IN THE DISTRICT COURT
AT NAPIER

I TE KŌTI-Ā-ROHE
KI AHURIRI

CIV-2023-041-62
[2023] NZDC 24394

Under:	The Residential Tenancy Act
In the Matter of:	An Appeal of the decision of the Tenancy Tribunal
BETWEEN	RENTSMART NZ LIMITED Appellant
AND	ANDREW AND KIMBERLEY SNOW Respondents

Hearing:	15 August 2023
Appearances:	W Murdoch for the Appellant T McGurk for the Respondent Andrew Snow No appearance by or for the Respondent Kimberley Snow
Judgment:	13 November 2023

RESERVED JUDGMENT OF JUDGE R J EARWAKER

Introduction

[1] This is an appeal by Rentsmart NZ Ltd, as agent for the owners, Margaret and Robert Gregory (the landlords), under s 117 of the Residential Tenancies Act 1986 (the Act) against an order of the Tenancy Tribunal (the Tribunal) made on 12 March 2023.[1]

[2] The respondents (the tenants) rented a fully furnished three-bedroom home at 1071 Links Road, Waiohiki, RD 3, Napier 4183. The landlords, the Gregorys, lived

[1] *Rentsmart NZ Ltd as agent for Margaret and Robert Gregory v Snow* [2023] NZTT 4396860, 4347704.

next door to the tenants and used a property management company, Rentsmart NZ Ltd (Rentsmart) to manage the tenancy. The tenancy commenced on 4 February 2022 and was terminated, effective from 8 June 2022.

[3] The tenants, following the termination of their tenancy, filed an application in the Tribunal seeking various orders against the landlords. The landlords also filed an application in the Tribunal seeking various orders and the applications were heard together by consent.

[4] The Tribunal summarised the issues to be considered in the applications as follows:

(i) Do the tenants owe the landlords rent? If so, how much?

(ii) Do the tenants owe the landlords for outstanding electricity invoices? If so, how much?

(iii) Did the tenants leave stains on the carpets? If so, should the tenants compensate the landlords for remedial carpet cleaning?

(iv) Did the tenants fail to leave behind specific chattels? If so, should the tenants compensate the landlords for replacement chattels?

(v) Did the tenants intentionally or carelessly damage a light switch? If so, should the tenants compensate the landlords for the cost of repairing the light switch?

(vi) Did the landlords fail to repair and maintain the septic system?

(vii) Did the landlords fail to comply with Healthy Home Standards, specifically in relation to draught stopping and insulation?

(viii) Did the landlords fail to provide the tenants with documentation confirming their compliance with the Healthy Homes Standards?

(ix) Did the landlords breach the tenants' right to quiet enjoyment?

(x) Did the landlords issue the tenants with a Retaliatory Termination Notice?

[5] The Tribunal made findings in favour of both the landlords and the tenants in respect of the various issues, but only the landlords have appealed and only in respect of parts of the Tribunal's orders.

[6] The appeal by the landlords is in respect of the following parts of the Tribunal's order:

(i) The landlords failed to repair and maintain the septic tank.

(ii) The landlords did not provide records or other documents relating to Healthy Homes standards when requested.

(iii) The landlords breached the tenants' right to quiet enjoyment.

[7] When a deduction for rent arrears and costs required to be paid by the tenants is made, the net amount required to be paid by the landlords in compensation and damages is $5,992.99. That amount has been paid into court pending the outcome of this appeal.

[8] The tenants say that the decision of the Tribunal is correct and should not be disturbed.

[9] At the conclusion of the hearing, an opportunity was provided for the filing of additional submissions, which have now been received.

The Law

[10] Appeals to the District Court against orders of the Tribunal are governed by s 117 of the Act.

[11] Section 117(4) says:

> (4) The provisions of section 85, with any necessary modifications, shall apply in respect of the hearing and determination by the District Court of an appeal brought under this section.

