

CITATION: *Halkett v Munro* [2016] QCATA 122

PARTIES: Carol Halkett
(Appellant)
v
Kate Munro
Mark Munro
(Respondents)

APPLICATION NUMBER: APL125-16

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Acting Senior Member Browne**

DELIVERED ON: 12 August 2016

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. Leave to appeal granted.**
- 2. Appeal allowed.**
- 3. The decision of the tribunal is set aside.**
- 4. The proceeding is remitted to the tribunal for rehearing.**

CATCHWORDS: APPEAL – LEAVE TO APPEAL – MINOR CIVIL DISPUTE – LANDLORD AND TENANT– RESIDENTIAL TENANCIES LEGISLATION – where fixed term tenancy – where tenant issued notice to remedy breach and notice of intention to leave – where tenant vacated premises – where claim for compensation for early termination of tenancy – where tribunal found tenant had a right to exit property – where tribunal refused claim for compensation – whether grounds for leave to appeal

*Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 142, s 143, s 146, s 206
Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s 277, s 301, s 302, s 362, s 419, s 420, Divisions 3, Division 5*

Pickering v McArthur [2005] QCA 294; cited

APPEARANCES:

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] Kate Munro and Mark Munro ('the tenant') rented a Mermaid Beach property under a fixed term tenancy from Diamond Cove Resort ('the property'). Carol Halkett managed the property.
- [2] The tenant left the property early and new tenants moved in some weeks later. Prior to vacating the property, the tenant issued a notice to remedy breach (Form 11) and a notice of intention to leave (Form 13).
- [3] A dispute arose between the tenant and Ms Halkett about the return of the rental bond and other costs. Ms Halkett filed an application in the tribunal's minor civil dispute jurisdiction seeking an order for compensation and return of the rental bond. Ms Halkett's application included claims for cleaning, rent arrears, bond clean and reletting fee.
- [4] The tribunal made a final order that the Residential Tenancy Authority pay the amount of \$1,840 to the tenant and that Ms Halkett pay the amount of \$374.96 (balance owing) to the tenant.
- [5] Ms Halkett wants to appeal the tribunal's decision. Because this is an appeal from a decision of the tribunal in its minor civil dispute 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 the error.²
- [6] Ms Halkett says that the tribunal erred in law in its interpretation of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ('RTRA Act') and the Forms 11 and 13 issued by the tenant.³ Ms Halkett says the Form 11 issued by tenant did not satisfy the requirements of the RTRA Act. Ms Halkett also says that she has been financially disadvantaged because the tribunal awarded money to the tenant that was a 'debt' (owing to her) and was an amount more than the bond.⁴

Did the tribunal misapply the RTRA Act?

- [7] The RTRA Act contains provisions about ending of residential tenancy agreements and claims for compensation where there has been a breach of a term of a residential tenancy agreement.⁵ There are also relevant

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

² *Pickering v McArthur* [2015] QCA 294 at [3].

³ Application for leave to appeal or appeal filed 15 April 2016.

⁴ *Ibid* and see written submissions filed by Ms Halkett dated 23 May 2016.

⁵ RTRA Act, s 277, s 419.

provisions in the RTRA Act about issuing a notice to remedy breach and notice of intention to leave.⁶

- [8] Under s 277(4) of the RTRA Act, a tenancy agreement ends if the tenant gives notice of intention to leave the premises and hands over vacant possession of the premises on or after the handover day. There are certain requirements under the RTRA Act such as the time required for giving the notices that must be complied with by the tenant.⁷
- [9] In this case, there was a fixed term tenancy dated 27 May 2014 due to expire on 30 May 2016. The tenant vacated the property on 15 July 2015. The tenant issued a notice to remedy breach dated 1 July 2015 identifying '*details of the breach*' as follows:
1. Entry condition report – not given 3 days from 29/05/2014
 2. Unlawful entry – 11/08/204 through garage after 11:30AM with partner
 3. Insinkerator removed – replacement required or rent reduction (26 June 2015)
 4. Stovetop to be replaced as per owner advising in Dec 14.
- [10] The tenant also issued a notice of intention to leave dated 9 July 2015 identifying '*grounds*' in respect of the alleged breaches as '*failed to repair and maintain*' under s 185 of the RTRA Act, a failure to act on '*further breaches*', removal of rent, false rent receipts, wrongful entry and abusive behaviour.
- [11] Ms Halkett as the managing agent found a new tenant and the new tenancy commenced on 6 August 2015. There was no written agreement between the parties to end the tenancy and there was no order made by the tribunal terminating the agreement.
- [12] Justices of the Peace, as this tribunal was, do not have the power to determine termination applications, so it is understandable that the tribunal did not consider the termination issues inherent in the application before it.⁸
- [13] In this case, there is an error in the tribunal's interpretation of the RTRA Act and the findings made about the notices (Forms 11 and 13) issued by the tenant because the learned Justices of the Peace did not consider the relevant sections of the Act in determining Ms Halkett's application for compensation.
- [14] Ms Halkett is entitled to compensation under s 419(3) of the RTRA Act if she can demonstrate that the tenant breached the tenancy agreement and that breach caused loss. If a tenant issues a notice to remedy breach and notice of intention to leave there must be compliance with the RTRA Act.
- [15] Ms Halkett's application for compensation included a claim for lost rent from the date the tenant vacated the property to the date the new tenant moved into the property. There was also a claim for bond clean and reletting fee.

