

**IN THE DISTRICT COURT
AT ROTORUA**

**I TE KŌTI-Ā-ROHE
KI TE ROTORUA-NUI-A-KAHUMATAMOMOE**

**CIV-2019-063-000202
[2019] NZDC 11164**

BETWEEN SALLY NOELENE FRENCH
Plaintiff
AND LINDSEY GLENN DOLBEL
Defendant

Hearing: 20 May 2019
Appearances: Plaintiff appears in Person
Defendant appears in Person
Judgment: 20 May 2019

ORAL JUDGMENT OF JUDGE R L B SPEAR

[1] This is an appeal against the decision of the Tenancy Tribunal dated 5 May 2019 to decline an application by the appellant, Sally French for a rehearing of her earlier application dealt with in a decision of 17 February 2019.

[2] I have had regard both to the earlier decision of 17 February 2019 and the decision of 5 May 2019 declining the application for a rehearing. In each respect the decisions are fulsome and clear in relation to the explanation to the decisions reached. As the Tribunal noted in the earlier decision, the background in this case is complex with the relationship between the parties acrimonious and dysfunctional. It is running alongside a complaint that Ms French has filed against the respondent landlord, Mr Dolbel with the police.

[3] This tenancy dispute between the parties relates to a property at [residential address deleted] in Murupara in respect of which the registered owner is Mr Dolbel.

It has a house bus on it in which Ms French used to reside and that is the tenancy that has been the subject of proceedings over some period of time. In short, Mr Dolbel issued a termination notice on Ms French some time ago that was the subject of a decision, an earlier decision of the Tenancy Tribunal dated 25 July 2018, setting that aside on the basis that it was retaliatory. Other orders were made at that time.

[4] Mr Dolbel then issued a further notice of termination requiring Ms French to vacate the property within 90 days and that was the subject of the hearing dealt with in the decision of the tribunal dated 17 February 2019. The result of that decision is found in paragraph 97:

I have been unable to include that the 90 day notice from the landlord was presented in relation to any right, power, authority, remedy or complaint from the tenant against the landlord, so as to conclude that the notice to terminate is retaliatory.

[5] That meant that the termination notice came into effect to terminate the tenancy on 19 February 2019.

[6] The application for a rehearing was brought on the basis that Ms French and her advocate were unwell at the time of the hearing in February and additionally, a witness, one Chris Abreahama, who was summonsed to attend that hearing, was not able to attend as his car had broken down. Mr Abreahama was apparently to give evidence primarily to the effect that the second termination notice was retaliatory because of threats made and such like, all relating to the complete breakdown and animosity within the relationship between landlord and tenant.

[7] An application for rehearing is to be determined by the Tribunal under s 105 Residential Tenancies Act 1986. The Tribunal has the power to order a rehearing effectively if there has been a substantial wrong or miscarriage of justice that either has or may have occurred or is likely to occur. As is often the case in similar situations, it is just a question as to whether there is a possibility that a miscarriage of justice will have occurred if a rehearing is not allowed.

[8] In a detailed decision, the Tribunal dealt with the various submissions presented by Ms French and responded to each in turn.

[9] In relation to the illness relating to Ms French and also her advocate Ms Cross, the Tribunal noted that there had been a request for an adjournment made on 27 November 2018 and that was because of witness unavailability. That resulted in the hearing being rescheduled to 13 December 2019. The Tribunal rejected any suggestion that there was any unfairness in the Tribunal process. The referee emphasised that no medical evidence had been presented and furthermore, that the Tribunal did not consider from his own observations that either Ms French or Ms Cross appeared to be impaired in their respective ability to present Ms French's case. Indeed, the referee noted that both gave fulsome evidence and Ms French made fulsome submissions. He declined the rehearing on that basis.

[10] The second ground was that Ms French was not properly prepared for the hearing but of course that has already been dealt with in the earlier matter.

[11] As to the fact that a summonsed witness did not attend the hearing. The Tribunal noted at paragraph 29, "*There was no request that the matter be adjourned so that Mr Abreahama could be located.*" Furthermore, after the hearing and prior to issuing the decision five weeks later, there was no request to reconvene and hear evidence from Mr Abreahama. The Tribunal noted that at the hearing on 21 March 2019, he asked why Mr Abreahama did not appear and he received the advice from Ms French that Mr Abreahama had the car problems. The Tribunal then addressed the circumstances under which the Court would consider a rehearing or an adjournment where a summonsed witness did not attend. At paragraph 36:

I record however that had Ms French requested that the hearing be adjourned until Chris Abreahama could attend to give evidence, that that request would have been considered. Again however that request was only made after the decision was issued and at that point I considered that such a request is simply too late.

[12] I inquired of Ms French as to why she did not seek an adjournment because Mr Abreahama was not present and I was informed that the earlier application for adjournment on grounds of illness had been declined and she did not consider that a second application based on Mr Abreahama's non-availability or non-presence would succeed.

[13] I am conscious that Ms French and as well Mr Dolbel are both representing themselves. I appreciate that Ms French has explained that Mr Abreahama would have given evidence as to further threats and other conduct on the part of Mr Dolbel such that the second termination notice would also properly be considered as a retaliatory measure and be struck down. But that is just what Ms French has said and there is nothing before me to confirm that and there is no statement from Mr Abreahama. There is nothing definite even on the part of Ms French except the allegation that she made to the Tribunal at the application for rehearing and she now makes to me. Frankly, it is all far too uncertain and general to be able to give weight to.

[14] When considering an appeal such as this, it is necessary for me to have regard to whether the Tribunal has taken matters into account that he should not have, that it has not taken into account matters that it should have, whether the referee has misdirected himself on the question of law or, in any other respects, the decision to refuse a rehearing is simply wrong and should be corrected to ensure that there is not a miscarriage of justice.

[15] The decision given by the Tribunal in each respect is detailed, it is clearly articulated, it is fulsome, and I can find no fault with it. The appeal is accordingly dismissed.