QCAT

Queensland **Civil and Administrative Tribunal**

CITATION:	*Amos v Fett & Anor* [2016] QCATA 120
PARTIES:`	**EDWARD AMOS** (Applicant/Appellant) v **DESMA FETT** (First Respondent) and **CYNTHIA FETT** (Second Respondent)
APPLICATION NUMBER:	APL478-15
MATTER TYPE:	Applications and Appeals
HEARING DATE:	On the papers
HEARD AT:	Brisbane
DECISION OF:	**Justice Carmody**
DELIVERED ON:	4 August 2016
DELIVERED AT:	Brisbane
ORDERS MADE:	**IT IS THE DECISION OF THE APPEAL TRIBUNAL THAT:** **1. Leave to appeal is refused.**
CATCHWORDS:	PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COMMENCING PROCEEDINGS – WHERE TO COMMENCE PROCEEDINGS – where the applicant brought proceedings in the Magistrates Court – where proceedings were transferred to the tribunal – where the parties did not attempt the conciliation process first – whether the tribunal has jurisdiction to hear the matter – whether the tribunal has exclusive jurisdiction to hear residential tenancy disputes under $25,000. LANDLORD AND TENANT – TERMINATION OF THE TENANCY – where the respondents issued notices to remedy to breach before terminating their lease agreement – where the applicant claims the notices were invalid – whether leave to appeal should be granted.

APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – whether the tribunal failed to take into account relevant considerations – whether the tribunal took irrelevant considerations into account – whether leave to appeal should be granted.

Queensland Civil and Administrative Tribunal Act 2009 (Qld) ss 3, 4, 6, 7, 9, 10, 11, 12, 13, 28, 32, 33, 35, 36, 48, 53, 61, Schedule 3

Queensland Civil and Administrative Tribunal (Jurisdictions Provisions) Amendment Act 2009 (Qld) s 1445(1)

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) ss 3, 4, 295, 414A, 416, 417, 419, 420, 424, 429, 432

Retail Shop Leases Act 1994 (Qld) s 94(1)

Allesch v Maunz (2000) 203 CLR 172

Attorney-General (SA) V Corporation of the City of Adelaide (2013) 249 CLR 1

Big4 Brisbane Northside Caravan Village v Schliebs [2012] QCAT 277

Brewer v Black [2013] QCATA 264

Bropho v State of Western Australia (1990) 71 CLR 1

Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd (1976) 135 CLR 616

Campaigntrack Victoria Pty Ltd v Department of Justice and Attorney General [2016] QCA 37

CSR Ltd v Della Maddalena (2006) 224 ALR 1

Caruana v Harcourts Proactive Results Pty Ltd [2012] QCATA 55

Coco v R [1994] 179 CLR 427

Dwyer v Calco Timbers Pty Ltd (2008) 234 CLR 124

Fitzroy v Cave [1905] 2 KB 364

Fox v Percy (2002) 214 CLR 118

Lowe v Aspley [2010] QCATA 59

Queensland Building and Construction

Commission v Watkins [2014] QCA 172

Potter v Minahan (1908) 7 CLR 277

Raymond v Doidge [2012] QCAT 163

Scholefield v High Surf Resorts Pty Ltd [2013] QCATA 157

Sendall v Howe [2012] QCATA 41

Torkington v Magee [1902] 2 KB 427

APPEARANCES and REPRESENTATION (if any):

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) (QCAT Act).

REASONS FOR DECISION

[1] The applicant landlord applies for leave to appeal a JP panel residential tenancy decision made in the tribunal's minor civil dispute jurisdiction ordering the respondent tenants to pay him $150 or less than 7.5 per cent of the claimed compensation amount under the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) (RTRA Act).

[2] Proposed appeals against decisions in minor civil disputes are restricted by the QCAT Act to those worthy of a grant of leave. The gateway requirement is a better than merely arguable case of appellable error casting enough doubt on the correctness and justice of the decision at issue to call for its reconsideration. That criterion is rarely met where – as here – findings of fact are challenged.[1] This is because, at law, a first-instance decision maker only makes an appellable error in the fact finding process if the conclusion (in this case, that disputed breach notices were authentic) is unsupported by any or insufficient evidence, "glaringly improbable" or contrary to irresistible contrary inferences.[2]

[3] Merely acting on "wrong" facts or not giving enough weight to the applicant's claims are not recognised categories of appellable error. It is not enough, for example, for a losing party to show that their version of events was just as (or arguably more) plausible than the opposing accounts, but for some reason they do not understand or will not accept, the tribunal fell for the other side's fabrications.

