IN THE DISTRICT COURT
AT DUNEDIN

I TE KŌTI-Ā-ROHE
KI ŌTEPOTI

CIV-2018-012-000563
[2019] NZDC 8197

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

Hearing: 1 May 2019

Appearances: Appellant appears in Person
C Brophy for the Respondents

Judgment: 1 May 2019

ORAL JUDGMENT OF JUDGE M B T TURNER

Background

[1] This is an appeal against a decision of the Tenancy Tribunal dated 31 October 2018.

[2] The proceedings were originally commenced by the tenants, the respondents in this appeal, on 27 June 2018 seeking an order from the Tribunal terminating a residential tenancy at 52 Fitzroy Street, Dunedin. They also sought a refund of the bond paid by them in the sum of $1360.

[3] It is accepted that by agreement the tenancy was terminated on 28 June 2018. New tenants were found, and their tenancy commenced on 29 June 2018 but the evidence before the Tribunal (and me) is that they did not in fact move in until two days later, 1 July 2018.

[4] The tenants' applications to the Tribunal proceeded to mediation but no agreement was reached. Accordingly, the matter was allocated a hearing before the Tribunal on 31 July 2018.

[5] On 30 July 2018. the landlord (Ms Anderson, the appellant in these proceedings) filed a claim against the tenants seeking damages and compensation under a number of heads.

[6] The proceedings were first heard before the Adjudicator on 31 July 2018. It is clear from reading the transcript that the Adjudicator was advised that the parties had reached agreement on the issue of termination (it appears the appellant informed the Tribunal that termination occurred on 27 June 2018 whereas in fact it is accepted it occurred on 28 June 2018) and that the only outstanding issue from the tenants' point of view related to return of the bond.

[7] The appellant, however, wished to pursue her claims for damages and compensation from the respondents. The hearing was not completed on 31 July 2018 and two further days were allocated, 26 September 2018 and 10 October 2018.

Determination

[8] After hearing the evidence and considering the material presented, the Adjudicator determined that the respondents were to pay the appellant $1381.71 immediately and that the bond was also to be paid immediately to her. The appellant's application for further compensation, amounting to just over $4000, was dismissed.

[9] The order also directed the appellant as landlord take any of the respondents' personal documents left at the premises to the nearest police station and obtain a receipt for them. The appellant was authorised to dispose of any other goods left at the premises as she saw fit.

[10] The order set out the basis of the award, which included rent arrears; costs for cleaning curtains, carpet and general cleaning; the cost of repairs and materials in relation to the dwelling and what is described as re-letting costs. Further, the appellant

was awarded the filing fee and exemplary damages for two intentional breaches of the tenancy – refusing to allow her as landlord access to the property and having a third party stay at the property (the tenancy permitted only two persons to live at the address). No costs were awarded in favour of the appellant against the respondents as the Adjudicator did not consider that the respondents' application had been made frivolously, vexatiously or ought not to have been brought.[1]

Appeal

[11] The appellant appeals the decision on nine specific grounds. They can be summarised in this way:

- The appellant seeks to quash the order made by the Adjudicator that any personal documents left at the premises by the respondents be taken to the nearest police station and a receipt obtained for same. (Order 4)

- That the Adjudicator erred in fact in her determination when she stated, "Both parties attended the hearings" (paragraph 1 of the Adjudicator's Reasons). The appellant submits that there were two tenants and that one of them (Sophia) did not attend the hearings; rather only the other tenant (Sophia's mother, Sylvia) was present at all hearings.

- The appellant appeals against the date recorded by the Adjudicator as the date of termination of the tenancy. In paragraph 4 of her Reasons the Adjudicator states, "The tenancy ended, effectively ended on 27 June 2018." The appellant's case is that the parties agreed that the tenancy had been terminated the following day on 28 June 2018.

- The cost of re-letting. The Adjudicator awarded the appellant $371.85 being re-letting costs. The appellant claimed at the Tribunal that her costs were in the order of $500. She seeks an order increasing re-letting costs by $128.15, the difference between the amount claimed and the amount ordered.

[1] Residential Tenancies Act 1986, s 102(2)(c).

- Loss of rental income: The appellant gave the new tenants a $150 rent discount as compensation for cleaning and repair work that had to be undertaken at the commencement of their tenancy, allegedly as a result of actions by the respondents. It appears the new tenants were not able to take possession at midday on 29 June 2018 (the time and date of commencement of their tenancy), they took possession two days later.

- The appellant submits that the respondents abandoned the property and that their actions constituted an unlawful act for which she should have been awarded exemplary damages.

