

CITATION: *Morgan v Lauren K George Family Trust & Anor*
[2018] QCATA 5

PARTIES: Candice Morgan
(Appellant)
v
Lauren Kay George Family Trust
(First Respondent)

North South Executive Rentals
(Second Respondent)

APPLICATION NUMBER: APL427-16

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Member Hughes**

DELIVERED ON: 12 January 2018

DELIVERED AT: Brisbane

ORDERS MADE:

1. Leave to appeal granted.
2. Appeal allowed.
3. The Orders made on 16 June 2016 are set aside.
4. The proceedings instituted by Applications 104/16 and 167/16 are remitted to a different Adjudicator for rehearing.

CATCHWORDS: APPEAL AND NEW TRIAL – APPEAL
GENERAL PRINCIPLES – RIGHT OF APPEAL
– WHEN APPEAL LIES – ERROR OF LAW –
PARTICULAR CASES INVOLVING ERROR
OF LAW – DENIAL OF NATURAL JUSTICE –
where residential tenancy – where tenants did
not appear at hearing – whether tenants
afforded natural justice – where Notice of
Hearing did not refer to correct application –
where tenants were not notified of applications
that were heard and determined on day of
hearing – where at best tenants given 17 hours’

notice to respond to landlord application for \$85,569.81 with no fewer than 200 pages of supporting material 17 hours before hearing – where tenants not given sufficient opportunity to present case and respond to landlord case – where tenants not afforded natural justice – where error of law causing substantial injustice

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 12, s 28, s 54, s 55, s 92, s 143, Schedule 3

Queensland Civil and Administrative Tribunal Rules 2009 (Qld), r 76

Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s 416

Bradlyn Nominees Pty Ltd v Saikovski [2012] QCATA 39

Cachia v Grech [2009] NSWCA 232

Glenwood Properties Pty Ltd v Delmoss Pty Ltd [1986] 2 Qd R 388

Hayward & Anor v LJ Hooker Longreach [2013] QCATA 221

Kioa v West (1985) 159 CLR 550

Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd [1989] 2 Qd R 577

Noffke v Oceanside Management Pty Ltd t/as Broadwater Apartments [2017] QCA 156

O'Brien v Gladstone Regional Council [2015] QCATA 82

QUYPD Pty Ltd v Marvass Pty Ltd [2009] 1 Qd R 41

APPEARANCES:

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

REASONS FOR DECISION

What is this appeal about?

[1] The residential tenancy in this appeal is characterised by a litany of claims and counter-claims. However, the appeal is grounded on one essential point: whether the Tribunal afforded the tenants, Candice and Wayne Morgan, natural justice at the hearing on 15 June 2016.

[2] On that day, the Tribunal dismissed the Morgans' claim for a rent reduction and compensation (Application 104/16) and ordered that the

bond of \$4,000.00 held by the Residential Tenancies Authority be paid to the Lessor, Lauren Kay George Family Trust, and that the Morgans pay the Trust the sum of \$610.00 (Application 167/16).

- [3] The Morgans did not attend the hearing on 16 June 2016 and seek to appeal the decision.
- [4] Because this is an appeal from a minor civil dispute, leave is required.¹ In determining whether to grant leave, the Tribunal will consider established principles including whether there is a reasonably arguable case of error in the primary decision,² whether there is a reasonable prospect that the appellant will obtain substantive relief,³ whether leave is needed to correct a substantial injustice caused by some error,⁴ and whether there is a question of general importance upon which further argument, and a decision of the Appeals Tribunal, would be to the public advantage.⁵

What is the background to this appeal?

- [5] On 19 April 2016, the Trust filed Application 986/16 to terminate the tenancy. On 20 May 2016, the Tribunal made Orders by Consent to terminate the tenancy from 13 June 2016. The Trust claimed that the Tribunal adjourned the “remainder of the issues”, to after the issuing of the warrant on 14 June 2016.
- [6] The Appeal Tribunal has only the first two pages of the Trust’s original Application 986/16 and therefore it is unclear what the “remainder of the issues” were apart from the termination of the tenancy. Regardless, nothing on the various files shows that the Tribunal made any orders for Application 986/16 other than to terminate the tenancy.
- [7] On 27 April 2016, the Morgans filed Application 104/16 for a rent reduction and compensation totalling \$9,411.83. This application was initially set down for hearing on 30 May 2016. On that day, the learned Adjudicator ordered that the hearing be adjourned to allow the Trust to file its own application for compensation, with a view to both applications being heard together.
- [8] However, the Tribunal made no order other than to adjourn Application 104/16 – presumably (and correctly) because no other application was on foot.
- [9] On 31 May 2016, a Notice of Hearing was then sent to each party for a hearing at 9.30am on 16 June 2016. This Notice has a line ruled through a reference to “T 101/16” and above it the reference “T 167/16” has been added.

¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 143(3).

² *QUYPD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

³ *Cachia v Grech* [2009] NSWCA 232, 2.

⁴ *QUYPD Pty Ltd v Marvass Pty Ltd* [2009] 1 Qd R 41.

⁵ *Glenwood Properties Pty Ltd v Delmoss Pty Ltd* [1986] 2 Qd R 388, 389; *Mclver Bulk Liquid Haulage Pty Ltd v Fruehauf Australia Pty Ltd* [1989] 2 Qd R 577, 577, 580.

- [10] On 15 June 2016, the Trust filed another Application which again has a line ruled through a reference to case number “T 101/16” and above it the reference “T 167/16” has been added with a notation “TO BE LISTED/HEARD CLAIM 104/16” (although no Order to this effect is evident from the files). This new application claims compensation of \$86,569.81 plus costs.
- [11] At 4.30pm on the same day, the Trust claims to have served Application 167/16 on the Morgans.
- [12] On 16 June 2016, another Adjudicator heard and determined both the Morgans’ Application 104/16 and the Trust’s Application 167/16.

What were the Tribunal’s obligations?

- [13] It is apparent from the various files that by the time of the hearing on 16 June 2016, the issues between the Trust and the Morgans had developed into somewhat of a quagmire. The learned Adjudicator was confronted with potentially overlapping claims and counter-claims, jurisdictional issues, an application that had already been adjourned two weeks earlier and considerable material, including some 200 pages filed only the evening before the hearing.
- [14] It is therefore understandable that the learned Adjudicator sought to determine all the issues before him. The Tribunal is mandated to deal with matters in a way that is accessible, fair, just, economical, informal and quick.⁶ This mandate is particularly acute in the minor civil disputes jurisdiction, where Adjudicators must deal with multiple and often complex matters on a daily basis. The Transcript suggests that the learned Adjudicator was seeking to deal with the issues between the Trust and the Morgans as expeditiously as possible.
- [15] However, the emphasis on expedition and informality does not allow the Tribunal to pursue speedy resolution at all costs.⁷ In all proceedings, the Tribunal must still act fairly and according to the substantial merits⁸ of the case and observe the rules of natural justice.⁹
- [16] On this occasion, the determination of Applications 104/16 and 167/16 at the hearing on 16 June 2016 raises issues of whether the Morgans were afforded natural justice.

Were the Morgans afforded natural justice in Application 104/16?

- [17] The first difficulty is that the Notice of Hearing sent on 31 May 2016 does not refer to Application 104/16.

⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 3(b).

⁷ *Hayward & Anor v LJ Hooker Longreach* [2013] QCATA 221, per Wilson J at [20].

⁸ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28(2).

⁹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 28(3)(a).

[18] Section 92 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) provides:

The principal registrar must give notice, as stated in the rules, of the time and place for the hearing of a proceeding to –

- (a) each party to the proceeding;
- (b) each other person to whom notice of the hearing must be given under an enabling Act or the rules; and
- (c) any other person the tribunal directs to be given notice of the hearing.

[19] Rule 76 of the *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) provides:

Notice of the hearing of a proceeding given to a person under section 92 of the Act must be given in either of the following ways –

- (a) by endorsing the time and place for the hearing on the copy of the application or referral for the proceeding that the principal registrar gives to the person under the Act;
- (b) by written notice.

[20] The purpose of the notice is to inform “each party to *the* proceeding” of the time and place of “*the* hearing”. The definite article means the notice relates the hearing to a specific proceeding¹⁰ and informs the parties of the time and place to hear *that* proceeding.

[21] Because the Notice of Hearing for 15 June 2016 was not sent for Application 104/16, the Morgans were not notified that their Application for rent reduction and compensation were to be heard and decided on that day. No order had been made that this application was to be consolidated or heard together with any other proceeding.¹¹

[22] This means that the Morgans were not afforded natural justice as they did not have an opportunity to present their case for a rent reduction and compensation.

