

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Hamilton

Tenancy Address

69 Lake Crescent, Hamilton Lake, Hamilton 3204

Applicant

Full Name

Alan Geraint Simpson

Tenant

Respondents

Full Name

Kenneth Alexander Ballantyne

Landlord

Susan Mary Ballantyne

Landlord

K & S Ballantyne Family Trust

Landlord

Order of the Tribunal

The Tribunal hereby orders:

Orders

1. Landlords claim against tenant for carpet cleaning costs is dismissed
2. Tenants claim against landlord for breach of quiet enjoyment is dismissed
3. Tenants claim against landlord for damage to motor vehicle is dismissed
4. All other claims are dismissed
5. (Section 78(1)(i) Residential Tenancies Act 1986)

Reasons

Introduction

1. This is a claim by the landlord for the costs to commercially clean the carpet on the exit of a
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tenancy.

2. There is also a claim by the tenant for two matters being compensation for damages to his motor vehicle and compensation for breach of quiet enjoyment involving an alleged assault.

Background law and approach.

3. Before considering any of the claims in this matter it is worth stating the relevant background law in relation to onus of proof and credibility of the evidence as that will become important in consideration of the issues at hand.

Onus of proof.

4. The onus, or burden, of proving a particular claim rests with the party who is making the claim. In this case, each applicant is bringing their own claims and the onus must be on them to establish with evidence their individual case. The standard of proof or level of evidence relates to the level required to discharge the onus. In the Tenancy Tribunal, this standard is the civil standard of being the balance of probabilities i.e. more likely than not.
5. While this is a considerably lesser standard than the criminal standard of beyond reasonable doubt it still provides an initial threshold to be overcome by the applicant.
6. Although the standard of proof is on the balance of probabilities where serious allegations are made as has occurred here in one of the claims it is some time said that a higher standard is required e.g. the more serious the allegation the higher will be the required degree of proof. In fact, it is not so much that a different standard of proof is required in different circumstances, varying according to the gravity of the issue, but that the gravity of the issue becomes part of the circumstances which I need to take into consideration in deciding whether or not the burden of proof has been discharged.
7. The more serious the allegation the more cogent is the evidence required to overcome the unlikelihood of what is alleged and thus to prove it. In summary, the standard of proof is the balance of probabilities but the proof must be in proportion to the gravity of the particular allegation advanced **Green vs Randle [1970] NZLR 237.**
8. In the case of the standard onus threshold will apply to the landlords claim and the tenants claim for car damage. Where however the tenant has made serious allegations against the landlord in relation to what is in effect physical assault then a higher standard is applicable. The reason is that the allegations on their own would, if proven, expose the tenant to criminal sanctions. The allegations are serious such that a higher standard of proof is required to discharge the onus. Each party must by evidence meet or exceed the threshold of proof should they wish to be successful.

Conflicting evidence.

9. It would be fair to say from the outset that the two views and the evidence provided are directly opposed to each other and the decision may well come down to one of credibility.

10. The landlord especially made it abundantly clear that he thought the tenant was fabricating a number of stories.

Credibility of evidence.

11. Credibility has been defined as not merely the appreciation of the witness' desire to be truthful but also their opportunities of knowledge and powers of observation judgement and memory. In a word the trustworthiness of their testimony **White vs R [1947] SCR 268**.
12. In assessing credibility, the following model sets out the essential requirements all of which must be satisfied for belief in any part of the evidence.
13. The applicant or any witness must be trusted there should be no personal barriers to accepting their evidence This trust is partly an intellectual and partly an intuitive judgement needs to be applied.
14. The evidence must be reasonable i.e. there should be no probative defects such as inconsistency or improbability to any material extent.
15. The evidence which is accepted must be consistent with or supported by but not contradicted by other acceptable evidence. In my finding, this is a major flaw in the both party's cases as quite simply there is no other acceptable supporting evidence.
16. Evidence which only satisfies the first two bullet points would only be plausible. The third bullet point must be met for belief.
17. It is important to not too readily believing that you can assess credibility from demeanour or body language. Memory is not an exact science and can be affected by the retelling and other factors. It is important to not too readily believing that you can assess credibility from demeanour or body language.
18. In this instance that evidence given is diametrically opposed. Each party seems to be honestly believing their own statements and recollection however clearly where questions of whether the discussion over no pets or the physical altercation took place they cannot be consistent.
19. Where the evidence is inconsistent I would normally have to make a decision on credibility however in determining this matter I am not making such a finding. The reason I am not doing so is down to the standard of proof.
20. As stated this obligation or burden is on the person bringing the application which in this case varies as to the application (tenant) or cross application (landlord). Where the evidence is inconsistent it is up to the person bringing the application to discharge the onus by providing compelling credible and corroborated evidence that exceeds the threshold and disproves the other parties counter claims.
21. Turning now to examine the evidence submitted as supporting the separate claims in light of these standards.

