

**IN THE DISTRICT COURT  
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE  
KI ŌTAUTAHI**

**CIV-2018-009-2490  
[2019] NZDC 4947**

UNDER THE	THE RESIDENTIAL TENANCIES ACT 1986
IN THE MATTER OF:	AN APPEAL AGAINST A DECISION OF THE TENANCY TRIBUNAL
BETWEEN	FULL CIRCLE REAL ESTATE LIMITED Appellant
AND	DANIELLE PIPER Respondent

Hearing: 6 March 2019

Appearances: Appellant in Person  
E Yu and S Nicholas for the Respondent  
K H Cook – Counsel to Assist

Judgment: 19 March 2019

---

**RESERVED JUDGMENT OF JUDGE P R KELLAR**

---

**Introduction**

[1] On 21 September 2018 the Tenancy Tribunal dismissed an application for reimbursement of the cost of methamphetamine testing of rental premises in Christchurch.

[2] The adjudicator adopted the 29 May 2018 recommendations of the Office of the Prime Minister’s Chief Science Advisor (“the Gluckman Report”) that where there was no evidence of manufacturing methamphetamine, levels of 15 micrograms per 100 square centimetres or below posed no risk to human health. The adjudicator

preferred the Gluckman report to New Zealand Standard 8510:2017 which stated that levels above 1.5 micrograms per 100 square centimetres posed a risk to health.

[3] The adjudicator concluded that there was no damage to the premises because all levels of methamphetamine were below 15 micrograms per 100 square centimetres apart from a toilet.

[4] The adjudicator also concluded that the evidence of methamphetamine on a smoke alarm which had been installed during the tenancy proved on the balance of probabilities that methamphetamine had been used in the premises during the tenancy by someone if not the tenant. However, the test of the smoke alarm and one other alarm did not specify the actual level of methamphetamine.

[5] The adjudicator was unable to conclude that the one area in the premises above 15 micrograms per 100 square centimetres was contaminated during the tenancy when there was no test done before the tenancy commenced.

### **The grounds of the appeal**

[6] The appellant, Full Circle Real Estate Limited appeals against the decision of the Tenancy Tribunal on the following grounds:

- (1) The adjudicator interpreted the methamphetamine report incorrectly;
- (2) The adjudicator erred in finding there had been no manufacture of methamphetamine. The appellant contends that as there were three precursor chemicals found on the premises, there was sufficient evidence of manufacturing;
- (3) The adjudicator's reliance on the Gluckman report was unfair as the document was given undue weight.

### **The nature of an appeal from the Tenancy Tribunal**

[7] Section 117(1) of the Residential Tenancies Act 1986 ("the Act") provides:

## **117 Appeal to District Court**

(1) Subject to subsection (2), any party to any proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in the proceedings may appeal to the District Court against that decision.

[8] The right to bring an appeal is generally treated as an appeal by way of rehearing heard on the record of the oral evidence given before the Tenancy Tribunal subject to a discretionary power to rehear the whole or part of the evidence or even receive further evidence.

[9] In *Shotover Gorge Jet Boats Limited v Jamieson* [1987] 1 NZLR 437 (CA) Cooke P stated at [440]:

In such cases it is the duty of the appellate court to reach its own independent findings and decision on the evidence which it hears or admits. It is entitled to give weight, if it sees fit, to the opinion of the Tribunal appealed from but is in no way bound thereby.

[10] Section 117(4) of the Act provides that the provision of s 85 of the Act apply in respect of the hearing and determination by the District Court of any appeal brought under the section. Section 85 provides as follows:

### **85 Manner in which jurisdiction is to be exercised**

(1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.

(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.

## **The tenant's responsibilities**

[11] Section 40(2)(a) of the Act provides:

### **40 Tenant's responsibilities**

...

(2) The tenant shall not—

(a) intentionally or carelessly damage, or permit any other person to damage, the premises; or

...

[12] Where any damage is proved to have occurred during the tenancy, then s 40(4) of the Act places the onus on the tenant to prove that he or she did not intentionally or carelessly damage the premises or permit such damage.

[13] In any claim against a tenant for damage to the premises, it is for the landlord to prove that the damage occurred during the tenancy and was probably not caused by fair wear and tear.

[14] Once the landlord has established that the damage occurred during the tenancy and was probably not caused by fair wear and tear it is then for the tenant to prove that the damage did not occur due to his or her careless or deliberate actions or the careless or deliberate actions of others on the premises with his or her consent.

[15] Section 40(2)(b) prohibits the tenant from using the premises or permitting the premises to be used, for any unlawful purpose. Clause 6 of the tenancy agreement contains the same prohibition. Section 41(1) of the Act provides:

**41 Tenant's responsibility for actions of others**

(1) The tenant shall be responsible for anything done or omitted to be done by any person (other than the landlord or any person acting on the landlord's behalf or with the landlord's authority) who is in the premises with the tenant's permission if the act or omission would have constituted a breach of the tenancy agreement had it been the act or omission of the tenant.