- Account of profits: Furthermore, the appellant submits that as a consequence of the respondents subletting the premises (to one of the tenant's boyfriend – Mr Monaghan) she ought to have been awarded compensation in the sum of $3740, being half of the rental for the premises for a period of 22 weeks. The Adjudicator found that there had been no subletting.

- Exemplary damages: The appellant submits that the Adjudicator erred when awarding exemplary damages of $500 for what were described as serious intentional breaches. These breaches relate to Mr Monaghan staying at the property (thus more occupants than permitted) and as a consequence of the respondents' actions in hindering the appellant's access to the property as she was entitled to by law. The appellant submits that $750 for each unlawful act should have been awarded.

- Finally, the appellant submits that the Adjudicator erred in law in not awarding her costs in respect of the respondents' application to the Tribunal, submitting that their proceedings were frivolous or vexatious or ought not to have been brought.

Hearing of appeal

[12] The appellant appears in person. The respondents are represented by Ms Brophy.

[13] The appellant filed submissions dated 30 November 2018 in support of her appeal. Ms Brophy filed submissions on behalf of the respondents, dated 24 April 2019. In addition, I have heard oral argument from the appellant and Ms Brophy on each of the appeal grounds.

Legal principles

[14] I accept the statement of law set out in Ms Brophy's submissions as to the approach to this appeal. It is by way of rehearing and not a de novo hearing.

[15] The Courts have traditionally shown a reluctance to depart from findings of the Tribunal on the facts or disturb discretionary considerations. The District Court has, on a number of occasions, approved the comments of His Honour, Judge Joyce QC, in *Housing New Zealand Corporation v Salt* in relation to the approach to be adopted. His Honour stated:[2]

> On an appeal by way of rehearing, the appellate body is not restricted by any findings which the lower Court or Tribunal has made, but the appellate body nevertheless acknowledges the advantage enjoyed by the decision maker at first instance, which may have seen and heard the witnesses.
>
> There is something akin to a presumption that the decision appealed from is correct and it is also customary for the appellate body to exercise restraint in interfering with discretionary decisions.
>
> Thus, ordinarily, the appellate body will only differ from the factual findings of the decision maker at first instance if:
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> - The conclusion reached was not open on the evidence, that is, where there was no evidence to support it; or
> - The lower body was plainly wrong in the conclusion it reached.

[16] Other appeal decisions have made it clear that the Tenancy Tribunal is a specialist body and is experienced in assessing credibility, reliability and truthfulness of witnesses and able to appropriately draw inferences and apply the facts in reaching correct decisions. Thus, it has been said that the appellate Court will be slow to depart from the Tribunal's findings and fact.[3]

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[2] *Housing New Zealand Corporation v Salt* [2008] DCR 697 at [13].
[3] *Focus Contracting Ltd v Property Management (Marlborough) Ltd* DC Blenheim CIV-2009-006-103, 17 December 2009 at [8].

[17] In *Housing New Zealand Limited v Bell* the Court said:[4]

> …appeals to the District Court on questions of fact are unlikely to be successful unless it can be shown that there was no evidence to support the finding of fact, or the adjudicator engaged in unacceptable, unconscionable, procedural or other misconduct which affected in the finding of fact.

[18] As to the powers of the Court on appeal, the Court may quash the order and direct a rehearing of the claim by the Tribunal on such terms as the Judge thinks fit, or quash an order and substitute an order or orders that the Tribunal could have made in the original proceedings, or dismiss the appeal.

Appeal grounds

First ground – tenants' personal documents

[19] The first ground of appeal relates to order 4 – "Ms Anderson (the appellant) must take any of the tenants' personal documents that have been left at the premises to the nearest police station and obtain a receipt for them".

[20] The appellant submits it was not necessary to make this order because there was no evidence before the Tribunal that the respondents had left any personal documents at the address. It was not claimed that the respondents have ever suggested personal documents were left at the address.

Respondents' position

[21] The respondents submit that in making this order, the Adjudicator simply made it clear that there was an obligation on the appellant to deliver personal documents to the police station and obtain a receipt if any were found.

Discussion

[22] Section 62A of the Act provides:

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[4] *Housing New Zealand Limited v Bell* DC Dunedin TT547/96, 4 September 1996.

> (5) If, after the period of 35 days specified in subsection (3), the goods or any personal documents belonging to the tenant remain unclaimed, the landlord must—
>
> …
>
> (i) take any personal documents belonging to the tenant to the nearest police station and obtain a receipt for them from a Police employee; and
>
> (ii) sell the other goods by public auction or by private contract at a reasonable market price.

