

**CITATION:** *Ogilvie & Ogilvie v Fuller & Peters* [2011] QCAT 079

**PARTIES:** Mr David Ogilvie and Mrs Fiona Ogilvie  
v  
Mr Kelvyn Max Fuller and Mrs Belinda Peters

**APPLICATION NUMBER:** APL347-10

**MATTER TYPE:** Appeals

**HEARING DATE:** On the papers

**HEARD AT:** Brisbane

**DECISION OF:** Richard Oliver, Senior Member  
Peta Stilgoe, Member

**DELIVERED ON:** 4 April 2011

**DELIVERED AT:** Brisbane

**ORDERS MADE:** **Leave to appeal refused.**

**CATCHWORDS:** MINOR CIVIL DISPUTE – RESIDENTIAL TENANCY – where landlord claimed costs of repairing damage to house – where tenant disputed condition of house on taking up tenancy

*Queensland Civil and Administrative Tribunal Act 2009, s 142(3)*

## **APPEARANCES and REPRESENTATION (if any):**

This matter was heard on the papers in accordance with section 32 of the *Queensland Civil and Administrative Tribunal Act 2009*.

## **REASONS FOR DECISION**

### **Senior Member Richard Oliver**

- [1] In this matter the Appeal Tribunal consisted of Ms Stilgoe, QCAT Member and me. I have had the benefit of reading her reasons in draft. I agree with her reasons, and her conclusions, and the order she proposes.



**Member Peta Stilgoe**

- [2] Mr and Mrs Ogilvie rented a house from Mr Fuller. Mrs Peters was the principal of the real estate agency engaged by Mr Fuller to manage the property. After Mr and Mrs Ogilvie vacated the house, Mr Fuller brought a claim in the tribunal's minor civil dispute jurisdiction claiming \$20,483.71 for the cost of cleaning and repairs to the house required because of the Ogilvies' tenancy. The learned Adjudicator ordered that Mr and Mrs Ogilvie pay Mr Fuller \$12,613.21. Mr and Mrs Ogilvie have sought leave to appeal that decision.
- [3] Leave to appeal will ordinarily only be granted where there is some question of general importance upon which further argument, and a decision of the Appeal Tribunal, would be to the public advantage; or, there is a reasonably arguable case of error in the primary decision and reasonable prospect of the applicant would obtain further substantive relief. Another question sometimes asked is: is leave necessary to correct a substantial injustice to the applicant, caused by some error?
- [4] I have read the transcript of the hearing carefully. I have also considered the material Mr and Mrs Ogilvie have submitted in support of their application for leave to appeal.
- [5] Mr and Mrs Ogilvie's submissions to the Appeal Tribunal are a restatement of the evidence that was presented at the hearing. They urge the Appeal Tribunal to look at the same witness statements, the same documents and the same photographs. While I understand that they consider the decision to be unjust, Mr and Mrs Ogilvie have not directed my attention to any question of general importance on which a decision of the Appeal Tribunal would be to the public advantage. While I also understand that they will suffer financially if this learned Adjudicator's decision is not overturned, Mr and Mrs Ogilvie have not demonstrated that they will suffer a substantial injustice unless leave to appeal is granted.
- [6] Findings of fact by a Tribunal will not usually be disturbed on appeal if the facts inferred by the Tribunal, upon which the finding is based, are capable of supporting its conclusions, and there is evidence capable of supporting any inferences underlining it<sup>1</sup>.
- [7] The minor civil dispute jurisdiction is a busy one and Magistrates and Adjudicators who sit in it are required to make decisions quickly. They do not have the luxury of considering every detail, every document or hearing from the parties at length. This is particularly so when, as here, there are a long list of issues to consider. I note from the transcript that the learned Adjudicator appeared to truncate the taking of evidence but

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<sup>1</sup> *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 197 ALR 201 at 207, 208

nothing in Mr and Mrs Ogilvie's submissions are sufficient to persuade me that the learned Adjudicator's decision could not be supported by the evidence that was before him at the time.

[8] Leave to appeal should be refused.