[12] Section 85 of the Act provides:

> 85 Manner in which jurisdiction is to be exercised
>
> (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
>
> (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[13] Section 118 of the Act provides as follows:

> 118 Powers of District Court Judge on appeal
>
> (1) On the hearing of an appeal under section 117, a District Court Judge may—
>
> (a) quash the order of the Tribunal and order a rehearing of the claim by the Tribunal on such terms as the Judge thinks fit; or
>
> (b) quash the order, and substitute for it any other order or orders that the Tribunal could have made in respect of the original proceedings; or
>
> (c) dismiss the appeal.
>
> (2) In ordering a rehearing under subsection (1)(a), the District Court Judge may give to the Tribunal such directions as the Judge thinks fit as to the conduct of the rehearing.
>
> (3) The procedure at an appeal under this section shall be such as the Judge may determine.

[14] The appeal is by way of rehearing.[2] It is well established that in appeals from the Tribunal, which is a specialist body, the Court will be slow to differ from the Tribunal on the facts.[3]

[15] Further, while the Court is not restricted by the Tribunal's factual findings,[4] it "must nevertheless acknowledge any advantage enjoyed by the decision maker at first instance which may have seen and heard witnesses".[5]

[16] The Court will only differ from the factual findings of the Tribunal if:[6]

(a) The conclusion reached was not open on the evidence, that is, where there is no evidence to support it; or

(b) The Tribunal was plainly wrong in the conclusion it reached.

[17] As the appeal is by way of rehearing, there is a focus on the legal, rather than the factual issues. However, the Court is nonetheless entitled to reach its own independent findings and decision on the evidence, while remaining mindful of the principals referred to above relating to factual findings made by the Tribunal.

[18] Other grounds for a successful appeal include an error of law, a miscarriage of justice, or a breach of natural justice.[7]

Materials Considered

[19] In considering this appeal I have reviewed and considered the following documents:

(i) The transcripts of the proceedings before Adjudicator T Lee-Lewis taken on 8 February 2023 and the documents referred during the hearing.

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[2] District Court Rules 2014, r 18.19.
[3] *Focus Contracting Ltd v Property Management (Marlborough) Ltd* DC Blenheim CIV 2009-006-103, 17 December 2009 at [8].
[4] *Shotover Gorge Jet Boats Ltd v Jamieson* [1987] 1 NZLR 437 (CA) at 440.
[5] *He v Bai* DC Waitakere CIV-2013-090-455, 23 October 2013 at [10].
[6] *Housing New Zealand Corp v Salt* [2008] DCR 697 (DC) at [15].
[7] *Raharuhi v Westerman Property Solutions Ltd* [2010] DCR 149 (DC).

(ii) Reasons for the order dated 12 March 2023.

(iii) The grounds of appeal dated 20 March 2023.

(iv) Submissions on appeal by appellant dated 26 June 2023.

(v) Respondent's submissions dated 15 August 2023.

(vi) Additional submissions on behalf of the respondent dated 21 August 2023.

(vii) Memorandum of counsel for the respondent dated 24 August 2023.

Appeal Grounds

(a) Claim — The landlords failed to repair and maintain the septic tank

[20] The Tribunal found that the landlords had breached their obligations under s 45 of the Act to provide and maintain the premises in a reasonable state of repair and to comply with any relevant enactment in relation to buildings, and health and safety.

[21] In particular the Tribunal accepted the tenants' claim that the drinking water at the property was contaminated due to issues with the septic tank system. The Tribunal also accepted that the tenants had spoken with one of the landlords on 1 April 2022 regarding the issue of the septic tank. This had been disputed by the landlords who claimed they were not notified by the tenants of any issues with the septic tank. The landlords claimed the first they heard about the issues was when the Hawke's Bay Regional Council (HBRC) contacted the landlords after the tenants had notified HBRC on 8 April 2022.

[22] However, after considering all of the evidence the Tribunal was satisfied that the landlords were aware of the tenants' concerns and chose to ignore those concerns until being officially contacted by HBRC. The Tribunal found that the failure to investigate issues raised and/or complete the repairs required was a breach of the landlords' obligation under s 45 of the Act.

[23] The Tribunal having found that the landlords had breached their obligations awarded compensation in the sum of $1,650.00. This represented a 50 per cent rent reduction for five and a half weeks from April 2022 when the landlords likely knew of the tenants' concerns of the septic system to 9 May 2022 when the landlords provided HBRC with the documentation evidencing the work completed on the septic system. Further the Tribunal awarded $2,000 exemplary damages.

