

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2018-009-003007
[2019] NZDC 2864**

BETWEEN

SADE ELLE GEMMELL
Plaintiff

AND

BRONWYN RATA GEMMELL
Defendant

Hearing: 19 February 2019

Appearances: Applicant appears in Person
Respondent appears in Person

Judgment: 20 February 2019

RESERVED JUDGMENT OF JUDGE P R KELLAR

[1] This is an appeal from a refusal to grant a rehearing. Bronwyn Gemmell (“Bronwyn”) let premises at [address deleted], Christchurch, to her daughter Sade Gemmell (“Sade”). There is no issue that the premises sustained extensive damage and there was rubbish everywhere. The issue is whether Sade was responsible for the damage or whether the damage and the rubbish was already there when she moved in.

[2] It was apparent during the hearing of the appeal that there is considerable enmity between Bronwyn and Sade. Indeed such was the strength of ill-feeling towards each other during the hearing of the appeal that it was virtually impossible to continue.

[3] There have been a number of applications, hearings and re-hearings in the course of this proceeding. Sade initially applied for compensation against Bronwyn for Bronwyn’s alleged failure to repair the premises. It was her contention that the

premises were in a shocking state when she moved into them and that Bronwyn did nothing about it. Sade's application was dismissed when Sade failed to attend the hearing.

[4] There was a hearing on 2 July 2018. Bronwyn attended the hearing but Sade did not. There was another hearing on 18 July 2018. This time both Bronwyn and Sade attended. The Tenancy Tribunal issued an order the next day, 19 July 2018, terminating the tenancy and granting possession of the premises to Bronwyn. The adjudicator adjourned the hearing in respect of Bronwyn's claim for rent arrears and compensation for damage to the premises.

[5] There was yet another hearing on 12 September 2018. Bronwyn attended the hearing but Sade did not. The Tenancy Tribunal issued an order on 12 September 2018 that Sade pay Bronwyn \$3838.98, including rent arrears of \$2787.15. The balance of just over \$1000 was to compensate Bronwyn for damage to the premises and removal of rubbish. Sade does not dispute the rent arrears. She said she withheld payment of rent because Bronwyn would not repair the premises or remove the rubbish.

[6] On 26 September 2018 Sade applied for a rehearing in respect of the 12 September 2018 order. The hearing of the rehearing took place on 31 October 2018. Both Sade and Bronwyn attended.

[7] On 5 November 2018 the Tribunal issued two orders. In the one the Tribunal declined to order a rehearing of Sade's claim for compensation against Bronwyn and in the other it declined to grant Sade's application for rehearing of the Tribunal's order of 12 September awarding Bronwyn compensation for damage to the premises.

[8] A reading of the transcripts of the various hearings it is fair to note that the Tenancy Tribunal has patiently provided both Sade and Bronwyn with a fair opportunity to exercise their grievances against each other in the most trying of circumstances.

[9] This is Sade's appeal against the Tribunal's refusal to grant a rehearing of the Tribunal's order awarding Bronwyn compensation for damage to the premises. I have

read the entire file of the Tribunal and seen a number of photographs both parties have put forward. I have also read all of the statements which both parties provided. It is fair to say that some of the statements are extremely difficult to follow. The key issue, however, is whether Sade has satisfied the Court that the Tribunal was wrong not to grant a rehearing. She bears the onus of proving that the premises were damaged, in a filthy state with substantial amounts of rubbish lying about, when she moved into the premises.

[10] As she did at the hearing of the rehearing Sade produced a “Residential Tenancy Agreement”. The document comprised two pages of an agreement between Bronwyn and Alphonsa Suresh to let the premises for a weekly rental of \$320 payable fortnightly as from 20 September 2012. Bronwyn accepts she signed the agreement. The document is also said to consist of a property inspection report containing the signature of the tenant on 26 September 2012. The property inspection report does not bear Bronwyn’s signature. The report purports to note damage to the premises under a number of headings. As she did in the Tenancy Tribunal at the hearing of the rehearing Bronwyn denies knowledge of the property inspection report and maintains that it has been fabricated. Sade takes issue with that contention.

[11] A Mrs Kaylene Walker attended the hearing of the appeal and provided a three page handwritten document denying that she falsified the property inspection report. She also referred to another tenant, Matthew William Ernest, whom she said had provided information, including photographs taken in September 2012, of the state of the premises. Mr Ernest did not give evidence before the Tribunal. Nor was he present at the hearing of the appeal.

[12] The adjudicator noted in his order of 5 November 2018 that the property inspection report had been completed “oddly”. He noted that in the columns headed “condition acceptable?” the letters L/L and T have been inserted in every box, whereas the boxes should have been ticked to indicate that the item was acceptable or any defects recorded. As noted above, the adjudicator also observed that the property inspection report had not been signed by the landlord. As such he found that the document had little, if any, evidential value. It is difficult to come to any other conclusion.

[13] There is no independent or objective evidence to show that the premises were damaged and rubbish was left lying about when Sade took possession of the premises. The various photographs of the premises merely show that damage occurred and rubbish was left lying about. There is no admissible evidence from any prior tenant as to the condition of the premises. In effect, it is Sade's word against Bronwyn's. Sade has not shown that the adjudicator was in error by dismissing her application for a rehearing. The appeal cannot succeed and is, therefore, dismissed.

P R Kellar
District Court Judge

Signed this.....day of February 2019 atam/pm.