

CITATION: *Morrison v Chen* [2015] QCATA 129

PARTIES: Cristina Eya Morrison
(Applicant/Appellant)
v
Ying Chen
(Respondent)

APPLICATION NUMBER: APL209 -15

MATTER TYPE: Appeals

HEARING DATE: 25 August 2015

HEARD AT: Brisbane

DECISION OF: **Senior Member Stilgoe OAM**

DELIVERED ON: 31 August 2015

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. The decision of 17 March 2015 in Brisbane claim MCDT221/15 is set aside.**
- 4. Brisbane claim MCDT221/15 is dismissed.**
- 5. H C Alliance Pty Ltd, as the original holder of the bond, and Ying Chen, as the applicant in Brisbane claim MCDT221/15 shall refund the bond of \$1500 to Cristina Eya Morrison and Donald Morrison by 14 September 2015.**
- 6. If Cristina Eya Morrison has paid any money to H C Alliance Pty Ltd or Ying Chen pursuant to the decision of 17 March 2015, the party to whom it was paid shall repay that sum to Cristina Eya Morrison by 14 September 2015.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – RESIDENTIAL TENANCIES – where claim for break lease – where claim for two weeks break lease fee – whether break lease fee reasonable - whether grounds for leave to appeal

APPEAL – LEAVE TO APPEAL - MINOR CIVIL

DISPUTE – RESIDENTIAL TENANCIES – where tenant wanted a periodic tenancy – where lessor required a fresh tenancy agreement with a fixed term – whether tenancy agreement signed under duress – whether grounds for leave to appeal

APPEAL – LEAVE TO APPEAL - MINOR CIVIL DISPUTE – REASONS – whether tribunal gave adequate reasons for decision - whether grounds for leave to appeal

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 3(b), 146
Residential Tenancies and Rooming Accommodation Act 2008 (Qld) ss 12, 173

Dearman v Dearman (1908) 7 CLR 549
Fox v Percy (2003) 214 CLR 118
Pickering v McArthur [2005] QCA 294
Chambers v Jobling (1986) 7 NSWLR 1
Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291

APPEARANCES and REPRESENTATION (if any):

Applicant: No appearance
 Ms Y Chen in person

Respondent:

REASONS FOR DECISION

- [1] Cristina Morrison signed two tenancy agreements to rent a property through Sunshine Aussie Pty Ltd. The first agreement named Ms Morrison and Ms Morrison's husband, Donald Morrison as tenants. The second tenancy agreement named only Ms Morrison. The tenancy was due to end on 31 January 2015 but Ms Morrison, in fact, left the tenancy in December 2014.
- [2] Mr Morrison, filed an application against HC Alliance Pty Ltd for return of the bond. Ms Chen filed an application against Ms Morrison for compensation. The tribunal heard the two claims together and ordered the bond be paid to Ms Chen and that Ms Morrison pay a further amount of \$1,290.21.
- [3] Ms Morrison wants to appeal that decision. She says that she signed the second tenancy agreement under duress. She says the break lease fee of two weeks' rent was evidence of an intention to apply pressure on her. She says the tribunal's reasons do not refer to her submissions at all. She

wants the lease declared “null and void and unenforceable” and the bond returned to her.

- [4] Because this is an appeal from a decision of the tribunal in its minor civil disputes jurisdiction, leave is necessary.¹ Leave to appeal will usually be granted where there is a *reasonable argument* that the decision is attended by error, and an appeal is necessary to correct a *substantial injustice* to the applicant caused by that error.²

Who are the correct parties?

- [5] Neither tenancy agreement named the lessor. The space available for the lessor’s name simply stated “see manager”. That is not sufficient identification. If the identity of the agent changes, or if the agent fails to appear, a tenant should be able to identify and name the lessor as a party to a proceeding.
- [6] Both tenancy agreements name the agent as Sunshine Aussie Pty Ltd. That company was not a party to either proceeding. It seems that the agency was transferred from Sunshine Aussie to HC Alliance but Ms Chen did not provide any evidence to that effect. Further, she did not provide any document to support her ability to appear for HC Alliance. As I explained at the appeal tribunal hearing, Ms Chen is extremely lucky the tribunal made an order in her favour. In other circumstances, before a differently constituted tribunal, her application may have been dismissed.