[24] The landlords challenged the Tribunal findings and provided detailed grounds of appeal, including a summary of the evidence, and detailed written submissions. The essential points on appeal can be summarised as follows:

(i) The landlords did maintain the septic tank and when they became aware that there was an issue with the septic tank, they had it fixed within a reasonable amount of time.

(ii) There was insufficient evidence for the Tribunal to make a finding that the tenants had spoken to one of the landlords on 1 April 2022 as claimed.

(iii) Even if the tenants did raise the issue with the landlords on 1 April 2022, this was contrary to cl 13 of the additional terms and conditions of the Tenancy Agreement signed on 4 February 2022. The Agreement, under the heading "Notice to Tenants" makes it clear that the property management firm, Rentsmart is the intermediary between the landlords and tenants.

(iv) The results of water samples provided by the tenants should not have been relied upon as the origin of the samples was not clear and the results were compromised.

(v) The Tribunal did not assess the evidence in a balanced and objective manner.

(vi) Even if compensation was justified, the Tribunal has miscalculated the period that should be covered.

[25] The evidence presented at the Tribunal makes it clear that there was an issue with the septic tank, which is why the HBRC became involved. Once the HBRC did become involved then the landlords completed the necessary work on the septic system. The landlords provided documentation to the HBRC on 9 May 2022 evidencing that the work had been completed. The Tribunal noted that "rather unhelpfully the landlord did not share any of this information with the tenants".

[26] The submissions filed in support of the appeal noted that the property manager, at the start of the tenancy, had advised the respondents to contact her if there were any issues with the property. The submissions go on to record that the first time that the respondent notified the property manager that there was an issue with the septic tank was on 13 April 2022. Once the property manager was made aware of the issue then arrangements were made for trades people to fix the issue within a week.

[27] The Tribunal made a factual finding that the landlords were aware of the issues with the septic tank on or before 1 April 2022. The Tribunal noted, at paragraph [28], as follows:

> There was a clear dispute between the parties as to whether the tenant notified the landlord of the issue with the septic tank or not. In cases of conflicting evidence, the Tribunal is not in a position to say with 100% certainty what occurred but must assess the evidence and make a determination on the balance of probabilities having regard to the nature, reliability and creditability of the evidence. The Tribunal must decide what is more likely than not to be the actual case. The onus is on the tenant to prove this claim.

[28] After reviewing the evidence, the Tribunal, at paragraph [30], made the following determination:

> Whilst there is no documentary evidence of the tenant notifying the landlord about the septic tank issue, I am satisfied that the owner was aware of the tenant's concerns but chose to ignore those concerns until being officially contacted by HBRC. The failure to investigate issues raised and/or complete repairs required is a breach of the landlord's obligation under s 45 of the RTA.

[29] In awarding exemplary damages, the Tribunal concluded, at paragraph [33a]:

> I have no doubt that the decision not to investigate and repair the septic system following the tenant raising the issue was intentional on the part of the landlord. The landlord did not consider the tenant had the expertise and blatantly ignored their concerns with the septic tank.

[30] The Tribunal had the benefit of hearing directly from the tenants, Mr and Mrs Snow, one of the landlords, Mrs Gregory, and Ms Shannon the property manager dealing with the tenants.

[31] The landlords' submissions, in effect, sought to relitigate the basis of the Tribunal's findings and to challenge the conclusions reached. Having carefully reviewed the transcript and the evidence, and having noted the concerns raised in the submissions, I see no grounds to depart from the Tribunal's decision on a matter of the facts, given the clear finding that the Tribunal made.

[32] As an alternative the landlords raised a point which was not raised before the Tribunal namely, that notifying the landlords directly of the fault, and not the property manager, was in breach of the Tenancy Agreement.

