

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Elvin v Teague & Teague* [2021] QCAT 48

PARTIES: **DENTON GRAHAM ELVIN**
(applicant)

v

BERNADETTE TEAGUE
KEITH TEAGUE
(respondents)

APPLICATION NO: MCDT228-20

MATTER TYPE: Residential tenancy matters

DELIVERED ON: 5 February 2021

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Adjudicator Lember

ORDERS: **1. The application to stay the decision of 10 December 2020 is refused.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE
TRIBUNALS – QUEENSLAND CIVIL AND
ADMINISTRATIVE TRIBUNAL – reopening application
– whether stay should be granted pending determination of
reopening application

Queensland Civil and Administrative Tribunal Act 2009
(Qld) s 138, s 138A, s 139, sch 3
Queensland Civil and Administrative Tribunal Rules 2009
(Qld) r 92, r 93

Bruce v Ridgway [2020] QCATA 95
Elphick v MMI General Insurance Ltd & Anor [2002]
QCA 347

APPEARANCES &
REPRESENTATION: This matter was heard and determined on the papers
pursuant to s 32 of the Queensland Civil and
Administrative Tribunal Act 2009 (Qld)

REASONS FOR DECISION

Summary

- [1] On 10 December 2020, the learned adjudicator made the following orders:
- The residential tenancy agreement between the parties be terminated as from midnight on 31 January 2021 on the grounds of Failure to Leave. A Warrant of Possession is to issue authorising a police to enter the premises... to take effect on 1 February 2021 and remain in effect for fourteen (14) days, to expire on 15 February 2021.
- [2] On 27 January 2021, the respondent tenants filed an application to stay the decision made on 10 December 2020, as well as an application to reopen it.
- [3] The application to stay the decision is the application that is currently under consideration.

Jurisdiction

- [4] The objects of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('QCAT Act')¹ include to have the Tribunal deal with matters in a way that is accessible, fair, just, economical, informal and quick, and, to that end, s 4 of the QCAT Act requires the Tribunal, among other things, to:
- (a) encourage the early and economical resolution of disputes before the Tribunal;² and
 - (b) ensure proceedings are conducted in an informal way that minimises costs to the parties and is as quick as is consistent with achieving justice.³
- [5] An application to reopen a decision is not an appeal of the decision made.
- [6] Section 138 of the QCAT Act allows a party to a proceeding to apply to reopen the proceeding if a "reopening ground" exists.
- [7] The two reopening grounds are limited to:
- (a) that a party did not appear at the hearing and had reasonable excuse for failing to do so; or
 - (b) that a party would suffer substantial hardship if the proceeding was not reopened because significant new evidence not available at the hearing has arisen.⁴
- [8] Under r 92 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) an application for reopening must be filed within 28 days of the relevant decision – the respondent's reopening application was not - and under r 93 each party must be given an opportunity to make submissions on the application – they were.

¹ Section 3(b) of the QCAT Act.

² Ibid s 4(b).

³ Ibid s 4(c).

⁴ Ibid sch 3.

- [9] Under s 139 of the QCAT Act, the Tribunal can reopen a proceeding if a reopening ground exists, and if satisfied the ground could be dealt with by reopening the proceeding.
- [10] In deciding whether to reopen, the Tribunal must consider delay, wasted costs, the legitimate concerns of proper case management and the proper use of public resources.⁵
- [11] Under section 138A(2) of the QCAT Act, the Tribunal can stay a decision pending the determination of a reopening application.
- [12] To succeed on an application for a stay, the party applying for the stay must satisfy the Tribunal that there is a good reason for the stay, including:⁶
- (a) that the applicant has a good arguable case on appeal (or reopening);
 - (b) that the applicant will be disadvantaged if a stay is not ordered; and
 - (c) that competing disadvantage to the respondent, should the stay be granted, does not outweigh the disadvantage suffered by the application if the stay is not granted.
- [13] The grounds for the stay were expressed as follows:
- (a) that the respondents needed to find a house ‘as my grandchildren will be taken’;
 - (b) that Mr Teague has had a stroke;
 - (c) that it has been difficult to find a home;
 - (d) that there are school aged children living in the home;
 - (e) that the respondents ‘need to get welfare from Centrelink’; and
 - (f) they would like to rent to buy the house.
- [14] The reopening grounds were expressed to be:
- (a) that members of the tenants’ family included an adult and a child with special needs;
 - (b) that they had been trying to get the owner of the property, the applicant, to sell them the property but he refused to name a price; and
 - (c) that the house needs extensive repairs.
- [15] The respondents went on to say that the applicant owes them money for repairs in the approximate sum of \$1,500.00.

⁵ *Bruce v Ridgway* [2020] QCATA 95 at [5].

⁶ *Elphick v MMI General Insurance Ltd & Anor* [2002] QCA 347 per Jerrard JA at [8].

[16] Although the order made on 10 December 2020 was not a ‘consent order’, notably, in making the termination order and issuing the warrant of possession on 10 December 2020, the learned adjudicator made the following observations:

The applicant wants to give tenants time to leave as they have been good tenants, but he needs to sell the property. Parties agreed to 31/1/2021 for T/O.⁷

[17] Whilst the reopening application will need to be considered separately on its merits, I note the following:

- (a) As to the first reopening ground, the respondents not only attended the hearing, but participated actively in it, including in the setting of the extended date upon which the tenancy was to end.
- (b) As to the second reopening ground, it is not readily apparent that the respondents have put forward new evidence that was not reasonably available at the time of the hearing.

[18] On those bases, I am not satisfied that the respondents have a good arguable case for reopening.

[19] With respect to disadvantage, whilst the respondents will be disadvantaged if the stay is refused, because a warrant of possession has issued and will remain in effect, there is a competing disadvantage to the applicant, who, according to the originating application, is 81 years of age, suffers from Parkinson’s disease and needs to sell the property in order to fund his moving into an aged care facility.

[20] In circumstances where the termination date given was extended, where it followed the giving of two months’ notice to leave on 4 September 2020, and where the termination date was chosen with the agreement of the respondents, I am not satisfied that the applicant’s need to fund his move into supported living is outweighed by the respondents’ failure to relocate themselves in the time agreed and ordered.

[21] The application to stay the decision is therefore refused.

⁷ T/O” is a reference to termination order.