

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *L J Hooker Stafford v Roberts* [2020] QCATA 100

PARTIES: **L J HOOKER STAFFORD**
(Applicant)

v

KATIE ROBERTS
(Respondent)

APPLICATION NO: APL 348-19

ORIGINATING APPLICATION NO: MCDT 450 of 2019 Brisbane

MATTER TYPE: Appeals

DELIVERED ON: 3 July 2020

HEARING DATE: 2 July 2020

HEARD AT: Brisbane

DECISION OF: Dr J R Forbes, Member

ORDERS:

- 1 The orders made on 26 June 2020 are withdrawn.
- 2 Hooker's application for leave to appeal is allowed.
- 3 Hooker's appeal is allowed, subject to Order 5.
- 4 The order of the primary tribunal that Hooker is liable to Roberts in the amount of \$1,602.10 is set aside.
- 5 The order that Roberts is liable to Hooker in the amount of \$437.70 is set aside.
- 6 No order as to costs.

CATCHWORDS: APPEAL – APPLICATION FOR LEAVE TO APPEAL – COUNTER APPLICATION – appeal tribunal's original orders rendered nugatory by RTA action not notified to tribunal – withdrawal and rectification of orders

Queensland Civil and Administrative Tribunal Act 2009

(Qld) s 32
Residential Tenancies and Rooming Accommodation Act
2008 (Qld) s 491
Caruana v Harcourts Proactive Results Pty Ltd [2012]
QCATA 55
Gubier v Queensland Department of Housing and Public
Works [2020] QCATA 23

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

REASONS FOR DECISION

- [1] On 26 June 2020 the appeal tribunal determined an application by L J Hooker Stafford ('Hooker') for leave to appeal from a decision of the primary tribunal ('the June decision').
- [2] The primary tribunal ordered that the Residential Tenancies Authority ('RTA') repay a bond of \$1,540 in full to the tenant Roberts.
- [3] But the June decision ordered that the RTA pay \$430.70 of the bond Hooker, and the balance of \$1,109.30 to Roberts
- [4] However, after the publication of the June decision the appeal tribunal was told for the first time that, notwithstanding Hooker's application for leave, the RTA had repaid the bond in full to Roberts. It is necessary, therefore, to revise the orders in the June decision.
- [5] The appeal tribunal's order setting aside the award of \$1,602.10 to Roberts for loss of amenity will stand, for the reasons set out in paragraphs [20] to [22] of the June decision. In a word, Roberts failed to lodge her claim while her tenancy was current.
- [6] But the primary tribunal's award of \$437.70 on Hooker' counterclaim for damage to the premises needs further consideration. In consequence of the RTA's action it can no longer be paid out of the bond.
- [7] Roberts, acting in person, raised no question about the validity of the counterclaim. However, as explained in paragraph [21] of the June decision, a tribunal may raise a jurisdictional issue on its own initiative.
- [8] Hooker's counterclaim alleged breaches of the lease. A claim that amounts to a breach of a residential tenancy, including a counterclaim, must be brought within the inelastic¹ time limit in section 491 of the *Residential Tenancies and Rooming Accommodation Act 2008 (Qld)*:

¹ *Gubier v Queensland Department of Housing and Public Works [2020] QCATA 23 at [8]-[9]; Caruana v Harcourts Proactive Results Pty Ltd [2012] QCATA 55.*

This section applies if any of the following claim there has been a breach of a ... residential tenancy lease ... a lessor ... may apply to a tribunal for an order about the breach ... [However] the application must be made within 6 months after the lessor ... becomes aware of the breach.

- [9] Roberts' tenancy ended in late December 2018. Hooker's counterclaim was brought some 10 months later, on 24 October 2019. It would be fanciful to suggest that Hooker was unaware of the alleged breaches until April 2019. Consequently, the tribunal had no jurisdiction to make the award to Hooker. It is simply a nullity. The award of \$437.70 to Hooker must be set aside.
- [10] The overall result is that neither party is entitled to any payment from the other.

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