[4] This restriction may seem harsh or arbitrary to some applicants, but it is grounded in sound public policy and aimed at conserving the tribunal's finite judicial and administrative resources as well as promoting finality of litigation.

[5] However, there is an important preliminary issue to be resolved before the merits of the leave application can be dealt with: that is, whether QCAT

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1 *Fox v Percy* (2002) 214 CLR 118 [29].

2 Ibid.

has exclusive jurisdiction over residential tenancy disputes up to $25,000 or merely provides simpler, quicker and cheaper alternative procedures.[3]

The context

[6] The parties made a tenancy agreement for a fixed term of six months starting on 14 September 2014. The agreed rental payable fortnightly in advance was $325 a week.

[7] The tenants vacated the premises on 16 December 2014 with more than three months of the lease left to run. The property was re-let on 17 January 2015.

[8] The respondents contested the claim based on asserted but disputed failures to remedy landlord breaches.

[9] Under ss 10 and 11 QCAT Act, the tribunal has original jurisdiction to hear and determine both "minor civil disputes" and "minor debt claims". By definition, a tenancy claim is both.[4] Different applications between the same parties about a disputed issue may be joined and decided in the one hearing.[5]

[10] It has been held, however, that the tribunal cannot circumvent any procedural "difficulties thrown up" by the RTRA Act by characterising a tenancy claim as a minor debt instead of a minor civil dispute.[6]

[11] Section 9 QCAT Act empowers the tribunal to deal with the matters specified in the RTRA Act. The QCAT Act provides for resolution of disputes about residential tenancy agreements involving amounts up to $25,000[7] by, among other things, dealing with them in a way that is accessible, responsive to the parties and quick.[8] One of the means of doing this is encouraging and facilitating early, and if appropriate, alternative, dispute resolution.[9]

[12] A lessor may apply to QCAT for an order about breach of a residential tenancy agreement,[10] the validity of a tenant's notice to remedy breach,[11] or any dispute about a term of the tenancy agreement,[12] but must do so "within six months after the lessor or tenant becomes aware of the breach".[13] Thus, rent arrears unpaid for more than six months before the

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3 QCAT Act ss 3, 4, 28.
4 Ibid Schedule 3; *Raymond v Doidge* [2012] QCAT 163 [15] – [16].
5 RTRA Act s 432.
6 *Big4 Brisbane Northside Caravan Village v Schliebs* [2012] QCAT 277 [34].
7 QCAT Act s 13, Schedule 3.
8 RTRA Act s 5(2); QCAT Act s 3.
9 QCAT Act s 4.
10 RTRA Act s 420.
11 Ibid s 424.
12 Ibid s 429.
13 Ibid s 419.

date of a dispute resolution request are not recoverable in tribunal proceedings.[14]

[13] Ordinarily, an application to QCAT is to be made as stipulated in the QCAT Act[15] and the procedures to be followed are at the tribunal's discretion.[16] A tribunal proceeding generally begins when an application including the making of a dispute resolution request is filed[17] by a "relevant person"[18] and accepted by the registry.[19]

[14] However, the process for applying to QCAT about a tenancy agreement dispute is subject to the RTRA Act.[20] Chapter 6 Part 1 of the RTRA Act provides for an assisted process to help and encourage parties to a tenancy dispute to resolve their differences without litigation.[21] Although the conciliation process is not compellable,[22] s 416(1) RTRA Act has the practical effect of making unsuccessful conciliation a precondition to tribunal proceedings about a non-urgent residential tenancy issue,[23] by requiring the parties to make a dispute resolution request before applying to QCAT (the conciliation condition).

[15] As an incorporated modifying provision about when a party "may apply under the RTRA Act to (QCAT) about an issue", s 416(1) of that Act prevails over any contrary QCAT Act provision to the extent of any inconsistency.

[16] Non-urgent proceedings commenced in the tribunal out of time, irregularly or without either party making a dispute resolution request are incurably defective and cannot be perfected by waiving the non-compliance under s 61(1) QCAT Act so as to give the tribunal jurisdiction it does not otherwise have.[24]

[17] For some reason – perhaps to avoid the conciliation condition or the time constraints of the RTRA Act, or both – the applicant bypassed the tribunal and on 24 March 2015 took his claim for $2,241.36 in overdue rent and related losses directly to the Magistrates Court instead.

