IN THE DISTRICT COURT
AT MANUKAU

CIV-2017-092-000747
[2017] NZDC 18900

UNDER	THE RESIDENTIAL TENANCIES ACT 1986
AND IN THE MATTER	of an appeal from a decision of the Residential Tenancies Tribunal at Manuaku
BETWEEN	WIDHARNI RAHAJU ISKANDAR AKA DEBBIE ISKANDAR Appellant
AND	THE CHIEF EXECUTIVE, MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Respondent

Hearing:	17 July 2017
Appearances:	Mr Phillipps for Appellant Ms Thompson for the Respondent
Judgment:	21 August 2017

RESERVED JUDGMENT OF JUDGE L I HINTON

---

[1] The appellant appeals the decision of the Tenancy Tribunal dated 1 February 2017 that the Tenancy Tribunal has jurisdiction to hear and determine 197 applications made by the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE) under s 124A of the Residential Tenancies Act 1986 (the Act).

[2] The relevant proceeding concerns individual applications in respect of Ms Iskandar as landlord under s 19 of the Act for failure to lodge a bond within 23 working days of receipt. MBIE seeks 197 orders, cumulatively totalling $202,769.00,

for amounts paid to Ms Iskandar as landlord by tenants for bonds not forwarded by Ms Iskandar to the bond centre. MBIE seeks that these monies be held in the Chief Executive's trust account where they would be contestable by both the tenants concerned and Ms Iskandar. There are also 68 claims for exemplary damages, and MBIE seeks a restraining order against the commission of further unlawful acts for a period of six years.

[3] Ms Iskandar was represented at the hearing of the appeal by Mr Phillipps. Ms Thompson appeared for MBIE. Both counsel filed written submissions for which I thank them.

The Tribunal's decision

[4] The question before the Tribunal was whether or not the limit on the Tribunal's jurisdiction of $50,000.00 in s 77(5) of the Act precludes the Tribunal hearing 197 applications which might result in an order requiring Ms Iskandar as the respondent to each of those separate applications to pay more than $50,000.00 in total.

[5] Section 77 of the Act deals with the jurisdiction of the Tribunal. Section 77(1) provides as follows:

> **77 Jurisdiction of Tribunal**
>
> (1) The Tribunal has, subject to the Limitation Act 2010, jurisdiction to determine in accordance with this Act any dispute that—
>
> (a) exists between a landlord and a tenant or between a landlord and the guarantor of a tenant; and
>
> (b) relates to any tenancy to which this Act applies or to which this Act did apply at any material time.

[6] As to a limit on that jurisdiction, s 77(5) provides as follows:

> (5) Despite subsection (1), the Tribunal does not have jurisdiction to require any party to pay any sum, or to do any work to a value, or otherwise to incur any expenditure, in excess of $50,000.

[7] The decision of the Tribunal that s 77(5) did not preclude its jurisdiction to hear the 197 applications is comprehensive. The Tribunal's reasons can be summarised as follows:

(a) The Tribunal was not prepared to read in words to s 77(5) to provide that the Tribunal has no jurisdiction to require any party to pay any sum in excess of $50,000 "at any one point in time".

(b) The Tribunal considered there were 197 applications, in respect of 197 different tenancies, that would require 197 discrete orders to be made. Whatever the outcome of each application, self-evidently none of the resulting orders could require Ms Iskandar to pay any sum in excess of $50,000 in respect of that particular tenancy.

(c) The Tribunal's hearing and determining multiple applications filed by the Chief Executive, all involving the same landlord, is entirely consistent with what Parliament intended when it amended the Act to include ss 124A and 124B. The clear intention of the provisions was to enable the Chief Executive to act on behalf of tenants in cases where the landlord's conduct had been particularly egregious or follows a pattern of recurring breaches of the Act. The sections permit the hearing of each matter separately but in a manner that enables the Tribunal to determine the matters expeditiously. Consolidation does not have the effect of transforming the individual applications into one or resulting in one requirement to pay.