[23] In her application of 30 July 2018, the appellant sought an order for the sale of goods left at the premises.

[24] In my assessment, order 4 simply stated the legal obligation on the appellant, as landlord, to deliver any documents found at the address to the police station and obtain a receipt. While it might be said that such an order was not necessary because there was no evidence before the Tribunal that such documents were at the address, the making of the order is of no detriment to the appellant in the circumstances.

Result

[25] This ground of appeal has no merit, is frivolous and fails.

Second ground - attendance at the hearing

[26] The appellant submits that the Adjudicator erred in law by stating in paragraph 1 of her Reasons "Both parties attended the hearings." It is accepted that Ms Sylvia Paulin (one of the tenants and mother of the other tenant, Sophia Paulin) was present on all dates. Sophia Paulin was not present at all. It seems she had personal (mental health) issues during the relevant time.

[27] The appellant's position is that the statement by the Adjudicator is incomplete; it should have referred to the fact that Sophia Paulin did not appear.

Respondents' position

[28] The respondents submit that the tenants were represented at the hearing. This was a joint and several tenancy between the Paulins and the landlord and at the commencement of the hearing, Sylvia Paulin indicated she was representing herself and the other tenant.

Discussion

[29] There is no obligation in a civil proceeding for the parties to attend Court. In fact, during the course of giving this judgment the appellant left the Courtroom and building. The Adjudicator was correct when she said that both parties attended the hearings, that is both the landlord and tenant appeared. That one of the tenants did not appear did not affect the course of the proceedings.

[30] The appellant was unable to adequately articulate the relevance of the error she alleges against the Adjudicator.

Result

[31] This ground of appeal is meritless, frivolous and fails.

Ground 3 - date tenancy terminated

[32] In paragraph 4 of the Reasons, the Tribunal stated that the tenancy ended on 27 June 2018. The appellant submits that the Adjudicator erred in fact; both parties had agreed it ended on 28 June 2018.

Respondents' position

[33] The respondents accept that to be the case.

Discussion

[34] A perusal of the transcript shows that the appellant told the Adjudicator that the tenancy was terminated on 27 June 2018.[5] This is the likely reason for the Adjudicator referring to that date whereas in fact the agreed position was that the tenancy terminated the following day.

[35] The appellant submitted that the error was relevant to the calculation of the various awards but I am unable to accept that submission. To the suggestion that one day's rent ($43) might/could have been awarded, the respondents' submission is that on 27 June 2018 the sum of $147 was paid by them to the appellant; this covered rent for the following few days. Subsequently, about six weeks later and for no apparent reason, the appellant refunded that money to the respondents.

[36] I am unable to accept the submission of the appellant that the error in the Tribunal's decision as to the date the tenancy ended was material. It was occasioned by a statement made by the appellant herself but in any event had no bearing, in my view, on the awards made in the appellant's favour.

Result

[37] This ground of appeal fails.

Ground 4 - cost of re-letting

[38] This issue involved lengthy argument on appeal. Without traversing the entire history of the tenancy, which commenced on 14 January 2018 and terminated by agreement on 28 June 2018, it can be said that from an early stage there was unpleasantness between the parties to the point where discussions occurred to bring the fixed tenancy (of one year) to an end. It is clear that both parties expected the tenancy to be brought to an end and were working towards an agreed termination date sometime in June 2018. In anticipation the appellant undertook steps to find a new tenant.

[5] At first hearing on 31 July 2018.

[39] The appellant's position is that the respondents suddenly and unexpectedly indicated they were no longer prepared to terminate the tenancy and would see it through to its conclusion in January 2019. However, on 27 June 2018 the appellant discovered that the property was empty. It appeared the respondents had moved out. Thereafter, and as a result of discussions between the appellant and the respondents' solicitors, agreement was reached to bring the tenancy to an end at noon on 28 June 2018. The appellant then contacted the new tenants to arrange for them to take possession.

[40] Although not produced in evidence before the Tribunal, it is accepted that the new tenants signed a tenancy agreement for the premises at the same rental paid by the respondents. That tenancy was to commence midday on 29 June 2018 (the respondents had paid rent to that point). The appellant's case is that she was unable to give the new tenants occupation because of the state the property had been left in by the respondents and the new tenants did not physically take possession until 1 July 2018. The respondents accept the new tenants moved in on that date.