[33] The Tenancy Agreement was signed on 4 February 2022. The Agreement was signed by the tenants and by Rentsmart acting as agent for and on behalf of the landlords, Robert and Margaret Gregory. Clause 13 of the Additional Terms and Conditions (cl 13-A) on page 5 of the Agreement says as follows:

> **Maintenance**
>
> The tenant agrees to notify the landlord immediately upon the discovery of any damage or the need for repairs to the property. The tenant acknowledges that only the landlord may authorise any repairs and if the tenant organises a tradesperson to complete work without permission of the landlord they will be liable for any cost. The tenant acknowledges they will be liable for any damage caused by a repair which is not authorised by the landlord.

[34] Page 6 of the Agreement contains the following notice (a similar Notice appears on page 1 of the Agreement):

> **Notice to Tenants –**
>
> The person or firm named in the "Property Management Firm/Agent Details" box, is an intermediary between the owner/principal/landlord and you as the tenant. The agent is acting "as an agent for" or "on account of" the landlord. The below parties agree to the terms set out in this Tenancy Agreement.

[35] It is clear from the Tenancy Agreement that Rentsmart are not the landlords; they are the agent for the landlords. Notwithstanding the Tenancy Agreement "Notice to Tenants" at page 6 of the Agreement, cl 13-A clearly refers to the tenants notifying the "landlord". Other clauses in the Agreement distinguish between the "landlord" and "owner" and the "landlord's agent" or "property manager".[8] The language is not consistent. Clause 13-A only refers to "landlord". Similarly, cl 25 of the Agreement provides as follows:

> **Repairs**
>
> The tenant agrees to notify the landlord as soon as possible after the discovery of any damage or the need for repairs. The tenant should not arrange for any maintenance or repairs without the landlord's prior consent.

[36] It is therefore clear that cls 25 and 13-A refer to the landlords, as described in the Agreement, and not Rentsmart as agent.

[37] In my view, cl 13-A appears to authorise the tenants to contact the landlords directly if any repairs to the property are needed.

[38] Mr McGurk, on behalf of the tenant Mr Snow, also argued that s 136 of the Act allows each party to a tenancy to give notice to the other in several ways, including either personally or through an agent. He argues that s 136 of the Act deals specifically with the question raised, which is whether a tenant can give notice under the Act directly to a landlord in a situation where the principal/landlord has appointed an agent/property manager.

[39] As indicated, this point was not raised before the Tribunal. However, in my view, the Agreement does not prevent direct notice being given to the landlords, notwithstanding the provisions of the "Notice to Tenants" in the Agreement. I agree that s 136 operated to authorise that notice be given directly to the landlords.

[40] Furthermore, I take into account the principles of s 85(2) of the Act which apply to this appeal by virtue of s 117(4) of the Act.

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[8] See cls 9, 17, 27 and 14-A.

[41] I find that it would be contrary to the principles set out in s 85(2) of the Act to prohibit the tenants from notifying the landlords directly of the need for repairs or maintenance, particularly given that the landlords lived next door to the tenants and it was the landlords, not the agent, who were responsible for costs and repairs and the maintenance.

[42] It follows that I find that the tenants were not obliged to solely notify Rentsmart of the fault with the septic tank.

[43] Accordingly, in light of the Tribunal's factual finding that the landlords were aware of the issue with the septic tank from on or before 1 April 2022 but chose to ignore these concerns, I dismiss this ground of appeal.

[44] However, there was a second part of this appeal ground relating to the septic tank. The landlords argue that the period of time used to calculate the compensation should be reduced. The Tribunal, at paragraph [31], found as follows:

> As the landlord has breached its obligations, the tenants are entitled to compensation for loss or inconvenience caused. The tenants have not provided any evidence to support their compensation claim. However, I find the tenants were not able to enjoy the premises as they would have had if the issues had been acknowledged and addressed earlier. Taking all factors into consideration I find that $1,650.00 is reasonable compensation. This represents 50% rent reduction or 5.5 weeks from 1 April 2022 when the landlord likely knew of the tenants' concerns with the septic system through to 9 May 2022 when the landlord provided HBRC with the documentation evidencing the work completed on the septic system. I note rather unhelpfully the landlord did not share any of this information with the tenants.

[45] The landlords argue that the end date should be 18 April 2022, which was when the appellant did something to address the issue. The landlords disagree that the appropriate date was 9 May 2022, when the landlords provided HBRC with documentation evidencing the work completed on the septic system.