(d) There is scope to assess each application for exemplary damages in its own right under s 109(3), ameliorating any concern about application of a totality principle in that regard.

(e) The Principal Tenancy Adjudicator has the capacity to direct a particular adjudicator (for example, one with legal qualifications or expertise) to sit in a particular matter, thereby alleviating any concern about the Tribunal's ability to deal with complex proceedings.

Preliminary

[8] There was a threshold issue of whether or not just one application or alternatively 197 separate applications had been filed. If just the one application had been filed the Tribunal would not have had jurisdiction. This was in fact the first of three issues raised by Mr Phillipps in his written submissions on appeal.

[9] Section 86 of the Act provides as follows:

> **86 Filing of applications**
>
> (1) Proceedings before the Tribunal are commenced by filing an application in the approved form, with any prescribed fee,—
>
> (a) at any office of the Tribunal; or
>
> (b) by any electronic means (for example, through an Internet site) approved by the chief executive.
>
> (2) Before the chief executive approves a proposed form for the purposes of subsection (1), the chief executive must consult with the Principal Tenancy Adjudicator about the proposed form.

[10] The Tribunal's decision certainly proceeds on the assumption that there were 197 separate individual applications. Ms Thompson for MBIE was able to advise that 197 separate applications in the approved form had in fact been filed, for purposes of s 86. This form did not, as Mr Phillipps noted, have any formal receipt stamp on it, but Ms Thompson advised that each application form was submitted electronically with date and time of filing and so forth evident.

[11] I proceeded on the assumption that separate applications were filed in respect of each relevant affected tenancy. That is a predicate for consideration of the issue of application of s 77(5) of the Act. Counsel agreed with that basis of consideration of this appeal.

Issues

[12] The main issue was whether s 77(5) operated to exclude the jurisdiction of the Tribunal to make the orders sought by MBIE.

[13] There was another issue, concerning which there was little discussion on appeal, as to whether the Tribunal nevertheless, on an assumption it had jurisdiction, should have made an order transferring the proceedings to the District Court.

Appellant's argument

[14] Mr Phillipps' submissions include this:

> 34. It is respectfully submitted that those words *"any tenancy"* in 77(1)(b), do not limit the application of s.77(5) to a claim relating to a single tenancy, because s.77(5) applies (and the words of the section commence) *"Despite subsection (1)…"*. The whole of s77(2) is directed to the jurisdiction to make orders and determine issues relating to residential tenancies under the RTA. Section 77(1) merely references a tenancy to which the Act applies.
>
> 35. Section 77(6) specifically allows a party to abandon so much of a claim as exceeds $50,000 in order to bring it within the jurisdiction. A "claim" is not defined but "dispute" includes any claim. A cause of action cannot be divided into 2 or more claims in order to bring it within the Tribunal's jurisdiction.
>
> 36. Section 77(5) is broad in its terms. Section 77(5) provides that the Tribunal cannot *"require" "any party"* to pay *"any sum… in excess of $50,000"*. There must be the possibility of a requirement for a specific party to pay any sum of $50,000. That is all.
>
> 37. Section 77(5) does not say the Tribunal does not have jurisdiction to require any party to pay a sum in excess of $50,000 *in respect of any tenancy agreement* or *in respect of any dispute arising under a tenancy agreement* or *in respect of any claim arising under a tenancy agreement.* Section 77(6) specifically references the word "claim". Had section 77(5) been intended to apply to each individual claim or residential tenancy agreement, or tenancy, it would have expressed that.

[15] Mr Phillipps put particular emphasis on the use of the word "require" in s 77(5). His argument was that the Tribunal errs in conflating "individual requirements" when that is not what the Act says.

[16] Further, Mr Phillipps noted that the restraining order sought by MBIE is based on the "cumulative effect of the alleged breaches of the Act". He submitted also that the Tribunal would need to consider the "totality principle" when awarding

exemplary damages, meaning that all applications would need to be heard together when determining any such award. The appropriateness of a restraining order could not be considered in the context of each of the 197 applications in isolation.

