

**IN THE DISTRICT COURT
AT WAITAKERE**

**I TE KŌTI-Ā-ROHE
KI WAITĀKERE**

**CIV-2019-090-002021
[2020] NZDC 24057**

BETWEEN

JUN HE
Appellant

AND

JOHNNY LIU
Respondent

Hearing: 6 November 2020

Appearances: No appearance by or for the Appellant
No appearance by or for the Respondent

Judgment: 6 November 2020

DECISION OF JUDGE G M HARRISON

[1] This is an appeal by Mr He from a decision of the Tenancy Tribunal. Unusually, the appeal is against the refusal of the Tribunal to grant a rehearing of the original decision of the Tribunal of 1 August 2019.

[2] The facts, briefly, were that Mr He rented a room basement at 8 Skyla Place, Massey, from Mr Liu as landlord. Mr Liu sought vacant possession from Mr He, who applied to the Tenancy Tribunal, and I quote from his application, whereby the relief he sought was: “I want the Tenancy Tribunal to order that I am a tenant rather than a flatmate. The landlord must give me three months’ notice to end the tenancy.”

[3] The decision of the Tribunal was that the agreement to rent the premises was a residential tenancy agreement between the parties. Mr He consequently succeeded in his application and the Tribunal directed that his filing fee be reimbursed to him.

[4] At that hearing, Mr He then wished to advance a claim for compensation, but the referee quite correctly stated that he was restricted to the claim advanced in Mr He's application and could not consider a claim for a rent refund or compensation. He noted further that should Mr He wish to pursue this, it was open to him to file a further application to the Tribunal and it will be dealt with separately.

[5] Mr He sought a rehearing, which the referee dismissed in a decision of 13 November 2019. His decision appears to me to be soundly based and accurate from a legal point of view. Indeed, it seems quite strange that Mr He should seek a rehearing of a case in which he has succeeded. The simple process he should have followed was to take up the referee's suggestion of a further application to the Tribunal in which compensation could have been sought.

[6] I note that s 51 of the Residential Tenancies Act 1986 deals with termination by notice in broad terms. It says: "where the owner of the premises requires the premises as the principal place of residence for the owner or any member of that owner's family," then 42 days' notice is to be given to the tenant. There are other subsections which are not relevant in this case. The section then provides that if the 42 day requirement does not apply, then a 90 day notice is required. The issue that would then have to be determined by the Tribunal was whether or not Mr Liu, as owner of the premises, required them as the principal place of residence for him or any member of his family. If not, then a 90 day notice would be required.

[7] That, of course, is an issue that must be determined in the future, should Mr He file the further application as indicated by the Tribunal. For those reasons, therefore, as far as the papers filed in respect of the appeal are concerned I can see no basis upon which the appeal can be allowed; but in any event Mr He is not present to advance his appeal and so I have no option but to dismiss it, and it is dismissed accordingly.

G M Harrison
District Court Judge