IN THE DISTRICT COURT
AT NORTH SHORE

I TE KŌTI-Ā-ROHE
KI ŌKAHUKURA

CIV-2019-044-001597
[2021] NZDC 3231

BETWEEN	ACME REALTY LTD PAUL SIEBERHAGAN Appellants
AND	ALEXANDER JAMES HOGG, TUITUI GRACE POLOTU, LEIGH SHARYN COUGHLIN Respondents

Hearing:	23 February 2021
Appearances:	Mr Sieberhagan, with Mr Wong of Acme Realty - Appellant Mr Hogg, Ms Coughlin and Ms Poluto - Respondents
Judgment:	25 February 2021

DECISION OF JUDGE G M HARRISON

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[1] Mr Sieberhagan appeals against a decision of the Tenancy Tribunal of 8 November 2019. Acme Realty was the managing agent of his rental property.

[2] At issue is a short legal point, namely whether New Zealand Standard 8510:2017 has the force of law.

[3] Mr Sieberhagan and his family occupied the tenancy address at 6 Pupuke Road, Hillcrest, Auckland. When they vacated, the property was let to the three respondents. They acknowledge that there was no methamphetamine contamination of the premises at the time they took occupation on 6 June 2018.

[4] The tenancy concluded on 2 May 2019 when Mr Sieberhagan arranged for AllClear to test the premises for methamphetamine.

[5] Fifteen locations throughout the premises tested positive, and the report from AllClear recommended that the garage, bedroom 3 ensuite, and entry be remediated as the methamphetamine levels detected were above the level set by NSZ 8510:2017 being 1.5 micrograms per 100 square centimetres.

[6] All three tenants categorically denied using methamphetamine on the property although it seems that possibly Ms Polotu's partner was responsible for the contamination. They obtained their own report from Habitat Property Services which detected much lower levels in the three affected areas than the results from AllClear.

[7] At issue was the standard to be applied in determining whether the tenants had damaged the property in breach of s 40(2)(b) of the Residential Tenancies Act 1986.

[8] The Adjudicator referred in her report to the decision of Judge Kellar in *Full Circle Real Estate Ltd v Piper.*[1] The circumstances of that case were very similar to the present. The Judge described the issue on that appeal as follows—

> [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 NZS8510:2017. 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.

[9] There is no suggestion in this case that methamphetamine was manufactured on the premises.

[10] What follows is a summary of the determination of Judge Kellar. On 29 May 2018 the office of the Prime Minister's Chief Science Advisor Professor Sir Peter

[1] [2019] NZDC 4947.

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.

[11] From August 2010 until June 2017 the only available guidance for the 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 centimetre surface area.

[12] Judge Kellar noted at [26]—

> In June 2017 a new standard of 1.5 micrograms per 100 square centimetres was selected as the clean up level and the New Zealand Standard on the testing and decontamination of methamphetamine – contaminated properties (NZS8510:2017), 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.

[13] At [28] the Judge said—

> The report also stated that methamphetamine levels that exceed the NZS8510:2017 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 effect.

[14] The essence of the decision is at [33]—

> The issue before the Tenancy Tribunal was whether to adopt NZS8510:2017 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 provides 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.

[15] The crucial issue for the determination of this appeal is whether or not NZS8510:2017 has been adopted into law, and it is clear that it has not been. That means that the Tenancy Adjudicator was not bound to find that any decontamination above 1.5 micrograms was injurious to health.

[16] The Adjudicator was therefore confronted with two conflicting opinions. The AllClear results indicated an excess of 15 micrograms on cabinets in the garage and that that was the only area requiring remediation. Those varnished cabinets were removed and disposed off by decontamination specialists.

[17] That was a conclusion that was open to the Adjudicator.

[18] The respondents otherwise accepted the decision of the Adjudicator and did not challenge the award made in favour of Mr Sieberhagan.

[19] While his frustration is understandable he presented his case objectively and sensibly and essentially on the basis that the Adjudicator was bound to apply NZS8510:2017. But for the reasons I have given that standard has not been passed into the law of this country and consequently the Adjudicator was not bound by the level it prescribes in reaching her conclusion.

[20] For those reasons therefore the appeal is dismissed.

G M Harrison
District Court Judge