Did Ms Morrison sign the second tenancy agreement under duress?

- [7] Mr Morrison told the tribunal³ that the then agent Michael Meng Wang threatened them with eviction if they didn’t sign the lease, that his name was deliberately dropped from the lease because Ms Morrison told Mr Wang they did not have to sign a lease, and Mr Wang demanded that she sign the tenancy agreement.
- [8] I’ve read the statutory declarations from Mr and Ms Morrison. They are correct that tenants can stay in premises on a periodic tenancy but that is only with the lessor’s agreement. Both parties are entitled to the certainty of a fixed term tenancy agreement. In this case, the lessor wanted that certainty. Although Mr Wang’s manner may have been wanting, and he was wrong about the rules in Brisbane being different from the rules in Cairns, Mr Wang’s insistence on a fixed term agreement was reasonable. If the Morrisons wanted to stay in the tenancy, they had to sign a new fixed term agreement.
- [9] I note that Mr Morrison’s name was a handwritten addition to the first tenancy agreement. That might explain why his name was not on the second tenancy agreement. Although the absence of his name deprived Mr Morrison of rights under the tenancy agreement, it also prevented him

¹ Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 142(3)(a)(i).

² *Pickering v McArthur* [2005] QCA 294 at [3].

³ Transcript page 1-12, lines 13 – 23.

from incurring obligations, such as the obligation to pay the amount ordered by the tribunal. I do not see how the omission of Mr Morrison's name amounted to duress.

- [10] Even if there were problems with the written agreement, the fact is the Morrisons had the benefit of living in the premises. The *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)* (RTRA Act) provides⁴ that an agreement to give someone a right to occupy residential premises as a residence is a residential tenancy agreement, even if it is not an agreement in writing. The tenancy agreement is not null, void or unenforceable.

Break lease fee

- [11] A term of a tenancy agreement is void if it provides that, if a tenant breaches a term of the agreement, the tenant is liable to pay liquidated damages⁵. However, the term will not be void if it states that, if the tenant ends the tenancy other than in a way permitted by the Act, the tenant is liable to pay the reasonable costs of reletting the premises⁶. If a "break lease" term specifies an amount payable, the term will not be void only if it is a reference to the reasonable costs incurred by the lessor in reletting the premises⁷.
- [12] The tribunal commonly allows recovery of one week's rent as a reletting fee. In this case, as the Morrisons pointed out, the reletting fee was two weeks' rent. Ms Chen did not provide any evidence to demonstrate that \$836 (which is not quite two weeks' rent) was the reasonable cost of reletting the premises. I asked Ms Chen for evidence that it was reasonable. I asked her what costs she incurred in reletting the premises. She could not assist me.
- [13] The appeal tribunal will not usually disturb findings of fact on appeal if the evidence is capable of supporting the conclusions.⁸ An appellate tribunal may interfere if the conclusion is 'contrary to compelling inferences' in the case.⁹
- [14] There is no evidence to support the tribunal's finding that the reletting fee was the reasonable cost of reletting the premises. That term of the tenancy agreement is void and, therefore, Ms Chen could not claim it in her application. Leave to appeal should be granted, the appeal allowed and the decision of 17 March 2015, to the extent that it refers to the reletting fee, set aside.

Did the tribunal fail to refer to the Morrisons' submissions in its decision?

⁴ RTRA Act s 12.

⁵ RTRA Act s173(1)(d).

⁶ RTRA Act s 173(2).

⁷ RTRA Act s 173(3).

⁸ *Dearman v Dearman* (1908) 7 CLR 549 at 561; *Fox v Percy* (2003) 214 CLR 118 at 125-126.

⁹ *Chambers v Jobling* (1986) 7 NSWLR 1 at 10.