[46] I do not consider there needs to be any adjustment to the figure calculated by the Tribunal. The compensation was intended to compensate for loss or inconvenience caused. It is clear from the notes of evidence that a considerable inconvenience was caused to the tenants due to the septic tank issue and these concerns were ignored by the landlords. A calculation for compensation is not a mathematical one but one based

upon an overall assessment of the situation. I do not, in the circumstances, particularly when the landlords did not choose to share with the tenants any documentation evidencing the work completed on the septic system, consider that sufficient grounds to interfere with the compensation sum awarded by the adjudicator.

[47] This ground of appeal is also dismissed.

(b) Claim – the landlords did not provide records or other documents relating to healthy home standards when requested.

[48] The Tribunal found that the landlords breached their obligations under s 45 of the Act by failing to provide a copy of the landlords' compliance with the Healthy Home Standards as requested.

[49] The landlords argue that the Tribunal was wrong in this ruling as the landlords had already provided to the tenants the information they were required to supply through the information contained in the Tenancy Agreement. That Agreement contains a three-page section headed "Healthy Homes Statement".

[50] During the hearing, the tenants claimed that they had requested a copy of the landlords' compliance with the Healthy Homes Standards on a number of occasions, which was ignored. The tenants went to the Citizens Advice Bureau as a last resort.

[51] The landlords claim that the first time that they had been asked for a copy of their compliance with the Healthy Home Standards was when they were contacted by the Citizens Advice Bureau on the last day of the tenancy.

[52] The Tribunal noted that this was another instance where the landlords' and tenants' evidence were inconsistent. However, the Tribunal was not required to resolve this conflict as it was accepted that the landlords had received a request, through the property manager from the Citizens Advice Bureau, but still the landlords failed to provide a copy of the report to the tenants. Rentsmart's response, on receiving this request, was that the tenants could simply refer to the Tenancy Agreement because all of the information was disclosed at the start of the tenancy.

[53] The tenants argue that the Tribunal was correct in concluding that the landlords breached s 45 of the Act, as it was clear the tenants were not requesting information required to be included in the Tenancy Agreement under s 13 of the Act.

Discussion

[54] Section 45(1AC) provides as follows:

> (1AC) If the tenant requests the landlord to provide information described in s 123A(1)(e) (relating to the healthy homes standards) to the tenant, the landlord must, within 21 days after the date of receiving the request, provide the information to the tenant.

[55] Section 45(1AD) says a landlord commits an unlawful act if it fails to provide the information requested.

[56] The information described in s 123A(1)(e) that a landlord must provide a tenant on request is the following:

> (e) the records or other documents that relate to the landlord's compliance with the healthy homes standards and that are prescribed by regulations under section 138B(5)

[57] Section 13A(1A) of the Act requires the landlord to include a statement in the Tenancy Agreement regarding compliance with Healthy Home Standards. Section 13A(1A) provides:

> (1A) The landlord must include in the tenancy agreement a statement, made and signed by the landlord, that provides the following information to the tenant (subject to subsections (1B) and (1C)):
>
> (a) whether or not there is, as at the date of the tenancy agreement, any insulation installed in connection with any ceilings, floors, or walls that are at the premises:
>
> (b) details of the location, type, and condition of all insulation that is, as at the date of the tenancy agreement, installed in connection with any ceilings, floors, or walls that are at the premises:
>
> …

[58] Regulations 34–39 of the Residential Tenancies (Healthy Home Standards) Regulations 2019 (the Regulations) outlines the information that a landlord must

provide to their tenant under s 13A(1A). This information consists of particulars about the landlord's compliance with the standards as outlined in s 138B of the Act and the Regulations.

