

**IN THE DISTRICT COURT
AT NEW PLYMOUTH**

**I TE KŌTI-Ā-ROHE
KI NGĀMOTU**

**CIV-2021-043-000197
[2021] NZDC 21896**

BETWEEN

EGMONT ECO LEISURE PARK
Appellant

AND

ARAGORN DUNEDAIN CAVANAGH
Respondent

Hearing: 8 November 2021

Appearances: Appellant in Person
Respondent in Person

Judgment: 9 November 2021

JUDGMENT OF JUDGE A S GREIG

[1] This is an appeal against a ruling of the Tenancy Tribunal delivered on 27 May 2021.

[2] An appeal from the Tenancy Tribunal proceeds by way of a rehearing. Thus, ordinarily, the appeal should only be allowed if the conclusion reached at first instance was not open on the evidence; that is, where there was no evidence to support it, or where the Tribunal was plainly wrong in the conclusion reached.

[3] The Tribunal ruling covered a number of points, both factual and legal. The first issue the Tribunal was required to decide was a jurisdictional issue; whether or not the arrangements between Mr Cavanagh and Egmont Eco Leisure Park (Leisure Park) even came within the jurisdiction of the Tenancy Tribunal; whether the premises owned by Leisure Park, coupled with the arrangement between the parties, were of a nature that is covered by the Residential Tenancies Act (the Act).

Background

[4] In October 2020, Mr Cavanagh was effectively homeless. He was staying in emergency accommodation in a motel in New Plymouth. His rent was being paid by WINZ. He had been there for a week or two when WINZ advised him that he must move to what they described as “short or long-term” accommodation. What it appears WINZ really meant was somewhere cheaper. They gave Mr Cavanagh a list of places that he could try.

[5] Mr Cavanagh contacted the Egmont Eco Leisure Park, where he spoke to Mr Ogle. Mr Ogle owns Leisure Park, which might be better understood as a camping ground equipped with a variety of types of accommodation and facilities.

[6] Mr Ogle’s business was heavily dependent on the tourist industry. In October 2020 he, like everyone else in the tourist industry, was faced with a serious contraction of his business. He therefore started taking in what might be termed, “WINZ tenants”. He agreed to take on Mr Cavanagh.

[7] Mr Cavanagh signed a document that was headed up: “The boarder will abide by the following rules”. The actual document that Mr Cavanagh signed was not available, but the Tribunal found, as a finding of fact, that a document produced at the hearing that had been signed by another tenant of Leisure Park was probably the same, or very similar, to the document that Mr Cavanagh said he signed. The Tribunal referred to this document as a “boarding house tenancy agreement.”

[8] The Tribunal considered a variety of living arrangements that are excluded by the Act from the Tribunal’s jurisdiction. The Tribunal determined that Mr Cavanagh’s occupation of Leisure Park did not come under the heading of “temporary or transient accommodation such as that provided by hotels and motels”.¹ The tribunal found that Mr Cavanagh’s arrangement did not fall under s 5(1)(ta) of the Act, being “structures located within a camping ground”, due to the length of time, being 67 days, that Mr Cavanagh had stayed at Leisure Park. The tribunal also determined that the arrangements were not excluded under s 5(1)(y), which applies to emergency or

¹ section 5(1)(k) Residential Tenancies Act 1986.

transitional accommodation where the accommodation has been funded wholly or partly by a government department.

[9] Having run through the possible likely options that would have excluded the Tribunal's jurisdiction, the Tribunal determined, on the basis of the criteria set out in s 66B of the Act, as well as the document that the tribunal had determined was a boarding house tenancy agreement, that Mr Cavanagh's arrangement was a boarding house tenancy and thus came within the jurisdiction of the Act.

Boarding house

[10] A boarding house is defined under s 66B as "residential premises that contain one or more boarding rooms along with communal facilities, and which are occupied (or intended for occupation) by six or more tenants at any one time."

[11] A "boarding house tenancy" means a residential occupancy in a boarding house of 28 days or more where the tenant has exclusive rights to occupy particular sleeping quarters and communal rights to use shared facilities.

[12] The Act also sets out what must be contained within boarding house tenancy agreements. As well as complying with s 13A of the Act, it must also contain certain additional requirements as set out in s 66C which are:

- (a) a statement of whether the tenancy is intended to last for 28 days or more;
- (b) one or more telephone numbers of the landlord;
- (c) the room number of the boarding room to which the tenancy agreement relates;
- (d) a statement specifying whether the tenant's boarding room is shared and, if so, the names of the other occupants;

- (e) a statement of whether the tenancy is a joint tenancy and, if so, the names of the other people who will occupy the boarding room under the tenancy agreement:
- (f) a statement of the services the landlord will provide;
- (g) the name, address and contact numbers of the manager of the premises, if this is a different person than the landlord; and
- (h) a description of the fire evacuation procedures for the premises.

[13] When Mr Cavanagh first moved into the Leisure Park, he was provided with his own chalet at the cost of \$295 per week. He stayed there from 13 October 2020 until 3 November 2020 but then requested cheaper accommodation. On 4 November he moved into a room containing a cluster of bunk beds. He stayed there from 4 November until he was evicted on 19 December 2020.