- [15] The tribunal's reasons for decision were very short¹⁰:

The matters in contention are the letting fee, rent arrears, cleaning and repairs. I'll deal with the cleaning and repairs first. I'm dismissing the applicant's claim for those because of the ... lack of receipts, as we discussed during the case. So those matters are dismissed.

As far as the lettering fee and the rent arrears are concerned, I'm confident that the application has made out a case that she is entitled to these moneys and I'm therefore making an order to the effect that the bond will be paid to the RTA to the applicant and that a further amount of \$1290.29 will be paid by the respondent to the applicant.

- [16] In the tribunal's minor civil disputes jurisdiction, giving immediate oral decisions accords with the spirit and purpose of the QCAT Act. Those decisions will not be exposed to criticism which fails to acknowledge the circumstances in which they are given, or the pressure of the tribunal's caseload.
- [17] Nevertheless, the tribunal's reasons for decision should set out the material findings of fact, the applicable law and the reasons for applying the law in the way expressed in the decision¹¹. The tribunal's decision did not, in this case, expose its reasoning for the finding in favour of Ms Chen. Leave to appeal should be granted and the appeal allowed, to the extent it relates to Ms Chen's claim for rent.

Should the Morrisons be liable for rent after they terminated the tenancy?

- [18] Because the failure to provide reasons is an error of law, I may either substitute my own decision¹² on question of rent or return it to the tribunal for reconsideration¹³. The tribunal's obligation to deal with matters quickly¹⁴ will not be met if I return the proceeding to the tribunal.
- [19] The Morrisons told the tribunal that they found a substitute tenant who was willing to move into the tenancy within 24 hours of them giving vacant possession¹⁵. She inspected the unit. The Morrisons were prepared to subsidise the rent.
- [20] The tribunal asked Ms Chen about this. She told the tribunal that the proposed tenant was happy to move in¹⁶ but she refused to do so when Ms Morrison wanted to do the exit clean herself, rather than engage professionals. The Morrisons say that the proposed tenant was never given a second opportunity to inspect the premises to see if it was clean.

¹⁰ Transcript page 1-19, lines 6 – 16.

¹¹ *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 at [47].

¹² QCAT Act s 146(a).

¹³ QCAT Act s 146(c).

¹⁴ QCAT Act s 3(b).

¹⁵ Transcript page 1-13, line 15 to page 1-14, line 3.

¹⁶ Transcript page 1-15, lines 28 – 30.

- [21] As the tribunal observed¹⁷, neither party called the proposed tenant as a witness. Ms Chen, as lessor, had the onus of proving that she took all reasonable steps to mitigate her loss.
- [22] The Morrisons introduced a proposed tenant. The manager, Ms Chen's agent, decided that the premises weren't clean enough for the proposed tenant but that person did not have an opportunity to see the unit for herself. Ms Chen admitted that she had multiple units vacant at the time the Morrisons vacated¹⁸. Ms Chen could not produce an invoice for cleaning the premises after the Morrisons left. The strong inference from the evidence is that Ms Chen preferred to rent other premises to that person and keep the Morrisons paying rent. Therefore, I am not satisfied that Ms Chen took all reasonable steps to mitigate her loss.

Orders

- [23] Leave to appeal should be granted and the appeal allowed. The decision of 17 March 2015 is set aside and Brisbane claim MCDT221/15 is dismissed. H C Alliance Pty Ltd, as the original holder of the bond, and Ying Chen, as the applicant in Brisbane claim MCDT221/15 shall refund the bond of \$1500 to Cristina Eya Morrison and Donald Morrison by 14 September 2015. If Cristina Eya Morrison has paid any money to H C Alliance Pty Ltd or Ying Chen pursuant to the decision of 17 March 2015, the party to whom it was paid shall repay Cristina Eya Morrison that sum by 14 September 2015.

¹⁷ Transcript page 1-16, lines 33 - 37

¹⁸ Transcript page 1-15, line 4