Were the Morgans afforded natural justice in Application 167/16?

[23] The second difficulty is that the Notice of Hearing sent on 31 May 2016 could not have referred to Application 167/16 when it was sent, because the Trust did not file Application 167/16 until 15 June 2016.

[24] Although it is unclear, it would appear that “101/16” in the Notice of Hearing sent on 31 May 2016 is a new reference number given to the “remainder of the issues” in the Trust’s original application 986/16. This is

¹⁰ *Noffke v Oceanside Management Pty Ltd t/as Broadwater Apartments* [2017] QCA 156.

¹¹ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 54, s 55.

despite no orders having been made in Application 986/16 other than to terminate the tenancy. No order was ever made about any other “issues”.

- [25] It would then appear that the Notice of Hearing sent on 31 May 2016 was for Application “101/16” and later changed to “167/16”, presumably because the Applications were considered to relate to the same issues – that is, the issues in 167/16 were considered to relate to the “remainder of the issues” from 986/16 (now 101/16) . However, no order was ever made to consolidate proceedings 101/16 and 167/16 or that they be heard and decided together.¹²
- [26] Moreover, the Appeal Tribunal does not accept Application 167/16 refers to the same issues as previous applications pre-dating termination of the tenancy. This is because Application 167/16 claims \$86,569.81 in compensation for *post-tenancy* issues encompassing water arrears, keys and locks, cleaning and property damage.
- [27] The Trust claims to have served the Morgans with Application 167/16 at 4.30pm on 15 June 2016 – the day before the hearing at 9.30am on 16 June 2016. However, the Morgans claim they did not become aware of Application 167/16 until they found it in a plastic shopping bag in their garden on 18 or 19 June 2016 – after the hearing.
- [28] The Notice of Hearing sent on 31 May 2016 could not operate to notify the Morgans of the hearing for Application 167/16. Application 167/16 was not filed or purported to be served on the Morgans until the evening of the hearing on 15 June 2016.
- [29] This means that at best, the Morgans were given some 17 hours’ notice to appear at a hearing to respond to an Application for compensation of \$85,569.81. Although the Tribunal’s jurisdiction in minor civil disputes is limited to \$25,000.00,¹³ 17 hours is not sufficient time to respond to an application exposing a respondent to the maximum of the Tribunal’s jurisdictional limit and filed with no fewer than 200 pages of supporting material.
- [30] The Appeal Tribunal is not satisfied that the Morgans were afforded natural justice as they were not given sufficient notice to appear at the hearing of, and respond to, Application 167/17.

Should the Appeal Tribunal grant leave to appeal?

- [31] Although the notion of natural justice is flexible, it fundamentally requires that a party is entitled to know the case against him or her, and must be given a reasonable opportunity to respond.¹⁴ The Appeal Tribunal is satisfied that the Morgans were not given an opportunity to present their case for Applications 104/16 and 167/17 and were therefore not afforded natural justice.

¹² Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 54, s 55.

¹³ Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 12, Schedule 3.

¹⁴ *Kioa v West* (1985) 159 CLR 550.

- [32] A failure to give natural justice is an error of law.¹⁵ If leave is not granted, a substantial injustice will occur because the Morgans would not be given sufficient opportunity to present their cases in Applications 104/16 and 167/16.
- [33] Leave to appeal is granted and the appeal allowed. The proceedings instituted by Applications 104/16 and 167/16 should be remitted for rehearing before a different Adjudicator, where relevant findings can be made after giving all parties an opportunity to appear at the hearing for those proceedings and considering all the evidence.
- [34] Whether the issues in either of the proceedings have first undergone conciliation with the Residential Tenancies Authority¹⁶ are properly addressed at a rehearing, upon considering all the evidence from the parties.

What are the appropriate Orders?

[35] The appropriate Orders are:

1. Leave to appeal granted;
2. Appeal allowed;
3. The Orders made on 16 June 2016 are set aside; and
4. The proceedings instituted by Applications 104/16 and 167/16 are remitted to a different Adjudicator for rehearing.

¹⁵ *O'Brien v Gladstone Regional Council* [2015] QCATA 82, [24].

¹⁶ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 416.