[18] The respondents did not ask the court to reject or dismiss the action as statute-barred or an abuse of process but, instead of unconditionally

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14 *Scholefield v High Surf Resorts Pty Ltd* [2013] QCATA 157.
15 RTRA Act s 414A.
16 QCAT Act s 28(1).
17 QCAT Act s 33.
18 Ibid s 12.
19 Ibid s 36.
20 Ibid s 6(4),(7)(a); RTRA Act s 414A.
21 RTRA Act s 379.
22 Ibid s 406.
23 QCAT Act s 7(3), (4).
24 RTRA Act ss 419(2)-(3) and see, for example, *Caruana v Harcourts Proactive Results Pty Ltd* [2012] QCATA 55 [14]; *Sendall v Howe* [2012] QCATA 41; *Brewer v Black* [2013] QCATA 264; cf *Campaigntrack Victoria Pty Ltd v Department of Justice and Attorney General* [2016] QCA 37.

defending the claim, applied without notice for the matter to be transferred[25] to QCAT as the more appropriate forum to deal with it.

[19] A transferred tenancy proceeding is taken to have been started before the tribunal when it began in the court; in this case, 24 March 2015.

[20] Any QCAT or RTRA Act requirements for starting a tribunal proceeding can be deemed to have been fully complied with by the terms of the transfer order; but, curiously, the transferring magistrate did not do that here. The possible explanations for this are that the court either did not avert to the conciliation condition, did not think it applied in the circumstances, or did consider it but decided that the tribunal had exclusive jurisdiction to resolve disputes under $25,000.

[21] The applicant was eventually directed by the tribunal to make a dispute resolution request, which he did on about 4 June 2015. A notice of unresolved dispute was issued on 17 June 2015 and the application was rescheduled for a tribunal hearing.

[22] Having succeeded in having the matter transferred to QCAT, the respondents challenged its competency for non-compliance with the RTRA Act conciliation condition and when that failed, refused to participate in the conciliation process.

[23] The respondents maintain their threshold argument that the applicant's initial non-compliance with the conciliation condition robs the tribunal of both its original and appellate jurisdiction.

[24] They also contend that as the current tribunal proceedings did not start until 17 June 2015 (when the unresolved dispute notice issued), the applicant is precluded from recovering any rent due for more than six months after the alleged tenancy breach came to his attention; that is, prior to 2 December 2014 when a notice to remedy breach was issued.

[25] The applicant, however, invokes the traditional common law right to seek court-based redress that is not inconsistent with relief under the RTRA Act and submits that normal rules governing tenancy proceedings in QCAT do not apply to court actions transferred to the tribunal at the behest of the opposing party on an ex parte basis without notice.

Is the RTRA Act a code for resolving residential tenancy disputes up to and including $25,000?

[26] In *Big4 Brisbane Northside Caravan Village v Schliebs*[26] (Big4), the then-President of QCAT decided the tribunal did not have jurisdiction to hear non-urgent RTRA claims concurrently with an "urgent" application for a termination order unless the conciliation condition had been met, and remarked that the RTRA Act "is intended to be prescriptive and all-

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25 QCAT Act s 53.

26 [2012] QCAT 277.

embracing in governing the procedure for (commencing proceedings and) determination of disputes arising under residential tenancies…".[27]

[27] Likewise, in *Lowe v Aspley*[28] (Lowe) the then-Deputy President set aside a tenancy termination order because the notice to leave on which it was founded relied on a non-existent alleged breach (unpaid rent) and was, therefore, a nullity. As Her Honour explained:

> "[10] (…) The RTRA is prescriptive about the requirements for issuing Notices and commencing proceedings. The consequences that can flow from a tenant's failure to comply with Notices issued under the RTRA explains the degree of prescription. If the tenant fails to comply with validly issued notices, the agent is entitled to commence urgent proceedings, without the need to enter into discussions with the tenant in an effort to resolve the dispute. The end point of that process is an order to terminate the tenancy.
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> [11] The requirements are not merely a matter of form; they are preconditions to QCAT's jurisdiction to grant relief under the RTRA (...)"

[28] These statements have been read by some as suggesting that the same conditions for accessing the tribunal's less formal, cheaper, faster, more accessible and responsive procedures for resolving tenancy disputes up to $25,000 apply to court proceedings dealing with the same subject matter including the requirement that parties attempt to "sort the issues out for themselves" first.