[14] It was accepted by all parties that when Mr Cavanagh was in the bunk room, he shared the room with a number of other people and did not have the exclusive right to any particular bed. Who slept in which bed in the bunk room was a matter of first come first served. He did not therefore have an exclusive right to occupy particular sleeping quarters.

[15] More importantly, however, the agreement that the Tribunal referred to as a “boarding house tenancy agreement” contained none of the requirements of s 66C.

[16] The agreement that Mr Cavanagh signed was simply a set of rules that stipulated how much rent was to be paid, when it would be paid, the penalties for late payment, the requirement of a bond, and then a series of other rules about language, behaviour, smoking, use of communal facilities and so forth.

[17] The agreement contained the word “boarder” in a number of places but that did not convert it into a boarding house arrangement or a boarding house tenancy agreement.

[18] One of the rules in the agreement that Mr Cavanagh later fell foul of was the rule that no guests were allowed. Mr Cavanagh was evicted after Mr Ogle determined that he had committed drug use, alcohol fuelled disorderly behaviour, in company with uninvited guests, at least one of whom had already been trespassed from the premises and whom Mr Cavanagh had been told not to let back onto the property.

[19] It is clear that Mr Ogle had never intended Mr Cavanagh's occupation to be described as a boarding house tenancy. It is clear that the legal definition of what constitutes a boarding house does not apply to the arrangements that existed for Mr Cavanagh and it is clear that the agreement he signed was not a boarding house tenancy agreement.

[20] The Tribunal was plainly wrong in its finding as to jurisdiction.

[21] What therefore was the legal arrangement under which Mr Cavanagh was present at the leisure park?

Jurisdiction

[22] The answer is found in s 5(1)(y)(i)(B). That section set out in full is as follows:

5 Act excluded in certain cases

(1) This Act shall not apply in the following cases:

...

(y) if the premises are used to provide emergency or transitional accommodation and—

(i) the provision of the accommodation is funded wholly or partly by—

(A) emergency housing assistance paid to or for the credit of a person under the Special Needs Grants Programme; or

(B) any other payment made by a government department for the provision of emergency or transitional accommodation to people in need of housing; or

- (ii) the provider of the accommodation is a person, or class of person, prescribed by regulations for the purposes of this paragraph.

[23] Mr Cavanagh had been specifically directed by WINZ to find alternative emergency accommodation. WINZ had provided him with a list of premises that might take him in. Having consulted that list Mr Cavanagh had approached the Leisure Park facility. WINZ had paid Mr Cavanagh's bond and had also paid \$500 towards his rent in advance. WINZ then paid part of Mr Cavanagh's benefit directly to Leisure Park each week, deducting it directly from Mr Cavanagh's benefit.

[24] In other words, these premises were providing emergency or transitional accommodation for Mr Cavanagh, funded wholly or partly by a government department, namely WINZ.

[25] For that reason, the Tenancy Tribunal had no jurisdiction over the arrangement between Mr Cavanagh and Egmont Eco Leisure Park.

[26] The appeal is upheld and all orders made by the Tenancy Tribunal are quashed.

Exemplary damages

[27] Because of the above finding it is not strictly necessary for me to consider any of the other orders made by the Tribunal. In the event that I am wrong about the issue of jurisdiction however there is the issue of exemplary damages that Mr Ogle was directed to pay Mr Cavanagh. The circumstances of that issue are that WINZ provided Mr Ogle with a bond of \$500 upon Mr Cavanagh moving into the Leisure Park. Mr Ogle did not lodge the bond with the Bond Centre, an act that the Tribunal described as an "unlawful act". The Tribunal ordered Mr Ogle to pay Mr Cavanagh \$850 by way of exemplary damages.

[28] In doing so the Tribunal noted Mr Ogle's explanation for not lodging the bond, namely that he did not consider it met the legal definition of a bond.

[29] Exemplary damages may only be awarded by the Tribunal if the act complained of was both unlawful and intentional and, after considering the intent of

the offender in committing the unlawful act, and the effect of the unlawful act, and the interests of the party against whom the unlawful act was committed, and the public interest, the Tribunal may then order the offender to pay exemplary damages.²

[30] Mr Ogle clearly and genuinely believed that he was not subject to the Residential Tenancies Act and that the normal rules around bonds did not therefore apply. This was a mistake of law at its worst. He had evicted Mr Cavanagh for repeated breaches of the rules that Mr Cavanagh had agreed to and which Mr Cavanagh had been warned for breaching prior to his final eviction. It should also have been clear that Mr Ogle believed that he was owed money by Mr Cavanagh for losses incurred as a result of Mr Cavanagh's breaching of the rules.

[31] Setting that background against the criteria for exemplary damages set out in the relevant section of the Act, the award of exemplary damages was "plainly wrong".

Judge AS Greig
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 09/11/2021

² Section 109(3) Residential Tenancies Act 1986.