⁶ RTRA Act, Division 5.

⁷ Ibid, Division 3, Division 5.

⁸ QCAT Act s 206C.

- [16] The transcript shows that Ms Halkett disputed the issues raised by the tenant about the condition of the property and raised issues about the validity of the notices (Forms 11 and 13) issued by the tenant. The relevant extract of the transcript is as follows:

Ms Halkett: Yeah. That was – that, and the other form, the notice to leave, were put in the letterbox at the same time two days before she went. And either way that letterbox has got “No post” on it, because it’s the office letterbox, which is never opened. The office is right next door. So it’s got a sign on it saying “No post”, and she put it in the letterbox...there’s no evidence about when she actually – both forms were together, which they can’t be. You’ve got to have seven days apart, for a start. And both forms were together in the letterbox.⁹

- [17] The transcript shows that Ms Halkett referred the tribunal to the entry condition report and photographs in relation to the condition of the property. Ms Halkett disputed that items such as the cooktop needed replacing. Ms Halkett stated:

... So the cooktop never needed – replacing; it was all just hygiene. I’m trying to find- and the cooktop is still there with the- there has been two tenants since and it’s still there.¹⁰

- [18] In relation to Ms Halkett’s claim for the bond clean, the tribunal accepted the tenant’s evidence that the unit was not clean at entry but did not address the issues raised by Ms Halkett about the condition of the property as evidenced in the entry and exit reports and photographs taken. The tribunal said:

Now, the bond clean. We accept the [tenant’s] evidence that the unit was not clean at entry, and therefore the bond clean is not payable at exit by the [tenant].

- [19] The tribunal found that the tenant gave the correct notices to exit due to the condition of the property but did not address the issues raised by Ms Halkett about whether proper notice had been given by the tenant under the RTRA Act. The tribunal said:

As far as the break-lease fee, [the tenant] has given the correct notices to exit the property, with ground, due to the condition of the premises. Therefore, we will not allow the break fee at exit...¹¹

- [20] The tribunal did not allow Ms Halkett’s claim for lost rent and found that the tenant had a right to exit the property. The tribunal said:

As far as the rent goes, we consider as the [tenant] was paid up to the 15th July [2015], which is when she exited the property, and we are not allowing a break-lease fee, as we feel she has a right to exit. There is no extra rent payable until a new tenant moves into the premises.¹²

- [21] In this case, the tribunal did not consider the relevant sections of the RTRA Act about ending of residential tenancy agreements and the issuing of a notice to remedy breach and notice of intention to leave. The issue

⁹ T1-30.

¹⁰ T1-35.

¹¹ T1-35.

¹² T1-45.

before the tribunal was whether Ms Halkett's claim for compensation should be allowed under the RTRA Act because the tenant left the property early. Ms Halkett presented evidence at the hearing about the condition of the property at entry and exit and raised issues about the validity of the notice to remedy breach and notice of intention to leave. The learned Justices of the Peace did not consider the relevant sections of the RTRA Act and the issues raised by Ms Halkett about the ending of the tenancy agreement and the claim for compensation. There is a reasonably arguable case that the learned Justices of the Peace were in error in applying the RTRA Act. Leave to appeal is granted and the appeal allowed. The proceeding is returned to the tribunal for rehearing.