[41] The appellant's case at the Tribunal was that after the new tenants had moved into possession, further cleaning and other remedial works were necessary and as a consequence she refunded the sum of $150 to the new tenants, they having paid rental at the full rate from 29 June 2018. (This aspect is the basis of the fifth ground of appeal.)

[42] In her determination the Adjudicator awarded (with the consent of the respondents) the sum of $371.85 to the appellant, as re-letting costs. As to the balance of $128.15, the Adjudicator did not consider that such an award should be made because the appellant had new tenants who could move in immediately and the reduction of rental income was a matter negotiated between the appellant and her new tenants.

Respondents' position

[43] The respondents support the Adjudicator's finding.

Discussion

[44] The cost of re-letting claimed by the appellant in the Tribunal was $500, based on the appellant's hourly rate of $75 per hour. No invoice was prepared and there was no itemisation of the hours claimed beyond a bland summary which had been prepared to 27 June 2018 and which sought the sum of $371.85.

[45] No documentation setting out the composition of the additional claim was placed before the Tribunal.

[46] There is no merit, in my view, in this ground of appeal. There was no error of law or of fact. The Tribunal was entitled to consider that the evidence did not persuade it to award the additional costs for the reasons given. Furthermore, the Tribunal was of the view that the sum of $371.85 was reasonable in the circumstances.

Result

[47] This ground of appeal fails.

Ground 5 - loss of rental income

[48] The appellant submits that she should have received an award from the Adjudicator in the sum of $150 being the amount of a refund she gave to the new tenant. She claims this on the basis that the new tenants paid the full rental from 29 June 2018 (being the date of the commencement of the tenancy) but were not able to take possession until 1 July 2018. During the course of the appeal the appellant initially stated the new tenants took possession on 30 June 2018 but it is accepted by the respondents that it was in fact 1 July 2018.

[49] The appellant's case is that the loss incurred arose directly out of the state the house was left in by the respondents.

Respondents' position

[50] The respondents' submission is that they were ordered to pay rental of $97.14 (two days' rental) which covered the period in question. Furthermore, if the appellant decided to make a refund of rental for the new tenants that was a matter between her and the new tenants and the respondents should not be liable for same.

Discussion

[51] No evidence was produced to the Adjudicator to establish that the new tenants were able to move in on 29 June 2018, but it seems that the Adjudicator accepted that the appellant needed to undertake certain work at the property, evidenced by the fact that an award was made in her favour in respect of cleaning the property. No evidence was given by the new tenants that they sought a refund of rent for any inconvenience caused.

[52] In the circumstances, I am unable to accept the appellant's claim that the Adjudicator erred in finding that a refund of $150 to the new tenant was anything other than a matter negotiated between the new tenants and the appellant.

Result

[53] This ground of appeal fails.

Ground 6 - unlawful abandonment

[54] In paragraphs 21-23 of her Reasons, the Adjudicator addressed the issue of the appellant's claim that the respondents had abandoned the premises. The Adjudicator held that a tenancy is abandoned where tenants leave without reasonable excuse and fail to notify the landlord, not intending to return or meet their obligations. It becomes an "unlawful act" in terms of the Act if rent is in arrears when the premises are abandoned. In those circumstances exemplary damages can be awarded, to a maximum of $1000.

[55] The appellant submits that the Adjudicator was wrong in finding that the respondents had not committed an unlawful act by abandoning the premises. She claims the respondents had moved their possession from the premises by 25 June 2018 and it was clear from the state of the property that they had no intention in continuing with the tenancy or fulfilling their obligations.

Respondents' position

[56] The respondents submit that the tenancy was in the process of being terminated; it was clear that both parties expected the tenancy to come to an end but in any event the rent was paid to midday 27 June 2018 (this tenancy commenced and terminated at midday) and on the morning of 27 June 2018 (before midday) a further $147 was paid to the appellant by way of rent, effectively three and a half days' rent.

Discussion

[57] Whether or not the respondents had abandoned the premises on or by 25 June 2018 was not the issue the Adjudicator needed to determine. On the face of it, the respondents had moved out. Both parties were expecting the tenancy to be brought to an end by agreement. Clearly the respondents were no longer intending to live at the address. The appellant was of the same view. She had organised new tenants to commence a tenancy on or around 29 June 2018. In those circumstances, it could be argued that the respondents had abandoned the premises, but the issue for the Adjudicator was whether the tenants had committed an unlawful act in abandoning the premises.

[58] In terms of s 66X(5) of the Act it is an unlawful act if, without reasonable excuse, the tenant abandons the property when the rent is in arrears. Exemplary damages of up to $1000 may then be awarded.