**The Tenancy Tribunal proceeding**

[16] The appellant sought a sum by way of compensation in the Tenancy Tribunal for a contravention of the tenant's obligation not to intentionally or carelessly damage, or permit any other person to damage, the premises. The application was not brought on the basis that the tenant used the premises, or permitted the premises to be used, for any unlawful purpose. Section 40(3A) of the Act declares a contravention of s 40(2)(b) to be an unlawful act. Section 70(2)(o) confers on the Tenancy Tribunal

jurisdiction to award exemplary damages where a complaint that a tenant has committed an unlawful act is proved.

[17] At the hearing of the appeal, the appellant referred to the respondent having contravened s 40(2)(b) by using or permitting the premises to be used for an unlawful act, namely the use of methamphetamine.

[18] The Tenancy Tribunal found on the balance of probabilities that methamphetamine had been used at the premises during the tenancy, if not by the tenant then by someone else. However, the issue of whether that was an unlawful act and if so, whether exemplary damages should be awarded, was not before the adjudicator. Consequently, the Tribunal made no findings about those matters that could give rise to an appeal.

[19] Even if there was evidence as to the commission of an unlawful act, it is unlikely the adjudicator would have awarded exemplary damages given that the methamphetamine testing of the smoke alarm was presumptive and did not specify an actual level of methamphetamine.

## **Discussion**

[20] It is trite that methamphetamine causes harm to human health. Where methamphetamine has been used or manufactured on premises, the surfaces, including ceilings, walls, floors and appliances become contaminated with methamphetamine in concentrations that vary according to the extent of use or manufacture. Where the concentration of methamphetamine exceeds any prescribed maximum acceptable level there is “damage” to the premises in terms of s 40(2)(a) of the Act because there is a risk to human health.

[21] The issue on this appeal is whether the Tenancy Tribunal was correct to find that the tenant damaged the premises or permitted any other person to damage the premises during the tenancy because the levels of methamphetamine did not exceed 15 micrograms per 100 square centimetres in any part of the premises apart from a toilet. The argument for the landlord is that the Adjudicator should have adopted the

level of “safe” methamphetamine contamination as set out in NZS 8510:2017. The argument for the tenant is that the Adjudicator was right to adopt the most recent scientific knowledge on the levels of “safe” contamination absent evidence of manufacturing methamphetamine.

[22] The tenancy commenced on 5 April 2017. Possession was returned on 27 May 2018. An inspection report noted that there was a lot of rubbish left at the property around the yards and especially behind the garage. The author of the report expressed concern that due to the nature of some of the items there may have been contamination inside the property. Arrangements were made for methamphetamine testing to be carried out.

[23] On 23 May 2018 the Independent Drug Screening (“IDS”) provided a report in which it concluded that methamphetamine was present in the dwelling at levels of 1.5 micrograms per 100 square centimetres or above. The report referred to New Zealand Standard 8510:2017 as specifying maximum residue levels of methamphetamine in high use areas of 1.5 micrograms per 100 square centimetres and 3.8 micrograms per 100 square centimetres for limited use areas, for example ceiling cavities. The report recommended a detailed screening assessment be carried out.

[24] On 29 May 2018 the Office of the Prime Minister’s Chief Science Advisor Professor Sir Peter Gluckman issued a report (“the Gluckman Report”). The question that formed the basis of the report was whether, and at what level of detection, methamphetamine residue on household surfaces poses a risk to human health.

[25] The report noted that in New Zealand from August 2010 until June 2017 the only available guidance for cleaning of contaminated dwellings was a Ministry of Health Guideline intended to be applicable to former methamphetamine laboratories which indicated an acceptable level (after cleaning) of 0.5 micrograms of methamphetamine per 100 square centimetres surface area.

[26] The Gluckman Report noted:

A 2016 risk-based review of these guidelines by the Institute for Environmental Science and Research (ESR) concluded that 2 micrograms per

100 square centimetres is an appropriate precautionary cleanup guideline for methamphetamine-contaminated houses not known to be former meth labs.

In June 2017 a new Standard of 1.5 micrograms per 100 square centimetres was selected as the cleanup level and the New Zealand Standard on the testing and decontamination of methamphetamine-contaminated properties (NZS 8510:2017), taking the ESR review into consideration. This threshold was chosen for reasons of practicality and did not distinguish former labs and premises where methamphetamine was used

[27] The Gluckman Report suggested that the guideline of 1.5 micrograms per 100 square centimetres should not be universally applied. It stated that testing is only recommended where “meth lab” activity is suspected or where very heavy use is suspected. The report concluded that there is currently no evidence that methamphetamine levels typically resulting from third hand exposure to smoking residues on household surfaces can elicit an adverse health effect. It also concluded that toxicity assessments and exposure dose models have deliberately adopted very conservative assumptions, with large safety margins built in.

[28] The report also stated that methamphetamine levels that exceed the NZS 8510:2017 clean-up standard of 1.5 micrograms per 100 square centimetres should not be regarded as signalling a health risk. Indeed, exposure to methamphetamine levels below 15 micrograms per 100 square centimetres would be highly unlikely to give rise to any adverse effects.

