

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CIV-2019-090-000436
[2019] NZDC 12578**

BETWEEN	AMY WANG Plaintiff
AND	NA XING First Defendant
AND	XUEWEI TAO Second Defendant

Hearing: 28 June 2019

Appearances: Plaintiff appears in Person
First Defendant appears in Person
No appearance by or for the Second Defendant

Judgment: 28 June 2019

ORAL JUDGMENT OF JUDGE G M HARRISON

[1] This is an appeal from a decision of the Tenancy Tribunal of 22 February 2019, in which the Tenancy Tribunal adjudicator declined an application by Ms Wang for a rehearing of an earlier decision of the Tribunal of 12 November 2018. In that decision, the Tribunal determined that the Residential Tenancies Act 1986 applied to the tenancy between Ms Wang as landlord and her various tenants, including Ms Na.

[2] The issue, as I understand it, was that Ms Wang argued that the Act did not apply because her premises were being operated as a boarding house and were also the principal place of residence of the landlord.

[3] The adjudicator did not accept that and determined essentially that the premises were being used for a commercial purpose, and that the Residential Tenancies Act therefore applied to the occupation of the premises by the various tenants. The adjudicator ordered Ms Wang to pay two of the tenants damages of \$480.

[4] It is clear that Ms Wang did not accept that the adjudicator's findings were correct. However the substantive decision of the Tribunal was not amenable to an appeal because where the amount involved in an appeal is less than \$1000, there can be no appeal to this Court. That is provided for in s 117 of the Act.

[5] Ms Wang is therefore constrained to appeal to this Court against the decision of the Tribunal declining her application for a rehearing.

[6] Section 117(1A) includes a decision to grant or refuse to grant a rehearing as a decision that can be the subject of an appeal. Consequently, it is incumbent on Ms Wang to demonstrate that the decision of the adjudicator in declining to grant a rehearing was wrong.

[7] At paragraph [4] of the decision of 22 February 2019 the adjudicator said:

Section 105(1) Residential Tenancies Act 1986 provides that the Tribunal has the power to order a rehearing where, "A substantial wrong or miscarriage of justice has or may have occurred or is likely to occur." The District Court has held that, if the Tribunal was simply wrong in its findings of fact or its application of the law, this is not sufficient to establish a miscarriage of justice: the proper remedy for a party who is dissatisfied with the decision of the Tribunal is an appeal. An appeal is heard by the District Court and any application must be made within 10 working days after the date of the original decision. See s 117 RTA.

[8] At paragraph [5] of the decision the adjudicator correctly noted that a party applying for a rehearing must show that something went wrong with the Tribunal's procedure. For example, that they did not receive notice of the hearing or they were not able to present their case properly.

[9] The adjudicator also noted that a rehearing may also be granted where there is new evidence that was not reasonably available at the first hearing, if it could have affected the outcome.

[10] However, and importantly, the adjudicator noted that a rehearing will not be granted to give a party a second opportunity to present their case.

[11] In deciding whether or not to grant a rehearing, I have taken some guidance from r 11.24 District Court Rules 2014. That rule relates to circumstances in which the District Court may order a retrial. At para 11.24, the rule states:

- (3) The Court may hold that there has been a miscarriage of justice that justifies a retrial if –
- (a) the judgment has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party; or
 - (b) material evidence has been discovered since the hearing that could not reasonably have been foreseen or known before the trial; or
 - (c) any witness has been guilty of such misconduct as to affect the result of the trial.

[12] There is also a general discretion by which the Court may hold that there has otherwise been a miscarriage of justice that justifies a retrial.

[13] The grounds of Ms Wang's application are firstly that the adjudicator pre-determined the matter, particularly because of the reference to the limitation on the right of appeal. That is a matter of law stated plainly in the statute and clearly there was no pre-determination by the adjudicator who was simply bringing to Ms Wang's attention the relevant provision of s 117.

[14] Ms Wang then submits that the Tribunal lacked jurisdiction and/or was wrong in law in its interpretation of s 5(1)(n) of the Act. Whether or not that is so, that is not a ground for a rehearing. An error of law can only be remedied by appeal to this Court, but there is no right of appeal.

[15] Her further grounds were that there had been a miscarriage of justice, but that has not been demonstrated according to the criteria contained within r 11.24 that I have previously cited.

[16] No miscarriage of justice as such has therefore been identified, such as a failure to notify Ms Wang of the hearing, or unfairly preventing her from adducing evidence,

or that otherwise there was any unfair or improper practice by the successful party, or that any witness has been guilty of misconduct.

[17] Ms Wang wishes to produce further evidence but the adjudicator correctly found that that evidence, relating to measurements of the floor area of the premises concerned, was available at the time of the original hearing and could have been presented then but was not and therefore it is not appropriate to grant a rehearing to allow that opportunity, where it should have been availed of from the outset.

[18] Ms Wang is also concerned that in an earlier case a different conclusion was reached by another adjudicator. The adjudicator in this case, again quite correctly, noted that the earlier decision was not binding, having been decided on different facts and would not in any event have justified a rehearing.

[19] Finally, Ms Wang seeks damages from this Court but plainly I have no jurisdiction to award any damages on an appeal from a decision of the Tribunal. If Ms Wang seeks damages, she must do so in the Tribunal and if an adverse decision results, then she would have the opportunity to appeal.

[20] Consequently, the necessary criteria to establish that the adjudicator wrongly decided to refuse a rehearing have not been established and the appeal must be dismissed. It is dismissed accordingly.

G M Harrison
District Court Judge