[59] In addition, reg 40 of the Regulations outlines what other documents the landlord is obliged to retain for the purposes of s 123A(1)(e) of the Act. Regulation 40 provides as follows:

> 40 Documents to be retained by landlord
>
> (1) For the purposes of section 123A(1)(e) of the Act, a landlord must retain sufficient relevant records or documents as reasonably provide evidence of the landlord's compliance with the healthy homes standards in relation to the tenancy.
>
> (2) However, subclause (1)—
>
> (a) only requires the landlord to retain records or documents that the landlord has possession of at the commencement of the tenancy or acquires possession of during the tenancy; and
>
> (b) does not require the landlord to create or obtain a record or document merely for the purpose of retaining it for the purposes of section 123A(1)(e).
>
> (3) In this regulation,—
>
> **possess**, in relation to a record or document, includes to have control of
>
> **relevant records or documents** means any of the following to the extent that they relate to compliance with the healthy homes standards:
>
> (a) reports or other records of inspections of the premises, tenancy building, or installed or provided things (whether the inspections were done during or before the commencement of the tenancy), including photographs or video recordings:
>
> (b) records of any installation, maintenance or repair, or other work carried out at the premises or tenancy building (whether the work was done during or before the commencement of the tenancy):
>
> (c) records of calculations of a living room's required heating capacity, including the required heating capacity that resulted from the calculations, (for example, results from a heating capacity calculator (as defined in regulation 10)):
>
> (ca) if the main living room complies with regulation 8 by meeting the requirements of regulation 10A,—

(i) the name and relevant qualifications of the specialist who made the assessment; and

(ii) a description of how the specialist calculated the required heating capacity:

(d) product manuals or other manufacturer's information relating to installed or provided things:

(e) certificates or other documents issued under or for the purposes of an enactment or a bylaw (for example, a code compliance certificate or building warrant of fitness under the Building Act 2004):

(f) reports or other documents issued by a local authority (as defined in section 5(1) of the Local Government Act 2002) in relation to the premises or tenancy building (for example, a land information memorandum (LIM) report):

(g) documents or records relating to the construction of, or work carried out at, the premises or tenancy building.

[60] It is clear, that the statute envisages two distinct requirements in relation to Healthy Homes Information. First, there is the information contained in s 123A(1)(e) relating to healthy homes standards that a landlord must provide if requested to under s 45(1AC) and (1AD). Secondly, there is the information a landlord must include in the tenancy agreement at the commencement of the tenancy under s 13A(1A) of the Act.

[61] The information a tenant may request under s 45(1AC) and (1AD) refers to the actual documents that support the declaration the landlord must make as part of the Tenancy Agreement. It is clear that the landlord is required to retain the full Healthy Homes Report which includes any photographs and video recordings taken for the purposes of the Report. Such a Report is necessary to service evidence that the landlord has complied with the Standards in relation to the tenancy. It is therefore insufficient for the landlords to rely on the Healthy Homes statements provided with the Tenancy Agreement as proof of compliance.

[62] Under s 45(1AC) of the Act, a landlord is required, within 21 days of receiving a request, to provide their tenant with the information described in s 123A(1)(e), which relates to the landlord's compliance with Healthy Home Standards in relation to the tenancy. This includes all of the material mandated by reg 40(3) of the Regulations.

[63] It is clear that the tenants were not requesting information required to be included in the Tenancy Agreement under s 13A(1A) of the Act. In fact, there is no dispute that the request was under s 45(1AC) of the Act for the documents and other supporting information. This was made at least on the last day of the tenancy. As the landlords refused to provide the tenants with the information requested they committed an unlawful act under s 45(1AD)(a) of the Act.

[64] It follows that the Tribunal was correct to find that the landlords had committed an unlawful act and were liable for not providing the documentation to the tenants on request.

[65] An exemplary damages award of $350.00 for the breach of s 45(1AC) of the Act, is appropriate in the circumstances.

[66] Accordingly, I dismiss this ground of appeal.

(c) Claim – landlords breached the tenants' right to quiet enjoyment

[67] The Tribunal found that the landlords breached s 38(2) of the Act by causing an interference with the tenants' reasonable expectation to peace and comfort. The Tribunal found that the breach by the landlords was significant and caused distress. Accordingly, an award of damages of $2,500 was made.

[68] The landlords argue that they did not breach the tenants' right to quiet enjoyment and the Tribunal's finding was not correct. In essence, the landlords argue that the Tribunal predetermined the issue by forming a view before hearing all of the evidence.

