IN THE DISTRICT COURT
AT DUNEDIN

I TE KŌTI-Ā-ROHE
KI ŌTEPOTI

CIV-2018-012-000563
[2019] NZDC 11921

BETWEEN	KAREN LEE ANDERSON Appellant
AND	SYLVIA ALICE PAULIN SOPHIE ELIZABETH PAULIN Respondents

Hearing: 1 May 2019

Judgment: 27 June 2019

IN CHAMBERS DECISION OF JUDGE M B T TURNER
AS TO COSTS

Introduction

[1] This proceeding arises out of an appeal of a Tenancy Tribunal decision dated 31 October 2018. The appellant (the landlord) was substantially successful before the Tribunal but appealed the decision on nine grounds.

[2] Her appeal was unsuccessful.[1] The respondents now seek costs on the appeal.

Submissions

[3] Written submissions (including supplementary submissions) have been received from both parties. Neither party sought to be heard and I determine the issue on the papers.

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[1] Oral judgment dated 1 May 2019.

Respondents

[4] The respondents submit that costs should be awarded in their favour because the appellant was wholly unsuccessful. Acknowledging the proceedings were not particularly complex, the respondents seek costs per Schedule 2B, at the daily rate of $1780. Furthermore, they submit that increased costs should be awarded on the basis that the appellant pursued a meritless appeal and failed to meaningfully engage in the Tribunal's mediation process.

Appellant

[5] The appellant acknowledges the principle that costs usually follow the event. Insofar as quantum is concerned, the appellant defers to the Court's decision but notes the respondents' acknowledgement of the simplicity of the issues and submits that band 1 may be appropriate. The appellant also queries the respondents' claim for preparation of written submissions rather than preparation of the appeal. Finally, the appellant disputes the claim for increased costs, submitting that the appeal was not "flippant" but was filed after receiving specialist advice.

Legal principles

[6] It is settled law that the Court has a discretion to award costs and the general principles applying to the determination of costs are set out in r 14.2 District Court Rules 2014:

> (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
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> (b) an award of costs should reflect the complexity and significance of the proceeding:
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> (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
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> (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
>
> (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or

counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

(f) an award of costs should not exceed the costs incurred by the party claiming costs:

(g) so far as possible the determination of costs should be predictable and expeditious.

[7] The Court has power to award increased costs. Rule 14.6 DCR provides:

(1) Despite rules 14.2 to 14.5, the court may make an order—

(a) increasing costs otherwise payable under those rules ("**increased costs**"); or

(b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party ("**indemnity costs**").

(2) The court may make the order at any stage of a proceeding in relation to any step in the proceeding.

(3) The court may order a party to pay increased costs if—

(a) the nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

(b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—

(i) failing to comply with these rules or a direction of the court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or

(d) some other reason exists that justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

Discussion

[8] The starting point is to consider the merits of the appeal. Nine specific grounds were raised.

[9] Of those I consider three were frivolous and/or entirely unmeritorious:

- Ground 1, seeking an order made by the Adjudicator that personal documents left at the premises by the respondents be taken to the nearest police station. The order merely stated the legal position;

- Ground 2, claiming that the Adjudicator erred in stating that both parties attended the hearings. The argument raised by the appellant, namely that only one of the two respondents attended the hearings, was frivolous;

- Ground 3, relating to the date recorded by the Adjudicator as the date of termination of the tenancy (27 June 2018, when in fact the parties agreed the tenancy had been terminated on 28 June 2018). In respect of this ground the evidence established that the appellant had wrongly stated the date to the Adjudicator.

[10] In relation to the remaining six grounds of appeal, one sought an increase in the award made to the appellant in the sum of $128.15, and the other grounds of appeal related to awards or determinations by the Adjudicator which were plainly available on the evidence.

[11] Overall, this was an appeal without reasonable grounds for success.

[12] In the circumstances I see no reason to depart from the general principle that the appellant should pay costs to the respondents.

[13] I consider the appeal involved matters of average complexity requiring a normal amount of time for each particular step and accordingly determine that costs should be set on a 2B basis. In that regard, there were a significant number of pages of transcript from the Tribunal which would have taken a reasonable length of time to peruse so as to prepare the response to the appeal.

[14] Insofar as the respondents' claim for preparation of written submissions is concerned, detailed submissions were prepared which were helpful to the Court. In the circumstances I consider it appropriate to allow the claim for written submissions rather than preparation of the appeal.

[15] I do not consider that increased costs are appropriate in this case. To the extent that the appellant pursued a meritless appeal that is addressed by the determination I have made. The failure of the appellant to engage meaningfully in mediation, as the respondents submit, is not relevant to my determination of costs on the appeal.

Result

[16] The respondents are awarded costs on a 2B basis, together with reasonable disbursements as fixed by the Registrar.

[17] I approve the respondents' claim for preparation of written submissions (24A) rather than preparation of appeal (24).

M B T Turner
District Court Judge