Landlord's claims.

22. The landlord has claimed for the commercial (industrial) cleaning of the carpets. There is no clause in the tenancy agreement that requires this to occur nor in fact even if there had been

one, it would have been unenforceable. A tenant is only required to leave the premises clean and tidy that does not mean pristine or even to a standard that the landlord could re-let immediately. The law expressly states that a landlord cannot require a tenant to do more than is allowed for in the Residential Tenancies Act 1986. Under that Act the tenant is required to leave the premises reasonably clean and tidy. Accordingly requiring the tenant to commercially clean is more than required under the Act and as such is unenforceable.

23. The landlord counters stating the tenant had a dog on the premises which was contrary to the tenancy agreement and this created the need for a commercial clean so argued that should over-ride the Act. Unfortunately, when challenged to prove the same the landlord admitted there is no such clause in the tenancy agreement. The tenant claims the dog was not excluded and in fact was only visiting with a relative for a short time. The landlord asserts there was a verbal agreement that no pets would be allowed. This is denied by the tenant. Whilst verbal variations or agreements can be enforced the onus of proving the clause was intended rests on the landlord and without additional evidence I cannot conclude that pets were excluded. As such the requirement to commercially clean on vacating is unenforceable and the claim for the carpet cleaning costs is dismissed.
24. In summary, the onus is on the landlord to prove with corroborated evidence that there was a breach of the tenancy resulting in damage which as caused by the tenant during the tenant's tenancy.
25. The landlord has been unable to establish a breach and without one his claim must fail and be dismissed.

Tenants claims.

26. The tenant has two claims being;
27. Compensation for both damage to his car from falling garage debris and breach of quiet enjoyment. Examining those claims separately

Garage debris – damage to car.

28. The garage is a lean to type structure which the tenant was aware was always going to be demolished at some stage to make way for the landlord's development on the rear of the section. The landlord turned up allegedly unannounced and proceeded to remove the roofing iron from the garage. The tenant's car was inside the garage at the time. It made no sense for either of the parties to leave the car in harms-way but clearly the animosity that existed at that time between the two of them took precedence over common sense
29. The tenant, even with the police present refused to move his car during the demolition (apparently out of a fear for his safety if he went outside) and the landlord rather stubbornly I would conclude continued to demolish the garage around it (due to a tight timeframe to develop the rear section)
30. That said, stubbornness, is not a breach of the Act and for the landlord to be liable the tenant must establish a causal connection between the landlord's breach of the tenancy agreement and the damage to the car (estimated at \$850.00) Despite photos being produced they are not

conclusive and the landlords evidence that whilst dust did fall onto the car (which he later attempted to remove) no damage was or could have been caused by the falling roofing iron due to the safety netting in the roof is in direct contrast.

31. I am unable to conclude either way on the balance of probabilities and according the tenant has failed to prove his case and it is dismissed

Alleged Assault- breach of quiet enjoyment.

32. The tenant claims he was both verbally and physically threatened by the landlord on the same day and that his amounts to a breach of his quiet enjoyment of the premises. I have no doubt that there were robust discussions between the parties, face to face.
33. When considering questions of abusive behaviour, one must bear in mind that landlord/tenant relationships tend to be between individuals and that will inevitably involve some interaction between them on a personal level. It is important not to allow a simple clash of personalities to become the sole basis for a claim for breach of this type. To establish abuse or threatening behaviour the tenants must prove more than lively and colourful debate.
34. The altercation appears to have occurred over the tenant being in a mild financial difficulty and unilaterally advising that the rent arrears will be met by the bond. This is not the intention of the bond and the landlords quite rightly objected to this proposal. I accept a heated discussion no doubt then ensued but this is not unusual between landlords and tenants.
35. The tenant alleges the discussion went further and an assault occurred and that he laid an official complaint with the police who attended the property.
36. No formal record exists of the complaint and certainly no arrest for assault was made although a trespass notice was issued to the landlord. It is not clear if the non-arrest was due to lack of evidence but presumably it was.
37. As stated the onus is on the tenant to prove his case and as the allegation of assault is serious I must impose the higher level of proof on the tenant. The police did not believe sufficient evidence existed to prove assault and I find similarly.
38. The claim for breach of quiet enjoyment is dismissed.
39. As both parties have been equally unsuccessful no award as to costs shall be made.