[29] In my opinion, however, there are at least four good reasons why that interpretation is wrong.

[30] In the first place, courts and tribunals occupy fundamentally different places in our system of government. Although the tribunal has the formal status of a court of record[29] with summary jurisdiction,[30] it is really a "court substitute" characterised and distinguished by greater procedural flexibility and evidentiary freedom than a regular court;[31] offering wider remedial options including making "fair and equitable orders" in resolving minor civil disputes,[32] awarding compensation for future rental losses caused by wrongful termination[33] and granting relief from excessive hardship.[34]

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27 Ibid [42].
28 [2010] QCATA 59.
29 QCAT Act s 164.
30 A summary court is a court which has jurisdiction to adjudicate immediately upon some matter arising during its proceedings. The QCAT Act gives the tribunal these powers.
31 Neil Rees, 'Procedure and Evidence in 'Court Substitute' Tribunals' (2006) 28 *Australian Bar Review* 41.
32 QCAT Act s 13.
33 RTRA Act s 424.
34 Ibid s 295.

[31] A court, by contrast, decides existing legal rights and obligations in the adversarial tradition; it does not create new or different ones.[35] A judge's task is not to "inquire" into the truth or "reconcile" disputes, but to decide them according to fixed legal rules based on probable facts proved by technically admissible evidence.

[32] Secondly, debt enforcement is an intangible common law property right.[36] It cannot be denied, delayed or eroded by legislation, except with "irresistible clearness".[37] Moreover, statutes in a democracy are presumed not to encroach or curtail common law rights and freedoms unless they manifest a considered and definite intention to do so by "unmistakeable and unambiguous language"; and, even then, must not transgress the protective principles of legality, necessity or proportionality.[38]

[33] There is nothing to suggest the RTRA Act is intended to cover the field of tenancy disputes up to $25,000 about anything other than how and when a party to a residential tenancy dispute can apply to QCAT. Notably, the conciliation condition only makes dispute resolution a prerequisite to residential tenancy applications to a "tribunal" (a technical term narrowly defined in Schedule 3 to mean (not just include) "QCAT") and makes no mention of a court.

[34] If Parliament intended to confer exclusive jurisdiction on the tribunal in residential tenancy matters up to $25,000, it should (and probably would) have said so in plain English along the same lines as s 94(1) of the *Retail Shop Leases Act* 1994 (Qld), which provides that retail tenancy disputes can only be resolved by the tribunal and must not be referred to arbitration or heard by any other court.[39]

[35] The QCAT Act and RTRA Act are totally silent about whether the ordinary jurisdiction of the courts is ousted in court-to-tribunal transfers of residential tenancy agreement disputes; either generally or to the extent of any non-compliance with mandatory RTRA Act procedures.

[36] Thirdly, the Magna Carta guarantees access to justice. So does Article 10 of the 1948 United Nations Universal Declaration of Human Rights and Chapter III of the Australian Constitution. That right traditionally implies the freedom of a litigant to choose the forum.

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35 Justice Steven Rares, 'Is Access to Justice a Right or Service?' (Speech delivered at the Access to Justice – Taking the Next Steps Symposium, Monash University, 26 June 2015).

36 *Torkington v Magee* [1902] 2 KB 427, 430; *Fitzroy v Cave* [1905] 2 KB 364, 373-4.

37 *Bropho v State of Western Australia* (1990) 71 CLR 1, 18; *Potter v Minahan* (1908) 7 CLR 277, 304 (O'Connor J).

38 *Coco v R* [1994] 179 CLR 427; also see *Attorney-General (SA) V Corporation of the City of Adelaide* (2013) 249 CLR 1.

39 See too the *Queensland Civil and Administrative Tribunal (Jurisdictions Provisions) Amendment Act* 2009 (Qld) s 1445(1), which gives the tribunal "… exclusive jurisdiction for the appointment of guardians and administrators for adults with impaired capacity for matters."

[37] For the RTRA Act to effectively limit that freedom of choice of forum for an applicant enforcing a property right or redressing infringement of one, it would have to evince a clear intention to do so. This, in my opinion, it does not do.