[17] On the question of optimal forum, in essence Mr Phillipps' point (at the appeal hearing) was that the consequences are so significant because of the amount claimed in total that Ms Iskandar should be entitled to a hearing in an elevated jurisdiction. His written submissions referred to a more relaxed procedure in the Tribunal, a need there for expedition, and that parties are not generally entitled to be represented.

Respondent's argument

[18] In summary, MBIE submitted that there are 197 separate applications seeking relief well below the jurisdictional threshold. Consolidation of the proceedings under s 124B(4) does not morph the 197 separate applications into one application or one requirement to pay. Each application derives from a separate tenancy agreement, with the only common denominator being the appellant as landlord. The Act has specifically contemplated expediency in Chief Executive applications through its insertion of s 124B(4) allowing for consolidation of hearings. The cumulative total of claims in consolidated proceedings is not a relevant factor for declining jurisdiction.

[19] Ms Thompson submitted that the Tribunal must and would consider each application separately and make an order on each. There is no overarching order which is relevant for purposes of s 77(5). Again, with respect to exemplary damages, an individual assessment was necessary. It might be laborious but it was not a complicated issue, and it did not mean s 77(5) was engaged.

[20] In particular, Ms Thompson's submissions noted:

> It is clear … the respondent accepts that where separate orders are made against a common party (usually a landlord), the cumulative total of the orders made for each application may exceed $50,000. As stated above, it cannot be the case that this factual scenario would operate to exclude chief executive proceedings brought on the basis of persistent breaches of the Act … on the basis that all applications have been filed at the same time. That would offend against the purposes of the Act.

[21] Ms Thompson highlighted that under s 124A, proceedings are brought:

> … *as if* the chief executive *were* the tenant" (emphasis added). […] The chief executive, by virtue of s 124A is stepping in to the shoes of each tenant for the purposes of bringing proceedings. Importantly, had the tenants brought the proceedings themselves, there would be 197 applications, hence there can be no distinction when the proceedings are brought by the chief executive as if they were the tenant.

[22] With regard to the appellant's primary submission regarding interpretation of s 77(5), the respondent contends:

> With respect, the only proceedings which will be caught by such an interpretation are chief executive actions such as the present. It is submitted that the words "despite subsection (1)" mean in the context of s 77; *matters that would otherwise be within the jurisdiction of the Tribunal* ***but for*** *the $50,000 monetary threshold* (emphasis added).

Discussion

[23] The jurisdiction of the Tenancy Tribunal under the Act relates to determination of any dispute between a landlord and a tenant relating to any tenancy. Section 77(2) provides that without limiting that general jurisdiction the Tribunal shall have jurisdiction to do a range of things in relation to any tenancy or any relevant premises, all with reference to a landlord and a tenant and a tenancy agreement, including powers to make determinations and orders.

[24] The jurisdiction limit in s 77(5) is plain. The Tribunal does not have jurisdiction to require payment, work or expenditure in excess of $50,000. On its face, because of the opening words "despite subsection (1)", the Tribunal's jurisdiction in relation to a dispute between a landlord and a tenant relating to any tenancy is so limited to $50,000, in accordance with the plain wording of ss (5).

[25] But as I understand the appellant's argument, the opening words of ss (5) "despite subsection (1)" mean that all disputes between a landlord and a or any tenant which relate to the same landlord should be accumulated because s 77(2) somehow relevantly refers, merely because it instances different sorts of "disputes", to more than one dispute or tenancy.

[26] That is an unattractive and artificial argument. A more natural reading of s 77(5) is that it relates to a limit of jurisdiction with respect to a dispute between a landlord and a tenant.

[27] The reference in s 77(6) to abandonment of part of "a claim" and the reference in s 77(7) to "a claim relating to a tenancy" reinforces the more natural and intended interpretation of s 77(5) to a limit on jurisdiction in relation to a dispute or a claim between a landlord and a tenant relating to a tenancy agreement.

