

**IN THE DISTRICT COURT
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE
KI WHANGĀREI-TERENGA-PARĀOA**

**CIV-2021-088-000126
[2021] NZDC 15210**

BETWEEN	EREN LIMITED Applicant
AND	LOUISE MARTIN First Respondent
AND	ROBERTA KUKURUZSNYAK Second Respondent

Hearing: 27 April 2021

Appearances: Ms Anderson for Eren Limited
Ms Martin appears in person
Ms Kukuruzsnyak appears in person

Judgment: 3 August 2021

RESERVED JUDGMENT OF JUDGE K B de RIDDER

[1] In an order dated 26 February 2021 the Tenancy Tribunal dismissed an application by Eren Ltd for an award of damages for unlawful use of the residential premises occupied by Ms Martin and Ms Kukuruzsnyak.

[2] Eren Ltd now appeals against that decision.

[3] After the tenancy was terminated by consent the landlord sought an order from the Tribunal for rent arrears, rubbish removal, repairs, key replacement, and water rates. The Tribunal made an order in favour of the landlord. At the hearing of this claim the landlord also produced evidence of repairs and costs associated with methamphetamine de-contamination. Accordingly, the Tribunal amended the application to include repair and methamphetamine costs and adjourned the hearing.

That hearing proceeded on 26 February 2021 resulting in the decision now under appeal.

Decision under appeal

[4] The Tribunal noted that the landlord sought compensation of \$228.85 for the cost of methamphetamine testing, \$2,998.63 for decontamination of the premises, and \$1,794 for the cost of a lab analysis, together with exemplary damages for the tenants using the premises for an unlawful purpose.

[5] The Tribunal ruled that the landlords claim could not succeed, firstly, because the landlord had not proved that the tenants smoked methamphetamine at the premises, nor provided evidence of drug paraphernalia or any other evidence of drug use or manufacture at the premises.

[6] Secondly, the Tribunal also found that the premises were not contaminated to a level accepted by the Tribunal. It noted that insurers and firms involved in decontamination work apply the NZS8510:2017 standard of 1.5 $\mu\text{g}/100\text{cm}^2$ but the Gluckman Report of 29 May 2018 recommended that exposure to methamphetamine levels below 15 $\mu\text{g}/100\text{cm}^2$ would be highly unlikely to give risk to any adverse effects. Only where there was evidence of manufacture should the lower level be applied. The Tribunal further noted that the decision to apply the higher standard of the Gluckman Report had been upheld in the case of *Full Circle Real Estate Ltd v Piper*.¹ As the highest level recorded at the premises was 9.9 $\mu\text{g}/100\text{cm}^2$ the premises could not be considered contaminated and a health risk. There was no evidence to show that the premises were used to manufacture methamphetamine which would allow the Tribunal to consider the lower standard. The Tribunal concluded that without a proven unlawful act the Tribunal could not award exemplary damages, and that the premises were not contaminated to level that constituted a health risk entitling the landlord to claim the cost of cleaning the premises.

¹ *Full Circle Real Estate Ltd v Piper* [2019] NZDC 4947.

Appeal grounds

[7] In the written notice of appeal the appellant states;

We believe that this is an unfair decision. As the tenancy service website states: the standard considers a house to be contaminated if meth is present at levels higher than 1.5mg/100cm²

[8] In support of the appeal Ms Anderson for Eren Ltd provided documentation that had previously been provided to the Tribunal. In addition, she produced two further documents which were not before the Tribunal being a document provided by tenancy services referring to the New Zealand standard NZS8510:2017, and confirmation from a business known as The Drug Detection Agency confirming a property should be treated as contaminated at the 1.5 level.

Approach on appeal

[9] The appeal proceeds by way of rehearing based on the evidence given before the Tribunal, but with the discretion to receive further evidence.² Accordingly, I have perused the evidence heard by the Tribunal and the documents produced at the hearing. In addition, I have taken in consideration the further documents supplied by Ms Anderson.

Discussion

[10] The appellants claim for exemplary damages for an unlawful act is founded on s 40(2)(b) of the Residential Tenancies Act. The testing carried out by the owners of the property quite clearly confirms that methamphetamine had been consumed in the premises. That is clearly unlawful. The evidence of the testing is circumstantial evidence that the Tribunal was entitled to take into consideration along with any other evidence of a circumstantial nature. In that regard, the owners of the property provided evidence that there was evidence of drug use in the rubbish left at the property by the tenants and also stated that neighbours advised the owners that the tenants had been using drugs at the property. This is also circumstantial evidence that the Tribunal was

² *Housing New Zealand Corporation v Salt* [2008] DCR 697.

entitled to take into consideration, particularly having regard to s 85 and s 97(4) of the Act. Instead the Tribunal has arbitrarily categorised such evidence as “gossip”.

[11] However, the significant problem for this claim is that there is no evidence of any methamphetamine testing carried out at the start of this tenancy. If there had been such testing and it revealed no methamphetamine then clearly the methamphetamine residue that was found at the end of this tenancy could only have occurred during the tenancy and could only have occurred by either the tenants using methamphetamine or permitting others to use methamphetamine inside the house. The lack of methamphetamine testing at the start of the tenancy significantly weakens the circumstantial case against the tenants to the point where it is not possible to conclude on the balance of probabilities that it was the tenants who were responsible for the methamphetamine residue located at the premises at the end of their tenancy.

[12] The claim for compensation for methamphetamine testing, laboratory analysis and decontamination was determined by the Tribunal by following the Gluckman Report and also the decision of the District Court in *Full Circle Real Estate Ltd v Piper*. The issue on appeal is simply whether or not the Tribunal was in error in adopting that approach. It seems abundantly clear from the transcript of the hearing that there is an established position in the Tenancy Tribunal that in dealing with claims for compensation for cleaning costs in relation to methamphetamine contamination the Gluckman Report is to be adopted.

[13] In this case there is no other evidence to counter the conclusions of the Gluckman Report. Thus it cannot be said that the Tribunal was wrong in the approach it adopted in dismissing the claim for compensation for these matters.

Result

[14] For the reasons set out above the appeal is dismissed.

K B de Ridder
District Court Judge