[38] The comments in Lowe and Big4 do not alter that position. Both cases were concerned with jurisdictional and procedural questions arising out of non-urgent rental claims made by lessors to the tribunal in the first instance. Neither had any need to consider the application of the conciliation condition to a common law rent recovery action commenced in a court and later transferred to the tribunal by the opposing party. The remarks about the RTRA Act's "prescriptiveness" and "all-embracing effect" are limited in effect, if no intention, to RTRA Act applications made directly to QCAT and have no bearing on the issue at hand.

[39] Fourthly, the RTRA Act specifically states in s 4 that it does not operate to reduce the effect of a right or remedy a person has apart from it and, to remove doubt, makes it crystal clear that:

> "A right or remedy given to a person under this Act is in addition to, and not in substitution for, a right or remedy the person would have apart from this Act."

[40] The only proviso is that the relevant right or remedy cannot be inconsistent with the RTRA Act.[40] I see a difference, but no conflict between the applicant's common law rights he sought to enforce in court and the remedies available under the RTRA Act.

[41] Neither is there any luminous policy reason why the RTRA Act's objects[41] cannot be pursued and achieved by seeking redress in the old-fashioned way, without forcing a litigant to try and sort a tenancy dispute out by negotiation or mediation before going to court.

[42] In my opinion, therefore, court and tribunal remedies for tenancy breaches in Queensland are concurrent. That is, they complement – not compete with or displace – one another.

[43] No doubt, this case turns on its own unusual facts, but on my analysis, the RTRA Act's stipulated pre-application procedures have limited range. They only govern non-urgent disputes that a party to a residential tenancy agreement applies to the tribunal about. They do not apply to court-based proceedings or tenancy matters transferred from a court to the tribunal.

[44] Thus, the applicant was not statute barred from litigating his claim in court (rather than tribunal proceedings) without first complying with the conciliation condition.

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40 RTRA Act s 4(3).

41 e.g. Ibid s 3(2)(b) – providing for the resolution of disputes about residential tenancy agreements etc.

[45] Accordingly, the tribunal had original jurisdiction on 18 September 2015 to decide and make orders about the breach of a tenancy agreement on 6 December 2014; and the appeal tribunal also has jurisdiction to determine an application for leave to appeal those orders.

The leave application

[46] A major issue at the final hearing was whether the respondents had served valid notices to remedy breach and a notice to leave for breach on the applicant before vacating. The tribunal found they had, and rejected the applicant's loss of rent and re-letting heads of claim.

[47] The proposed grounds of appeal appear intended to raise questions of mixed law and fact but are devoid of details.

[48] What the applicant really seems to want to argue if given leave to do so is that his claim was drastically reduced by the tribunal under the mistaken belief that the two challenged notices to remedy breaches allegedly served on him by the respondents at the end of 2014 were valid when, according to him, they were in fact "fictitious" and "false".

[49] In his submissions dated 17/12/15 the applicant claims that "the respondents (were) motivated to breach the lease" because –

(a) (They) were experiencing difficulty in paying the rent. They could not afford to pay the balance of the bond.

(b) In Queensland a culture has developed whereby a tenant seeking to terminate a fixed term lease before the expiration of the fixed term can go to a government subsidised agency such as the Tenants Union, Legal Aid, Caxton Legal Service et al and obtain free advice and guidance to manufacture a ground to include in a Form 11 Notice to Remedy Breach and then allege a failure by the lessor to remedy the fabricated breach as a ground to issue a Notice of Intention to Leave and vacate before the fixed term has expired. This is what the respondent did here.

(c) The respondents issued a fictitious Form 11 dated 28.11.14 falsely alleging there were no lights working due to a blown fuse after a hail storm. That Form 11 was received by the applicant on 2.12.14.

(d) The respondents issued a second fictitious Form 11 dated 3.12.14 falsely alleging water leaks in the roof. That Form 11 was received by the applicant on 8.12.14.

(e) It is curious the respondents did not allege any water leaks during the hail storm referred to in their first Form 11.

(f) In fact the dwelling was never without lights and the roof did not leak.

(g) The respondents issued a Form 13 Notice of Intention to Leave on 8.12.14 which the applicant received on 11.12.14.

(h) In breach of the fixed term lease the respondents vacated on 15.12.14.

6. The law

(a) None of the Notices issued by the respondents were of any force of effect not only because they were grounded upon false and fraudulent grounds but they were also all invalid for noncompliance with s 38 of the *Acts Interpretation Act* 1954 and s 328(1) of the RTRA Act as to the time within which to comply with such notices.

