

**IN THE DISTRICT COURT  
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE  
KI WAITĀKERE**

**CIV-2019-090-000318  
[2019] NZDC 14529**

BETWEEN

NEELAM AHUJA  
ANIL AHUJA  
Appellants

AND

JAGROOP SINGH  
Respondent

Hearing: 26 July 2019

Appearances: No appearance by or for the Appellant N Ahuja  
A Ahuja appears in Person  
Respondent appears in Person

Judgment: 26 July 2019

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**ORAL JUDGMENT OF JUDGE G HARRISON**

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[1] This is an appeal against a decision of the Tenancy Tribunal in which the Adjudicator declined to grant a rehearing of its original decision of 26 November 2018. In that decision the appellant, Mrs Neelam Ahuja, whose daughter appears today on her behalf, did not appear at the hearing. It seems that she and her husband had left the country to attend their son's wedding. No agent appeared on their behalf at the hearing at which the Adjudicator made a series of orders in favour of the tenant, Mr Jagroop Singh, in respect of his tenancy of the property at [residential address deleted].

[2] In particular, the Adjudicator held that the landlord had not deposited the bond for rental within the time limited by the Residential Tenancies Act 1986 and, furthermore, that there had been a failure to maintain the property by the landlord and, lastly, that the notice terminating the tenancy was a retaliatory notice, justifying an

award of exemplary damages. The total amount assessed as payable by the landlord to the tenant was \$4986.64.

[3] At the application for a rehearing, Mrs Ahuja's daughter appeared on her behalf and she again appears on her behalf at this hearing. The principal ground on which it is submitted that the Adjudicator erred is a finding that Mr Singh was about to leave the country permanently and that it would be contrary to his interests for a rehearing to be granted. In fact, at para (9) of her decision the Adjudicator said, "I understand that the respondents may wish the Tribunal to reconsider their position. However, the opportunity for them to put this or indeed any evidence before the Tribunal was in November 2018. The respondents admit via their daughter that they knew of the hearing of 26 November 2018 and that they left the country without any confirmation that an adjournment would be granted, nor took any steps to appoint an agent in their absence." That is the fundamental reason why the Adjudicator declined to grant a rehearing.

[4] The Adjudicator did go on to say that granting a rehearing would lead to a very substantial risk that the tenant would not recover his bond before leaving the country, notwithstanding the landlord's failure up to this point in lodging any application seeking a right to retain any portion of the bond. That was a factor in the Adjudicator's decision but not the compelling factor.

[5] The Adjudicator correctly stated in para (6) of her decision, "The District Court has held that if the Tribunal is simply wrong in its findings of fact or its application of the law, this is not sufficient to establish a miscarriage of justice: a rehearing is not an alternative to an appeal. Furthermore, a rehearing will not be granted just because a party is unhappy with the decision or to give them a second opportunity to present their case." That is a correct statement of the law.

[6] The Adjudicator had earlier observed that a rehearing may be granted where a party was not notified of a hearing, which is not the case here, or that they were not able to properly present their case. Again, there was an opportunity for the landlords to do so by appointing an agent. There is no new evidence that was not reasonably available at the first hearing that could have affected its outcome.

[7] Further factors may justify a rehearing. In that regard, I take my lead from criteria considered by the High Court in deciding whether or not to order a new trial. Factors relevant to that are whether there had been misconduct by a party or a witness at any time after the hearing commenced or whether evidence was wrongly admitted or whether an important error of law had been made. None of those factors are present in this case.

[8] The sole issue before me today is whether the Adjudicator erred in declining to grant a rehearing. For the reasons I have given, I am satisfied that the Adjudicator correctly applied the relevant legal principles in deciding whether to grant a rehearing or not. Essentially, the landlord was aware of the hearing. She could not presume that an adjournment would be granted and nevertheless did not attend the hearing when an agent could have been appointed to represent her interests. In all of those circumstances, the Adjudicator has not proved to have erred in her decision and the appeal is accordingly dismissed.

G Harrison  
District Court Judge