[59] While it could be argued that the respondents had abandoned the premises I do not consider that the Adjudicator was wrong in concluding there had been no unlawful act. The evidence before the Adjudicator showed that at the time they left the premises (on 25 June 2018) the rent was not in arrears. It was paid until 27 June 2018. On the

morning of 27 June 2018, a further rental payment was made. On 28 June 2018, the tenancy was terminated by agreement.

[60] There was no error of law, in my view, in the Adjudicator finding a lack of jurisdiction to award exemplary damages in these circumstances. There is no reason to disturb the Adjudicator's findings that the tenants had not committed an unlawful act.

Result

[61] This ground of appeal fails.

Ground 7 - account of profits/subletting

[62] The Adjudicator determined that there had been no subletting of the property by the respondents to a Mr Monaghan (Sophia's boyfriend). The appellant submits that the Adjudicator was wrong in fact and in law on that point.

[63] The appellant's submission is that the evidence before the Adjudicator would lead to the conclusion that there had been a subletting. The appellant's evidence before the Adjudicator was that from time to time when she visited the property (regularly she claims because the lawns were not mowed) Mr Monaghan was there. She told the Adjudicator of oral discussions between herself and Sophia Paulin which indicated Mr Monaghan had moved into the address, was living there and paying rent. She referred the Adjudicator to Facebook messages which suggested Mr Monaghan was paying rent and living at the address.

Respondents' position

[64] The respondents submit that there was no subletting of the premises. While they accept that Mr Monaghan was at the address from time to time, he did not meet the rental payments or part of them. The respondents' case is that he may have assisted in meeting costs for food and the like but he was not given the right of possession of the property and they did not receive rent from him.

[65] The respondents gave evidence to that effect before the Tribunal.[6]

Discussion

[66] It is generally accepted that subletting involves a tenant allowing someone else to occupy or have possession of all or part of the premises in exchange for money or money's worth, essentially acting as a sublandlord to that person. Subletting is in breach of the Act. It is an unlawful act and exemplary damages of up to $1000 can be awarded against the tenant, and an account of profit or compensation can be ordered.

[67] Here, the Adjudicator was faced with conflicting evidence. On the one hand, the appellant's evidence that she had seen Mr Monaghan at the address, that she had been told by Sophia Paulin that Mr Monaghan was living at the address and contributing to costs, and she had seen a Facebook post/postings of a similar nature. On the other hand, the Tribunal heard evidence from the respondents that there had been no subletting of the premises, that Mr Monaghan was not there on a long-term or permanent basis, he was not paying rent but may have contributed towards food from time to time, and he had not been given a right of occupation or possession of the premises or part of it. The respondents explained the Facebook postings on the basis that it was an attempt to persuade the appellant to lease the premises to Mr Monaghan once their tenancy terminated.

[68] The Tribunal had the benefit of hearing the evidence from the parties involved. I consider it was open to the Adjudicator to accept the respondents' evidence. Accordingly, I have not been persuaded by the appellant that the Adjudicator was plainly wrong on the facts.

[69] On the basis of the finding that there had been no subletting of the premises to Mr Monaghan, the issue of an account for profits did not arise. I note in passing that the appellant's claim was for $3740, which she had calculated as 22 weeks at 50 percent of the rental. But there was no firm evidence to support her contention as to the duration of Mr Monaghan's presence at the property. Even if there had been a

[6] For example, see transcript of 26 September 2018, page 29.

subletting the appellant faced significant difficulties in establishing an appropriate level of compensation.

Result

[70] This ground of appeal fails.

Ground 8 - exemplary damages

[71] Exemplary damages were awarded by the Adjudicator for two unlawful breaches by the respondents. First, in having Mr Monaghan stay at the property from time to time. The tenancy agreement provided that only two persons could occupy the premises, Ms Paulin and her daughter Sophia. It was accepted by the respondents that Mr Monaghan had stayed at the address. The second unlawful act was the intentional obstruction of the appellant's access to the property.

[72] In respect of those breaches a total sum of $500 was awarded by way of exemplary damages to the appellant.

[73] The appellant submits that the Adjudicator erred in law in assessing the exemplary damages at that level. She considers the figure to be low and that in respect of each breach the sum of $750 was appropriate.

[74] In support, the appellant submitted that having Mr Monaghan stay at the address was a deliberate act and occurred over a period of time. In respect to her access to the property, the appellant referred to being exposed to violence which on enquiry amounted to verbal abuse, directly and via social media. The appellant also gave evidence that items had been thrown at her.

