], Browns Bay was occupied by Mr Francis. There were cross applications whereby Mr Yang sought rent and water arrears. Mr Francis applied for reimbursement for water and power charges and also damages for quiet enjoyment and a breach by the landlord to his obligation to appoint an agent while overseas.

[3] There were two hearings, the first resolved by a decision of 5 December 2018 and the second by a decision of 19 March 2019.

[4] The arrears of rent were agreed at \$612.86. The adjudicator awarded \$100.00 for the failure of Mr Yang to appoint a local agent while he was out of New Zealand for a period of more than 21 days.

[5] The real contest was Mr Yang's concern that the adjudicator had awarded damages of \$1,000.00 to Mr Francis for breach of their right of quiet enjoyment of the property.

[6] It was clear that there was significant disruption to the use of the subject property by Mr Francis and his family during the period of construction. There were particular problems associated with access to the construction site, a loss of an ability to park on the driveway and the necessity to move cars to allow access to the site.

[7] Mr Yang claimed that an agreement had been reached to reduce the rent by \$70.00 per week to allow for the disruption. Mr Francis disagreed and gave evidence that the reduction was for the loss of the use of the backyard of the property and not for any breach of their right to quiet enjoyment.

[8] The adjudicator held at paragraph [22]:

I acknowledge the tenant's concerns the disruption caused but determine that the \$70.00 rent reduction is sufficient to cover anticipated breaches during that time. However, disruption should not include loss of internet for four days, or the use of power and water and the resultant disputes about who pays for what. I therefore assess that an award of \$1,000.00 to cover any breaches not sufficiently addressed in the rent reduction is warranted.

[9] No basis was established to demonstrate that that finding was incorrect. The evidence adduced by the parties was a matter for resolution by the adjudicator.

[10] A breach of quiet enjoyment is deemed by s 38(3) Residential Tenancies Act 1986 to be an unlawful act. Schedule 1A to the Act provides that a maximum amount of damages for a breach of that section is \$2,000.00. The adjudicator has awarded half that amount which appears to me to be appropriate in these circumstances.

[11] There were further disputes regarding amounts directed to be paid to Mr Francis for the use of water and power on the premises. As to the water, the

adjudicator relied upon the landlord's own figures in calculating the amount that should be refunded to Mr Francis at \$556.18. Again, no error in that calculation has been established, particularly when the landlord's own figures were used by the adjudicator to reach the conclusion he did.

[12] As to the power, it is clear that the evidence lacked precision. The adjudicator dealt with it as follows:

5. I have no way of knowing exactly how much power was used by the landlord during the construction of their home but it is fair the landlord makes some fair and reasonable payments. I assess this to be \$200.00

[13] That appears to me to be a sensible analysis on the part of the adjudicator where clearly the evidence lacked precision.

[14] Consequently, no error on the part of the adjudicator has been identified which would justify any interference with his decision, and the appeal is accordingly dismissed.

G M Harrison
District Court Judge