

CITATION:

Peter McManus Real Estate v Czuchwicki
[2016] QCATA 173

PARTIES:

Peter McManus Real Estate
(Applicant/Appellant)
v
Stanley Czuchwicki
(Respondent)

APPLICATION NUMBER:

APL097-16

MATTER TYPE:

Appeals

HEARING DATE:

24 October 2016

HEARD AT:

Brisbane

DECISION OF:

Justice Carmody

DELIVERED ON:

8 November 2016

DELIVERED AT:

Brisbane

ORDERS MADE:

IT IS THE DECISION OF THE APPEAL TRIBUNAL THAT:

1. Leave to appeal is refused.

CATCHWORDS:

LANDLORD AND TENANT – LEASES AND TENANCY AGREEMENTS – CONSTRUCTION AND INTERPRETATION – where the respondent sought compensation in the tribunal for tenancy breaches – where the claim was brought against the real estate agent – whether the lessors should be liable and not the real estate agent

APPEAL AND NEW TRIAL – APPEAL – GENERAL PRINCIPLES – FUNCTIONS OF APPELLATE COURT – IN GENERAL – whether the tribunal erred in law in not allowing a tenant seeking compensation to amend his claim to seek an order against the lessor instead of the real estate agent

Queensland Civil and Administrative Tribunal Act 2009 (Qld) s 131

Residential Tenancies and Rooming Accommodation Act 2008 (Qld) s 206

Noosa Hot Properties.com Pty Ltd v Olopai
[2012] QCATA 201

Tapp v Howarth-Hockey [2013] QCATA 72

APPEARANCES and REPRESENTATION (if any):

APPLICANT/APPELLANT	Peter McManus
RESPONDENT	Self-represented

REASONS FOR DECISION

- [1] The applicant is the real estate agent for the lessors, Mr and Mrs Alexander. The tenants (respondent) were awarded compensation of \$2,793.50 for tenancy breaches on 23 February 2016.
- [2] The real estate agent now seeks leave to appeal the order on the ground that it was not the party liable to pay and that the tribunal should have adjourned the hearing to allow the respondent to amend his claim to seek an order against the lessors instead.
- [3] The respondent rejects the proposal. He says he is quite content to enforce the order against the applicant and is not interested in substituting the lessors for it at such a late stage.
- [4] The applicant contends that although *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (RTRA) s 206 permits a tenant to take proceedings against an agent instead of the lessor, it does not apply in this case because the tenants were notified by the agent of the lessor's name and address for service before the tenancy.
- [5] The basis of the applicant's case for leave is that not only is there a reasonably arguable case of error and a substantial injustice to be corrected, but it would be to the public's advantage to have RTRA s 206 interpreted by the appeal tribunal.
- [6] Section 206(1)(a) imposes a mandatory duty on the lessor or lessor's agent to give the tenant a pre-occupation notice in writing of either the lessor's name and address for the service or, if the lessor has an agent authorised to stand in the lessor's place in a prescribed proceeding, the agent's details.
- [7] Under s 206(3), if the tenant is given the agent's details as in subsection (1)(b), the agent stands in the lessor's place and (for example) (a) the proceeding may be taken against the agent as if the agent was the lessor; and (b) the tribunal may make an order against the agent as if it was the lessor.
- [8] An individual address for service means that person's place of residence or business. The address for service for a company is its registered office.

- [9] The lessors were mentioned by name in item 1.1 of Part 1 of the tenancy agreement, but the address given was the applicant's business address. Their email also coincided with the applicant's. The applicant's details were provided in item 3.1.
- [10] The tenant had the option of giving notice to *either* the lessor or agent via the agents email under item 4.1 and 4.3.
- [11] Pursuant to s 43(1) of the standard terms of the tenancy, item 3 states the name and address for service of the lessor's agent and under subsection (2)(a), unless a special term provides otherwise,¹ the agent stands in the lessor's place in any tribunal application by the tenant. Moreover, the applicant signed the tenancy for the lessor as agent and was an original party to the compensation proceeding as a person in relation to whom a decision is sought by the applicant.
- [12] Neither of the parties asked the tribunal, before or at the hearing, to join the lessors under s 42(1). The tribunal did not do so on its own initiative because it was satisfied that they should be bound by the decision, had interests that may be affected, or that for another reason, it was desirable to join them.
- [13] The tribunal had power to hear and determine the respondent's compensation application against the applicant.² There is no error to be corrected or any matter of general importance or public advantage to be considered on appeal. Accordingly, leave to appeal is refused.
- [14] Any claim the applicant has against the lessor for contribution or indemnity will have to be the subject of fresh proceedings in a competent forum. In the meantime, the applicant is legally bound to pay the compensation to the tenants in the amount ordered.
- [15] Now that the appeal proceeding is finally decided, the stay placed on the operation of the tribunal's order is lifted and the applicant's liability may be enforced under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) s 131.

¹ This is inapplicable.

² See *Noosa Hot Properties.com Pty Ltd v Olopai* [2012] QCATA 201; cf *Tapp v Howarth-Hockey* [2013] QCATA 72.