IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2020-092-001782
[2020] NZDC 17022

IN THE MATTER OF	AN APPEAL FROM THE TENANCY TRIBUNAL
BETWEEN	SHANTILAL JATTAN AND MANJULA JATTAN AS TRUSTEES OF JATTAN'S FAMILY TRUST Appellants
AND	NAWAL KISHORE Respondent

Hearing: 21 August 2020

Appearances: Mr and Mrs Jattan in Person
No appearance for Respondent

Judgment: 25 August 2020

DECISION OF JUDGE G M HARRISON

---

[1] Mr and Mrs Jattan appeal against a decision of the Tenancy Tribunal of 21 February 2020 whereby claim and counterclaim by Mr and Mrs Jattan as landlord and Mr Kishore as tenant were resolved.

[2] Adjudicator J Tam allowed compensation to Mr and Mrs Jattan totalling $1,330 in respect of shortcomings by the tenant in the removal of rubbish; repairs to the front sliding door; carpet cleaning and one week's rent in lieu of notice.

[3] On the tenant's claim exemplary damages of $2,000 were awarded against Mr and Mrs Jattan for failure to insulate the tenancy at 20 Puhinui Road, Papatoetoe; compensation of $1,500 for failure to repair the leaking roof; $4,350 as a rent rebate

for renting out a fourth bedroom which was not a legally approved bedroom; and $500 for chattels lost owing to the leaking roof, mould and dampness.

[4] The bond of $2,600 was released to Mr Kishore and the Jattans were ordered to pay him the net amount of $7,020.

Appeals to this Court

[5] The right to appeal to this Court is provided by s 117 of the Residential Tenancies Act 1986. Subsection (4) of that section provides that s 85 of the Act applies in respect of the hearing and determination by a District Court on an appeal.

[6] Section 85(2) provides:

> (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[7] That subsection must also be read with s 85(1). It provides that the Tribunal should exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes.

[8] That means, that the Court, like the Tribunal in its original jurisdiction, is to approach the exercise of its appellate jurisdiction in a practical and fair way. Like the Tribunal, though bound to adhere to general principles of law, the Court need not do what otherwise the law might strictly require or impose.

[9] With that qualification, the correct approach for a Court to adopt on the hearing of an appeal was stated by the Supreme Court in *Austin Nicholls & Co v Stichting Loadstar*[1] where the Court affirmed that on a general appeal, the correct approach for an appellate body is to form its own assessment on matters of fact and the law. The Court may come to a different opinion than the Court or Tribunal appealed from. If the original decision is wrong, the Court is obliged to overturn the decision. Generally speaking an appellant must establish that the Tribunal appealed from has taken

[1] *Austin Nicholls & Co v Stichting Loadstar* [2008] 2 NZLR 141.

irrelevant matters into account, or has failed to take relevant matters into account, has not acted according to law, or is otherwise plainly wrong.

[10] While Rule 18.19 District Court Rules 2014 provides that appeals are by way of rehearing, they are reheard on the evidence given before the body appealed from. There are limited grounds upon which leave to adduce further evidence at the hearing of an appeal may be granted but again, general speaking, an appeal to this Court does not provide an appellant with the opportunity to have a "second go". An appellant must establish that the Tribunal appealed from has erred in one or more of the respects I have referred to in reaching its conclusions.

Grounds of appeal

[11] The first ground of appeal was against the Adjudicator's award of exemplary damages for failure to insulate the house according to legal requirements.

[12] The Adjudicator referred to the requirement to insulate in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. The Adjudicator referred to the standard to which the house had to be insulated and noted that a breach of that obligation is an unlawful act for which exemplary damages up to a maximum of $4,000 may be awarded pursuant to s 45(1A) and Schedule 1A of the Act.

[13] I did not understand Mr Jattan to challenge the Adjudicator's application of the legal requirements to the failure to insulate correctly. Mr Jattan noted that there was insulation but it was old and not to the new standard. He said the leak had to be fixed first or otherwise new insulation could be damaged, and so it is clear that the Adjudicator was correct in his finding on that issue.

[14] As to leakage for which compensation of $1,500 was awarded again Mr Jattan acknowledged that there was a leakage problem. Photographs had been produced to the Tribunal indicating the replacement of iron roofing. But again, the Adjudicator was satisfied on the evidence that Mr Kishore's chattels had been damaged and compensation of $500 was awarded. As there had clearly been leakage general

damages were awarded for the failure to repair the leak which caused mould, dampness and unhealthy living conditions to Mr Kishore and his family.

[15] Mr Jattan referred to the difficulty of getting contractors to the site, and of further difficulties in actually locating the source of the leak, but despite that the obligation to maintain the premises in a proper condition as imposed by s 45 of the Act had been breached and compensation and damages were properly payable.

[16] The last issue was the finding of the Adjudicator that the property could not be lawfully rented as a four-bedroom property when the fourth bedroom had not been legally consented to by the local authority. At [29] of his decision the Adjudicator said:

> However, it is clear from the evidence, as well as the landlord's own admission, that the fourth bedroom had been converted from a sitting/rumpus area of the property. This house was only lawfully consented on Council plans as a three-bedroom property. The fourth bedroom did not have adequate protection against the elements, insulation or a proper ceiling.

[17] In those circumstances the Adjudicator properly held that the premises could only be let lawfully as a three-bedroom property and the rental rebate of $4,350 was awarded.

[18] Mr Jattan also complained that while the tenancy agreement allowed for there to be five occupants of the premises, he claims that from time to time there were six occupants or more in residence. That however was not supported by evidence presented to the Adjudicator. At [16] the Adjudicator said:

> The landlord's claim that the tenant had allegedly sublet the premises has not been proved. The landlord failed to adduce sufficient evidence to indicate that the maximum number of occupants at the property of five have (sic) been exceeded.

Conclusion

[19] The parties were given significant time to present their cases. The first hearing on 27 September occupied three hours which was only sufficient time for Mr Jattan to present the landlord's case. That hearing was adjourned and a further three hours was allowed for the resumed hearing leading to the Adjudicator's decision of 21 February

2020. It could not be said therefore that the parties were not afforded sufficient time to present their cases to the Adjudicator.

[20] Also, for the reasons given it has not been demonstrated that the Adjudicator failed to take into account relevant material, or took into account irrelevant material. His decision appears to be according to the requirements of the statute, and is not otherwise clearly wrong.

[21] In those circumstances the appeal fails, and is dismissed accordingly.

G M Harrison
District Court Judge