[28] I do not think that the use of the word "require" in s 77(5) is problematic or decisive. The word "require" is probably the best expression to encapsulate the three alternative "requirements" referred to in s 77(5), rather than the use of the word "order" to address or encapsulate, for example, the "incurring of expenditure". Require makes better sense. Both a requirement and an order are referred to in s 77(2)(pa) which refers to "any order requiring a party to pay", in any event. Further, the word "require" must mean require by means of an order, because the Tribunal makes orders in the normal course that have inherent requirements. I note that s 109(3) refers to whether or not it would be just to "*require* the person against whom the *order* is sought to pay a sum".

[29] Mr Phillipps allows at paragraph 38 of his submissions as follows:

> Commonly, applications made at different times against the same party (say a corporate landlord) but in respect of different tenancy agreements, may result in separate orders (requirements) for payment which are each less than $50,000 but if added together exceed $50,000. Each application is considered separately and each requirement for payment is within the statutory limit. Each application is not excluded by s.77(5).

[30] He proposes nevertheless, that in certain circumstances a multitude of claims relating to different tenancies against the same party may result in a "single requirement to pay over $50,000 and thereby exclude the Tribunal's jurisdiction". Such single requirement may arise, or more accurately having regard to Mr Phillipps' submission be "assumed", because of the entity bringing the claims, the nature of the relief, and the claims being related.

[31] There are mixed propositions here. It is true that MBIE initiate the proceedings because of alleged persistent breaches of the Act with respect to failure to lodge bond money. But nevertheless MBIE is in the shoes of a tenant for the purposes of bringing the proceedings. As Ms Thompson pointed out, there should not be any distinction when the proceedings are brought by the Chief Executive as the tenant, according to what s 124A facilitates. I agree.

[32] As to the nature of the relief, primarily this involves (ascertainable) liquidated bond monies which should have been paid, and nothing inherently problematic or pointing to an overarching need to total. The exemplary damages claim (maximum $1000 each) in some cases can be separately assessed, but conveniently and fairly assessed (having regard to the public and the appellant's and tenant's interests) in a consolidated setting. No particular complexity arises here either.

[33] Certainly, it would be appropriate that the Tribunal have regard to all relevant factors, including all relevant applications, with respect to whether or not orders are made under ss 109 and 109A of the Act. But that does not morph all the applications into one another.

[34] Section 109 provides as follows:

> **109 Unlawful acts**
>
> (1) A landlord or a tenant, or the chief executive acting on behalf of a landlord or a tenant, or the chief executive acting as the person responsible for the general administration of this Act, may apply to the Tribunal for an order requiring any other person to pay to the applicant an amount in the nature of exemplary damages on the ground that that other person has committed an unlawful act.
>
> …
>
> (3) If, on such an application (other than one referred to in subsection (3A)), the Tribunal is satisfied that the person against whom the order is sought committed the unlawful act intentionally, and that, having regard to—
>
> (a) the intent of that person in committing the unlawful act; and
>
> (b) the effect of the unlawful act; and

(c) the interests of the landlord or the tenant against whom the unlawful act was committed; and

(d) the public interest,—

it would be just to require the person against whom the order is sought to pay a sum in the nature of exemplary damages, the Tribunal may make an order accordingly.

[35] The Chief Executive here is acting on behalf of "a tenant" in respect of the relevant application for exemplary damages. The maximum amount that can be awarded is $1,000 in relation to any application. The amount awarded is to be paid to the relevant tenant where the application is by the Chief Executive acting on behalf of a tenant and is in addition to any sum payable to that tenant by way of compensation in respect of the relevant unlawful act, by virtue of s 109(5).

[36] In relation to MBIE's application for a restraining order, s 109A provides as follows:

109A Tribunal may restrain further commissions of unlawful acts

(1) If the Tribunal makes an order against a person under section 109 on the ground that the person has committed an unlawful act, the Tribunal may, if satisfied that it is in the public interest to do so, make an order restraining the person from committing a further act of the same kind.

(2) The Tribunal may make an order under subsection (1) on its own initiative or on the application of the applicant who applied for the order, under section 109, against the person sought to be restrained.