Respondents' position

[75] The respondents did not challenge the appellant's evidence before the Tribunal. Sylvia Paulin was not in a position to challenge the alleged actions of her daughter, Sophia. The respondents submit that the awards were reasonable in all the circumstances of the case.

Discussion

[76] It is not clear from the Reasons how precisely the exemplary damages award was made up; whether it was $250 in respect of each breach or some other combination was adopted. The maximum that could be awarded for exemplary damages was $1000 for each unlawful act.

[77] The appellant produced a number of cases from other adjudications in support of her position but none, on analysis, are identical to the circumstances of this case. Rather, they show the general range adopted of up to $500 per breach. One case referred to damages of $1000 but that was an extreme example involving the Armed Offenders Squad.

[78] I am not satisfied the appellant has demonstrated that the award was outside the range available to the Tribunal. The Adjudicator had the benefit of hearing the evidence, which included the aggravating features the appellant referred to in her submissions. While it could be argued that the award is towards the lower end of the spectrum, I am unable to say that the adjudicator erred in law.

Result

[79] This ground of appeal fails.

Ground 9 - costs at the Tribunal

[80] The appellant appeals the decision of the Adjudicator not to award her costs on the respondents' application. In her decision, the Adjudicator said at paragraph 45, "No order for costs is made as I consider the tenants' application was not frivolous or vexatious, or ought not to have been brought."

Respondents' position

[81] The respondents support the Adjudicator's finding.

Discussion

[82] Costs can only be awarded in limited circumstances. Relevant here is s 102(2)(a) which permits the Tribunal to make an award of costs where – "in the opinion of the Tribunal the proceedings are frivolous or vexatious or ought not to have been brought".

[83] An analysis of the facts does not support the appellant's claim. The respondents' application to the Tribunal was filed on 27 June 2018. They sought an order for termination of the tenancy and a refund of the bond monies paid by them. Their application was filed prior to agreement being reached between the parties to bring the tenancy to an end.

[84] The appellant accepted in the course of submissions that the filing of the application could not be considered frivolous or vexatious. I add to that, it could also not be said that the proceedings ought not to have been brought.

[85] As to the continuation of the proceedings, the respondents' case is that forthwith after agreement as to termination of the tenancy they notified the Tenancy Tribunal of the same. No record can be found of that notification. The appellant submits that had such notification been filed it would have been on the Tribunal's file. Based on experience, where unfortunately from time to time documents do not make it to the correct file, I cannot accept that argument.

[86] In any event, on 11 July 2018 the parties attended mediation, but no agreement could be reached. No agreement was necessary as to the issue of termination because that had already been agreed. Accordingly, the issue of a refund of the bond was scheduled for a determination before the Adjudicator on 31 July 2018. On the preceding day (30 July 2018) the appellant filed her application with the Tribunal seeking relief against the respondents. The hearing commenced the very next day. It is clear from the transcript that the Adjudicator was advised the issue of termination no longer needed to be resolved[7] and it was made clear to the Adjudicator, and to the appellant, that the only outstanding issue related to the refund of the bond.

[7] In fact the appellant told the Adjudicator that the tenancy was terminated on 27 June 2018.

[87] As it transpired, after hearing the evidence, the respondents were unsuccessful and the bond was directed to be paid to the appellant, along with other awards. It cannot be said, however, that at the time of filing (on 27 June 2018), or subsequently, the proceedings filed by the respondents were vexatious, frivolous or ought not to have been brought. Plainly there was a dispute between the parties. Initially that involved the termination of the tenancy and the refund of the bond. Before the first hearing the termination issue was resolved but how the bond was to be applied was very much a live issue.

[88] The Act does not permit for costs to be awarded in favour of a successful party generally, only in the limited circumstances I have outlined. I do not consider the Adjudicator erred in law or in fact in concluding that the respondents' application was not frivolous or vexatious or ought not to have been brought.

Result

[89] This ground of appeal fails.

Conclusion

[90] All nine grounds of appeal are dismissed for the reasons given.

Costs on appeal

[91] The respondents seek costs against the appellant.

[92] I make the following directions:

(a) The respondents are to file and serve their memorandum as to costs within 14 days.

(b) The appellant (who indicated she may well take legal advice) is to file her memorandum as to costs, and in response to the respondents' memorandum, within 28 days of receipt.

(c) Unless either party requires an oral hearing, costs will be dealt with on the papers in Chambers.

M B T Turner
District Court Judge