

**IN THE DISTRICT COURT
AT HAMILTON**

**I TE KŌTI-Ā-ROHE
KI KIRIKIROA**

**CIV-2021-019-000579
[2021] NZDC 16976**

BETWEEN

ANTHONY JAMES BROOKING
DANI HODGES
Appellants

AND

COLIN IMRIE
Respondent

Hearing: 7 July 2021

Appearances: A Brooking in Person
R C Mark for D Hodges (via telephone)
C Imrie in Person

Decision: 23 August 2021

RESERVED DECISION OF JUDGE I D R CAMERON

[1] This is an appeal against the decision of the Tenancy Tribunal dated 13 March 2021. In that decision the Tribunal found that the appellants were responsible for methamphetamine contamination of the premises during their tenancy, and ordered them to pay the sum of \$29,397.77 to the respondent. A cross claim by the appellants for damages and a refund of rental for being subjected to exposure by way of methamphetamine contamination was unsuccessful.

[2] The appellants contend that there was insufficient evidence for the Tribunal to make the finding that they were responsible for the methamphetamine contamination of the premises.

[3] The appellants through Ms Hodges' counsel Mr Mark emphasised that there was no dispute that the premises were not tested for methamphetamine contamination prior to the commencement of the tenancy, and that the Tribunal had accepted the proposition that the methamphetamine contamination could have occurred prior to the tenancy.

[4] Despite these findings, the Tribunal placed a great deal of emphasis on the evidence of a Ms Christie, who gave evidence by telephone. Ms Christie was a surprise witness and it appears that the Tribunal requested that the landlord phone Ms Christie during the hearing. Ms Christie's evidence was that she could view the premises from the child care centre where she worked across the road, that windows had been covered with film and security cameras had been installed, that strong chemical odours like fly spray or petrol were present and smoke often billowed from the chimney, that the occupants would work on cars in the driveway creating loud noises, that gang members and other undesirable people visited the premises and on one occasion there was suspicious activity at the premises, that cars regularly drove in and out of the premises, that there were other activities which seemed underhanded or dishonest, and that the police visited the premises on more than one occasion including the Armed Offenders Squad on one occasion.

[5] It is accepted that following the police visit the police confirmed that there was nothing of interest found and no drugs were found on the property.

[6] I note that Ms Christie's evidence was in conflict with a Mr Nolan's evidence, who also had a view down the driveway. In my view the evidence provided by Ms Christie was insufficient to establish that the tenants were responsible for the methamphetamine contamination. There was no obvious connection to methamphetamine contamination. The landlord had the obligation of providing evidence to establish that it was more likely than not that the tenant was responsible for that contamination, and the evidence falls short of that. The evidence simply does not establish that it was more likely than not that the tenant was responsible for the contamination of the premises during the tenancy. It is accepted that the premises were found to have a high level of methamphetamine contamination following the end

of the tenancy, but there is no evidence as to when that occurred. There was also evidence that methamphetamine does not degrade over time.

[7] The difficulty with the landlord's claim is that there was no methamphetamine test conducted at the beginning of the tenancy, and no actual proof of what occurred during such tenancy.

[8] Accordingly, I allow the appeal and make an order quashing the decision of the Tenancy Tribunal.

[9] I substitute the following orders:

- (a) Mr Imrie is entitled to retain the bond of \$1360. While he did not pursue claims for exterior cleaning of the property, toilet repair and the like before the Tribunal, I am satisfied that those items were more than fair, wear and tear and the costs he incurred for such items would have far exceeded the amount of the bond.
- (b) The cross claim by the appellants is dismissed in its entirety, as there is insufficient evidence to establish on the balance of probabilities that the premises were contaminated with methamphetamine when let to the appellants.
- (c) Each party is to bear its own costs.

I D R Cameron
District Court Judge