(3) The Tribunal must specify the term of the order, which may not exceed 6 years.

(4) Every person commits an offence who, being subject to an order under this section, intentionally contravenes the order.

(5) A person who commits an offence against subsection (4) is liable on conviction to a fine not exceeding $2,000.

[37] Notably, the Tribunal has jurisdiction under s 109A where an order has been made under s 109 and the order can be made on the application of the s 109 applicant, in this case the Chief Executive under s 109. The Tribunal has to be first satisfied under s 109 that the unlawful act was committed intentionally. If so, the Tribunal will

have to have regard to intent, the effect of the unlawful act and the interests of the tenant under s 109, and the "public interest" with respect to both s 109 and s 109A.

[38] I agree with the Tribunal and Ms Thompson with respect to the role of the Chief Executive and the nature of the inquiry under ss 109 and 109A. There may inevitably be similar considerations with respect to separate tenancies, and there are good policy reasons that underpin the Chief Executive's ability to step in here and consolidation. But that does not mean, as Mr Phillipps proposed it to mean, that a single requirement has arisen, fatally for s 77(5) purposes.

[39] Nor does the brevity or length of the present state of, or indeed the lack of complexity of, any evidence which might be presented by MBIE do so either. As well, the fact that the sums stated in separate applications are naturally capable of being added up does not mean one application has been made.

[40] Mr Phillipps referred me to the *Boutique*[1] decision of Wylie J. In that case Wylie J dealt with a particular application and the Judge's decision is, with respect, sensible. Mr Phillipps' argument was to the effect that a focus in *Boutique* on the "effect" of an order means that here the separate applications and determinations must be totalled for purposes of s 77(5). That is conclusionary in my view, informed simply by the assumption (which I do not accept) that all these applications should be treated as one.

[41] I do not overlook also Mr Phillipps' reference to the *Levett*[2] decision. In that case, the matter before the Court was an application for summary judgment by the plaintiffs seeking orders against the defendant for payment of a total sum of $93,690.33 for rent arrears owing under a lease of serviced apartments and claims for allegedly damaged, destroyed or lost chattels, lost keys, and general apartment repairs. There seemed to have been one lease between lessor and defendant whereby the plaintiffs as owners leased to the defendant nine separate apartments, two at one

---

[1] *Boutique Body Corporate Limited v J Star Property Management Limited* [2012] NZHC 3169, HC Auckland, 27 November 2012.
[2] *Levett v Village Accommodation Group Limited* [2012] NZHC 3356.

address and two at another, together with 12 indoor car parks at one of them. The lease was for a single term of six years and four months.

[42] Associate Judge Gendall noted at paragraph [14] of the decision as follows:

> 14. And, in any event there is also a possible argument that may require some exploration at a full hearing that, as the Tenancy Tribunal under s 77(1)(b) has jurisdiction to determine any dispute that relates to "any tenancy" (singular), the present proceeding is in reality not one but nine individual tenancy claims, for nine separately rented apartments with different commencement dates averaging for example $10,000 each, this falling well within the $50,000 cap.

[43] That issue was not decided in *Levett.* But the Judge's observations assume that s 77(5) addresses a (singular) tenancy.

[44] Finally, I address briefly the Tenancy Tribunal jurisdiction. The Tribunal is a specialist Tribunal with evident expertise in tenancy matters and undoubtedly is, in my view, the appropriate forum to hear these matters. There is no legal impediment in my view, nor policy consideration which militates in favour of removal of consideration of these applications from the Tribunal which is precisely tailor-made to deal with them. The Tribunal has, in my experience, highly competent and experienced adjudicators. The appellant here will be legally represented, as will be MBIE. The Tribunal has the ability to regulate and tailor its procedures. I could not accept that any relaxed procedure or perceived need for expedition is going to detract from an actual hearing or outcome here.

[45] For the foregoing reasons, the appeal is dismissed. The Tenancy Tribunal has the jurisdiction to hear and determine MBIE's application.

L I Hinton
District Court Judge