

**IN THE DISTRICT COURT
AT MANUKAU**

**I TE KŌTI-Ā-ROHE
KI MANUKAU**

**CIV-2018-092-000729
[2019] NZDC 4670**

BETWEEN

MIFTAR TAIRI
Appellant

AND

JOHN BLOEMENDAAL
Respondent

Hearing: 12 March 2019

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

Judgment: 12 March 2019

ORAL JUDGMENT OF JUDGE DAVID J HARVEY

[1] This matter started as an application by Mr Tairi under the Residential Tenancies Act 1986 against Mr Bloemendaal. He wanted payment of rent arrears of \$1671.43 and he wanted payment of water bills of \$560.67.

[2] The matter went to two hearings and, on the second hearing, an order was made on 20 November 2017. The Tenancy Tribunal order is very, very brief. Rather than ordering that Mr Bloemendaal pay the money claimed by Mr Tairi. In fact, it orders that Mr Tairi is to pay Mr Bloemendaal the sum of \$420 by 30 November 2017.

[3] It is usual in Tenancy Tribunal matters for there to be detailed reasons given. There were reasons given and they were remarkably brief. The reasons state that Mr Tairi brought a claim against Mr Bloemendaal in relation to the tenancy at [residential address deleted].

[4] At today's hearing the parties discussed the claim at length and came to an agreement as reflected in the order above. This agreement was reached on the understanding that no further claims will be brought by either party against the other in relation to this tenancy, that is, the agreement is in full and final settlement.

[5] I have had the advantage of reading the transcript of the proceedings before Adjudicator Ter Haar. It is quite clear that the hearing proceeded to a point where there was a desire on the part of the parties to resolve the matter and to settle.

[6] In the course of that hearing and in the course of those discussions, the adjudicator recorded the understanding she had that the parties had reached. That is recorded at page 36 of the transcript. In essence it says, and this was in a form of a question to Mr Tairi:

“Right, so I put, “Mr Tairi to pay John Bloemendaal the sum of \$420 by the 30th of November 2017, calculated as follows: Compensation, rent refund. Reasons: Mr Tairi brought a claim against Mr Bloemendaal in relation to the tenancy at [residential address deleted]. At today's hearing the parties discussed the claim at length and came to an agreement as reflected in the order above. This agreement was reached on the understanding that no further claims would be brought by either party against the other in relation to this tenancy. That is, the agreement is in full and final settlement.” “Is that your understanding?”

And then Mr Tairi said, “Yes it was.”

[7] There were further discussions that followed, which made it abundantly clear that this was to bring the matter to an end. Mr Bloemendaal for example said, “Ma'am can I ask you one question? You said it was final, that this is final?” And the adjudicator answered, “Yes. That includes any grievance complaints or of a grievance nature, anything in relation to this tenancy. Yes. And your relationship. Yes. It's finished so I can't take any grievance.”

[8] That was the end of the matter. It is perfectly normal in the course of litigation for parties to attempt to resolve the matter. Within the context of the Disputes Tribunal and the Tenancy Tribunal, frequently this may occur during the course of the hearing and an adjudicator may well slip into different roles. Into the role of a judicial officer

and also into the role of a negotiator or a mediator, depending the way in which the hearing proceeds.

[9] Having had an opportunity of reading the transcript, it is perfectly clear to me that for a considerable period of the hearing the parties were anxious to arrive at some kind of settlement or resolution of the matter. That was facilitated by the adjudicator.

[10] The adjudicator decided to record the settlement that had been reached as an order of the Court and, for that reason, made the order that she did. That was consented to by Mr Tairi.

[11] He at the hearing, today, by way of appeal concedes that that was the case. That he, in fact, agreed to it. He has raised a number of issues as to why it was that he agreed, but normally we do not go behind an arrangement or an agreement. What we do is, we accept that the parties have settled their differences and that the matter is at an end and agreement finalises it.

[12] It is quite clear to me that Mr Tairi has had second thoughts about the agreement, but I cannot allow the appeal merely on that basis. The parties resolved the matter in their own way with the assistance of the adjudicator. The matter was settled. There was an agreement.

[13] I cannot upset that by way of appeal and the appeal will be dismissed.

David J Harvey
District Court Judge