

**IN THE DISTRICT COURT
AT PALMERSTON NORTH**

**I TE KŌTI-Ā-ROHE
KI TE PAPAIOEA**

**CIV-2018-054-000569
CIV-2018-054-000596
[2019] NZDC 4432**

BETWEEN	HARRY EGDEN Applicant
AND	KAY RICHDALÉ Respondent

Hearing: 12 March 2019

Appearances: No appearance by or for Applicant
K Richdale, Respondent in person

Judgment: 12 March 2019

**DECISION OF JUDGE L C ROWE
(on appeals against Tenancy Tribunal orders)**

[1] The Applicant, Harry Egden, has filed two appeals from decisions of the Tenancy Tribunal relating to his tenancy of [residential address deleted], Palmerston North.

[2] The landlord, Kay Richdale, is the respondent on both appeals.

[3] On 21 September 2018 the Tenancy Tribunal ordered that Mr Egden's tenancy was terminated following expiry of a 90-day notice.¹

[4] Because Mr Egden required further time to move himself and his belongings out of the property, the Tribunal granted possession to Ms Richdale from midday Sunday 21 October 2018, conditional on Mr Egden paying weekly rent of \$250.

¹ Issued by the landlord under s 51(1)(d) Residential Tenancies Act 1986.

[5] Mr Egden applied for a rehearing in relation to this order on 30 September 2018 and a stay of proceedings pending the rehearing.

[6] On 2 October 2018 the Tribunal directed that the application for a rehearing would be set down for a 30 minute hearing to allow both parties to be heard before the Tribunal decided whether to grant the application. A stay of proceedings was granted conditional on Mr Egden continuing to pay weekly rent of \$250.

[7] Ms Richdale applied for Mr Egden to be evicted from the property on 9 October for non-payment of rent. That application was granted and Mr Egden was evicted on 15 October.

[8] On 2 November, having heard from the parties, the Tenancy Tribunal dismissed Mr Egden's application for a rehearing. The Tribunal found that Mr Egden had not demonstrated that a substantial wrong or miscarriage of justice had occurred, may occur or was likely to occur if a rehearing was not granted.²

First appeal

[9] Mr Egden's first appeal therefore is against the refusal of the Tribunal to grant him a rehearing.

[10] The appeal was adjourned from 28 January until today as there is a further rehearing application by Mr Egden presently before the Tenancy Tribunal. It was hoped that application would be determined before today so, if any appeal followed, all outstanding matters could be brought before this Court for determination.

[11] Ms Richdale attended today's hearing, but Mr Egden did not. Ms Richdale explained that the further Tenancy Tribunal application had not been completed pending a review of further information filed by or on behalf of Ms Richdale as to disposal of property left at the premises by Mr Egden.

² Residential Tenancies Act 1986, s 105(1).

[12] Mr Egden's non-attendance at today's hearing is not explained and I have the power to dismiss the appeal if the appellant does not appear.³

[13] Ordinarily I would be reluctant to dismiss for non-appearance unless it was obvious from the face of the file that the appellant's appeal was clearly untenable. This is such a case.

[14] The Tribunal's decision of 21 September 2018 to grant Ms Richdale possession of the property was clearly correct for the reasons that:

- (a) Ms Richdale is the registered proprietor of the property.
- (b) Ms Richdale inherited the property from the previous owner, Paul Buckley.
- (c) Mr Egden claimed to have an equitable right to the property, including a right to occupation, by virtue of what he said was an agreement to purchase the property on a "rent to buy" basis tentatively entered with Mr Buckley in or about February 2016. The alleged agreement, or its terms, is not in writing.⁴ Mr Egden claims the agreement was for Mr Egden to purchase the property at \$180,000, and that rent payments previously made by Mr Egden would instead be applied to payments of principal over an undefined period. Such a suggestion is entirely implausible. On top of that, Mr Egden asserted no equitable or other right to the property during the administration of Mr Buckley's estate.
- (d) It was not in dispute that Mr Egden was paying rent of \$250 per week to Ms Richdale and had been doing so for some months.

[15] In the circumstances, the Tribunal's decision was the only decision the Tribunal could legitimately make. Mr Egden's claim to any right to the property was unsupported by any evidence.

³ Rule 18.25.

⁴ As required by the Property Law Act 2007, s 24(1)(a).

[16] Mr Egden did not file any new information on his application for a rehearing. His application was largely based on a restatement of his claim that he had entered a contract with Mr Buckley to purchase the property. This claim was as unsupported on the application for a rehearing as it was at the original hearing. Mr Egden further asserted that the administration of Mr Buckley's estate had been improper. The Tribunal correctly observed that it had no jurisdiction to hear any matter concerning the administration of Mr Buckley's estate.

[17] The Tribunal was therefore obliged to find that there was no basis to suggest a substantial wrong or miscarriage of justice had or may have occurred or was likely to occur if a rehearing was not granted. The Tribunal was correct to refuse to order a rehearing.

[18] The first appeal, CIV-2019-054-00569, is dismissed accordingly.

Second appeal

[19] As noted, Mr Egden was evicted for non payment of rent on 15 October 2018. Mr Egden applied for an order that his eviction was unlawful on the basis he said the rent was not in arrears. Ms Richdale applied for an order that she be paid rent arrears and also for an order allowing her to dispose of property left by Mr Egden at the premises.

[20] On 14 November, the Tribunal dismissed Mr Egden's application and upheld the landlord's claim to rent arrears. The Tribunal allowed Mr Egden to remove his property prior to 30 November, following which Ms Richdale was permitted to dispose of any items at the premises.

[21] Possible issues arise from the way the Tribunal addressed the disposal of Mr Egden's property, and the requirement for the landlord to account for any disposal. These were identified in my decision of 12 December 2018 when I refused a stay of proceedings pending appeal.⁵

⁵ *Egden v Richdale* [2018] NZDC 25713

[22] In any event, Mr Egden filed an appeal against the Tribunal's 14 November decision on 10 December, well after the 10 working days within which an appeal must be filed.⁶ There is no power to extend the 10-day appeal period.⁷

[23] The second appeal, CIV-054-000596, having been filed out of time, is dismissed.

Further Tenancy Tribunal proceedings

[24] I note that Mr Egden has, in the meantime, filed an application for rehearing in respect of the 14 November decision in relation to the disposal of his property and whether that occurred in compliance with the relevant provisions of the Residential Tenancies Act. The above decisions dismissing Mr Egden's appeals do not affect that application for rehearing in any way. It should proceed on its merits in the Tenancy Tribunal. The parties retain their appellate rights in terms of the outcome of that rehearing application.

Judge L C Rowe
District Court Judge

Date of authentication: 12/03/2019

In an electronic form, authenticated pursuant to Rule 2.2(2)(b) Criminal Procedure Rules 2012.

⁶ Section 117(6).

⁷ *Caldwell v Crofts Timber Co Ltd* (2000) 15 PRNZ 115 at [9].