[69] In the Tribunal's decision, the Adjudicator detailed where the tenants claimed that the landlords did interfere with their quiet enjoyment of the premises including:

(i) The tenants claimed one of the landlords verbally abused them when one of the tenants had been seen on the roof cleaning the heater tanker.

(ii) The tenants claimed one of the landlords verbally abused the tenants when the plumber had attended the premises to repair the water leak at the pipe join.

(iii) The tenants claimed one of the landlords told them to "pack up and fuck off" in a rage when the HBRC had attended the premises to investigate the septic tank.

(iv) The tenants claimed that one of the landlords had abused them when they were moving out and accused them of stealing a coffee table.

(v) The tenants claimed one of the landlords turned up at the premises when they were packing up their belongings on 3 August 2022 and handed them a trespass notice.

(vi) The tenants claim that they felt like the landlords were always watching them and that the house rules were bullying in nature.

[70] The Adjudicator recorded that the landlords disputed the tenants' claim and noted the evidence where they maintained they would have the occasional congenial conversation over the fence with the tenants, but denied any undue interference. The landlords did accept on one occasion that the tenants had been yelled at for cutting back wisteria. The landlords had also said in the course of evidence that the tenants had the windows and curtains closed during the day and that most activity took place at night. The Adjudicator recorded that one of the landlords said she had difficulty in remembering some detail due to her age.

[71] The Tribunal had the benefit of hearing directly from the parties and made credibility and reliability findings. The Adjudicator made the following observation in the decision at paragraph [60] as follows:

> The oral evidence provided by the tenants in relation to these incidents was clear and persuasive. I think that it is unlikely that they invented all of these allegations, which in essence, is the owner's argument. The owner on the other hand was vague when questioned as to the incidents and clearly frustrated with the tenants' behaviour in relation to the septic system. Landlords should notify a tenant when they intend to come to the property and

> not turn up unannounced. The owner clearly had the right intention by appointing a property manager but failed to use the property manager at times when they should have.

[72] The Adjudicator also found that the landlords was not entitled to take matters into their own hands and threaten the tenants with trespass notices. It was accepted in course of the evidence that the landlords had issued a trespass notice without the property manager's knowledge, despite the tenants receiving an extension to the vacate date. The Adjudicator noted that the essence of a Tenancy Agreement was for the granting of an exclusive possession to another. This was breached when the landlords served the tenants with a trespass notice.

[73] The landlords, in submissions, argued that the tenants did not call available evidence, such as the plumber and representatives from the HBRC to corroborate their claims. The tenants' daughter who did give evidence, did not appear to give any evidence about the landlords abusing the tenants.

[74] The Tribunal made clear findings based upon all of the evidence that was heard. There is no requirement that the tenants' evidence be corroborated, if that evidence is accepted as being credible and reliable, which clearly the Adjudicator did.

[75] The fact that the landlords do not agree with the Adjudicator's findings does not mean that the Adjudicator was in error. I see no reason, having considered all of the material available, to depart from the Adjudicator's decision on the findings of fact, particularly when the Adjudicator made such clear findings of credibility and reliability.

[76] Accordingly, this ground of appeal is also dismissed.

Conclusion

[77] It follows that the landlords' appeal in respect of the three parts of the Tribunal's Order appealed against is dismissed. The amount awarded payable by the landlords to the tenants in the sum of $5,992.99 is upheld.

[78] Following a direction made by this Court, the amount awarded in favour of the respondent by the Tribunal has been paid into Court pending the outcome of the appeal. I now direct that the sum of $5,992.99 is to be paid to the tenants by arrangement with the Registrar.

[79] I note that the tenant Andrew Snow was represented by Mr McGurk of the Hawke's Bay Community Law Centre. Kimberley Snow was not represented at the appeal hearing and did not take part. As the appellant has been unsuccessful, the respondent, Mr Snow, is entitled to costs if any were incurred by utilising the service of the Hawke's Bay Community Law Centre. If costs are being sought, then I direct Mr McGurk to file a memorandum within seven days of the date of this judgment setting out what the costs sought are and the basis upon which costs are being claimed.

_____
Judge R Earwaker
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 13/11/2023