(b) None of the respondent's fraudulent Notices gave seven clear days within which to comply with them contrary to the provisions of the *Acts Interpretation Act* 1954 and s 328(1) of the RTRA Act and were consequently all void ab initio in any event.

[50] It also emerges from written submissions filed between 3 June 2015 and 17 December 2015 that the application is based on the failure of the "Justices at first instance to read and/or to give any weight to the sworn evidence of the Applicant at the hearing and the evidence of the Applicant contained in paragraphs 35-37 of the Affidavit of the Applicant filed on 2 June 2015".

[51] Those paragraphs state:

> 35. (The) Notice to Remedy Breach issued on 28 November 2014 by the Respondents … exhibited hereto marked "EA-24". … was of no force or effect not only because it is grounded upon a false premise but also because the Respondents were the customer of the electricity supplier and were responsible for maintenance of the electricity supply under s.153 of the Electricity Act and regulation 44 of the Electricity Regulation 2006 and, in any event, the Notice was invalid for non-compliance with s.38 of the *Acts Interpretation Act* 1954 as to the time within to comply with the Notice. In any event the said notice was invalid because I did not receive it until 2 December 2014 in the envelope exhibited with the notice. Therefore the notice failed to give seven clear days in which to comply. I verily believe time begins to run from the date of service of the notice and that the period specified in the notice must allow for delivery within a reasonable period by Australia Post.
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> 36. A true copy of a purported Notice to Remedy Breach issued on 3 December 2014 by the Respondents is exhibited hereto marked "EA-25". The said Notice was of no force or effect not only because it is grounded upon a false premise but also it was invalid for non-compliance with s.38 of the *Acts Interpretation Act* 1954 as to the time within to comply with the Notice. In any event the said notice was invalid because I did not receive it until 8 December 2014 in the envelope exhibited with the notice. The Notice was posted on Thursday 4

> December 2014. Therefore the notice failed to give seven clear days in which to comply. I verily believe time begins to run from the date of service of the notice and that the period specified in the notice must allow for delivery within a reasonable period by Australia Post.
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> 37. A true copy of a purported Notice of Intention to Leave issued on 8 December 2014 by the Respondents is exhibited hereto marked "EA-26". The said Notice was of no force or effect not only because it is grounded upon invalid Notices to Remedy Breach as particularised in paragraphs 35 and 36 hereof but also it was invalid for non-compliance with s.38 of the *Acts Interpretation Act* 1954 as to the time by which the Respondents intended to give up the vacant possession of the premises. In any event the said notice was invalid because I did not receive it until 11 December 2014 in the envelope exhibited with the notice. The notice was posted on Monday 8 December 2014 in the envelope exhibited with the notice. Therefore the notice failed to give seven clear days notice. I verily believe time begins to run from the date of service of the notice and that the period specified in the notice must allow for delivery within a reasonable period by Australia Post.

[52] QCAT facts appeals decided by way of rehearing[42] involve conducting a thorough review of the primary judge's reasons and engaging in the tasks of weighing conflicting evidence and drawing inferences and conclusions.

[53] As Kirby J noted in *CSR Ltd v Della Maddalena*:[43]

> [22] … where the conclusion of the primary judge depends on inferences drawn from undisputed facts or facts that have been found but can equally be redetermined by the appellate court, without relevant disadvantage, the duty of the appellate court is clear. It derives from the parliamentary enactment. It "will give respect and weight to the conclusion of the trial judge, but, once having reached its own conclusion, will not shrink from giving effect to it".

[54] If, however, the decision was reasonably open on the undisputed facts, the proper inference is that the tribunal correctly understood its role and function, applied the statutory definition correctly to the facts and, therefore, there is no legitimate ground for disturbing it.

[55] The applicant is clearly aggrieved that the tribunal was willing to act on the impugned veracity of the respondents' version of events instead of his, but as I have already pointed out, that is not enough to obtain leave to appeal.

ORDER

1. Leave to appeal is refused.

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42 The procedure is governed by s 147 QCAT Act. This must be distinguished, however, from a rehearing *de novo*. As to the different categories of appeal, see: *Dwyer v Calco Timbers Pty Ltd* (2008) 234 CLR 124; *Fox v Percy* (2003) 214 CLR 118; *Allesch v Maunz* (2000) 203 CLR 172; *Builders Licensing Board v Sperway Constructions (Syd) Pty Ltd* (1976) 135 CLR 616.

43 (2006) 224 ALR 1 [22].