[29] The Gluckman Report further noted that remediation is certainly warranted if high levels of methamphetamine are present that are indicative of manufacturing activity or excessive smoking. The report noted that levels of 30 micrograms per 100 square centimetres are considered by forensic experts to signify that manufacture is likely to have taken place. Testing for lower levels that still suggest relatively high levels of smoking for example 15 micrograms per 100 square centimetres could be used to identify specific areas of contamination that warrant remediation.

[30] On 1 June 2018 IDS provided a report that twelve of the sixteen swab tests conducted throughout the house showed results above the “current accepted level of 1.5 micrograms per 100 square centimetres for high use areas...” The results showed concentrations of methamphetamine residue of 11.06 and 14.78 in the lounge, 12.46 in a bedroom and 16.85 in the toilet. The IDS report concluded that test results suggest

use of methamphetamine had taken place. Further, the report stated that only minute levels of precursor substances were detected, also suggesting the possibility that the contamination has been through use rather than manufacturing. The report recommended remediation of the property. The appellant has had remediation work carried out, the cost of which it sought to recover from the tenant.

[31] The IDS report of 1 June 2018 did not refer to the Gluckman Report. Indeed it is not apparent that the author of the IDS report was aware of the Gluckman Report. That is perhaps not surprising given that the Gluckman Report was released only a day or so before the date of the IDS report.

[32] The difficulty with the case before the Tenancy Tribunal was that the Gluckman Report was released only shortly before the IDS testing on 1 June 2018. It was not unreasonable for the appellant to have commissioned a comprehensive methamphetamine testing of the premises given that the 23 May 2018 IDS report noted that contamination was present throughout the premises above 1.5 micrograms per 100 square centimetres.

[33] The issue before the Tenancy Tribunal was whether to adopt NZS 8510:2017 or the Gluckman Report to determine whether the tenant had caused damage to the premises or permitted any other person to do so. Neither the New Zealand Standard nor the Gluckman Report provide specific regulation of the testing and decontamination of methamphetamine damaged premises. The New Zealand Standards are a guideline based on the then current state of knowledge about the risk to human health from methamphetamine contamination. The Standards have not been incorporated into legislation. Likewise the Gluckman Report expresses expert opinion as to the levels of contamination giving rise to adverse effects to human health.

[34] The appellant has sought to introduce expert evidence, albeit as a submission, from Mr Simon Fleming of the Methamphetamine Testing Industry Association of New Zealand to the effect that the Tribunal was wrong to rely upon the Gluckman Report.



[35] I do not consider that it is appropriate to admit the evidence from the Methamphetamine Testing Industry Association of New Zealand because:

- (1) The information was available to the appellant and could have been put before the Tenancy Tribunal;
- (2) The writer of the report has not outlined his qualifications or experience so as to qualify as an expert;
- (3) The report is somewhat pejorative and does not at times appear to be an impartial and disinterested expression of expert opinion.

[36] The Tenancy Tribunal was in a difficult position. The best state of knowledge of risk to human health from methamphetamine contamination available to the adjudicator was the Gluckman Report. It would have been bold for the adjudicator to have ignored that report in favour of the New Zealand Standard given that the Gluckman report represents the current scientific knowledge on the risk to human health from methamphetamine contamination in dwellings.

[37] The appellant needed to prove not only that the premises were contaminated by methamphetamine beyond “safe” levels but also that any damage through methamphetamine contamination occurred during the tenancy. The adjudicator found that the positive test for methamphetamine on the smoke alarm proved that methamphetamine had been used during the tenancy. However, the test did not specify a level of methamphetamine contamination on the smoke alarm and the adjudicator was unable to determine whether that constituted damage to the premises.

[38] Furthermore, the adjudicator was unable to determine whether methamphetamine contamination, whether or above below 15 micrograms per 100 square centimetres occurred during the tenancy when there was no test done before the tenancy started. There was no evidence before the Tenancy Tribunal or on appeal to show how long methamphetamine contamination remains in a property aside from a reference in the Gluckman Report that:

Experiments involving simulated “smoking” methamphetamine found that residue levels decline markedly over a few days.

[39] That raises the possibility that it was likely methamphetamine contamination from smoking had occurred during the tenancy but there was no evidence on which the Tenancy Tribunal or this Court on appeal could determine that question. It may be that in future cases of this nature there will be evidence as to how long residues from methamphetamine contamination will remain on surfaces from which an inference may be able to be drawn as to whether the contamination occurred during the tenancy.

[40] The appeal is therefore dismissed.

[41] This appeal has raised a difficult issue in relation to methamphetamine contamination of rental properties. Hopefully, certainty will be introduced to this vexed issue with the enactment of the Residential Tenancies Amendment Bill and Regulations created under it.

[42] Given the nature of the issue it seems appropriate that the respondent, who is represented by counsel, bear her own costs. If however the respondent seeks an award of costs, then a brief memorandum is to be filed 10 working days following the release of this decision.

---

Judge P R Kellar  
District Court Judge