

TENANCY TRIBUNAL AT Hamilton

APPLICANT: Stephen John Bearsley
Applicant

RESPONDENT: Narrow Way Farms Limited
Respondent

TENANCY ADDRESS: 258 Ormsby Road, RD 6, Pirongia 3876

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. The applications are dismissed for want of jurisdiction.

Reasons:

1. Mr Bearsley appeared. Mr and Mrs Reymer appeared for the Respondent.
2. Mr Bearsley has filed claims with the Tribunal. The Respondent argues the occupancy arrangement is excluded under section 5(1) of the Residential Tenancies Act 1986 (The "Act").

Facts

3. In 2010 Mr Bearsley and Mr Reymer purchased 75 hectares of bare land at 272 Ormsby Road for the purpose of grazing cattle. To affect the purchase Mr Bearsley and Mr Reymer formed Narrow Way Farms Limited (Narrow Way Farms) of which both were both directors and shareholders. Mrs Bearsley is also a shareholder in Narrow Way Farms. At the time of the purchase Mr Bearsley and his family were residing in Hamilton.

4. Mr Bearsley and Mrs Reymer are siblings. The two families had a close association. In addition to his shareholding in Narrow Way Farms, Mr Bearsley also derived an income by teaching at a church attended by both families at which Mr Reymer was treasurer.
5. In 2015, Thousand Hills Cattle Company (Thousand Hills), of which Mr and Mrs Reymer are sole directors and shareholders, purchased a property at 258 Ormsby Road consisting of a house and 191 hectares. The properties at 258 and 272 Ormsby Road are near each other. Shortly afterward there was a transfer of ownership discussion between Mr Bearsley and Mr and Mrs Reymer. It was proposed that Thousand Hills would make available the house at 258 Ormsby Road and 20 hectares of the surrounding land to Narrow Way Farms. Narrow Way Farms would then transfer the 75 hectares at 272 to Thousand Hills. Mr and Mrs Reymer would then relinquish their directorship and shareholding interest in Narrow Way Farms. The parties state the purpose of this was to provide financial certainty for the Bearsleys.
6. The arrangement would result in Narrow Way Farms, made up of Mr and Mrs Bearsley only, having the house and 20 hectares at 258 Ormsby Road, with Thousand Hills having the 75 hectares at 272 Ormsby Road and the balance of the 191 hectares at 258. Thousand Hills would also lease back 15 hectares from Narrow Way Farms.
7. In contemplation of a transfer of ownership from Thousand Hills to Narrow Way Farms, on what the parties describe as an “as if the transfer had been formalised” basis, Mr Bearsley and Narrow Way Farms entered into a collateral oral agreement to rent the house at 258 Ormsby Road for \$150.00 per week. Invoices were then issued by Narrow Way Farms to the Bearsleys for the occupation of the house.
8. Mr Bearsley accepts that in renting from Narrow Way Farms he was renting from an entity in which he was a director and shareholder. The rent was offset against dividends. The surveying required to redefine the boundaries of the proposed properties was however, not completed. More significantly there was a break down in the relationship between Mr Bearsley and Mr and Mrs Reymer.
9. On or about 04 August 2018, Mr Reymer advised Mr Bearsley that he considered the proposed transfer of ownership agreement to be cancelled, including the collateral agreement under which Mr and Mrs Bearsley occupied the house at 258. Mr Reymer states he then arranged for Thousand Hills, as the legal owner, to lease the house at 258 Ormsby Road to Narrow Way Farms. Mr Bearsley states that despite Mr Reymer’s view, he did not view the transfer of ownership arrangement as being cancelled.
10. At a shareholders meeting on 20 May 2019, the majority shareholders voted to remove Mr Bearsley as director of Narrow Way Farms Limited. Mr and Mrs Bearsley retained their 40.6% share in Narrow Way Farms. On or about 03 June 2019, Mr Reymer advised the Bearsleys that Thousand Hills had leased the house

at 272 Ormsby Road to Narrow Way Farms, and that after consulting a property management consultant, Narrow Way Farms had set a market rent of \$450.00 per week which, if the Bearsleys remained, would be deducted from their dividend.

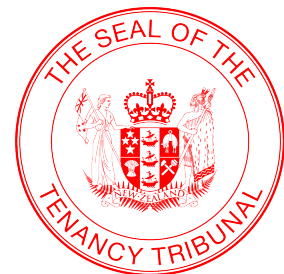
11. On 14 June 2019, Mr Reymer made an offer to purchase Mr and Mrs Bearsley's shares in Narrow Way Farms with an undertaking that Narrow Way Farms would not seek back dated market rent from 04 August 2018 plus interest. Also attached to Mr Reymer's purchase offer was an offer by Narrow Way Farms, as landlord, to enter into a residential tenancy agreement with Mr Bearsley using a standard form residential tenancy agreement and back dated to 04 August 2018.
12. Mr Bearsley states that he declined to sign the back dated agreement on the basis that there was already an agreement in place with Narrow Way Farms which had been entered into in 2015.
13. Mr Bearsley states that Narrow Way Farms subsequently recorded a debt for back dated rent and interest of some \$19,000 against their shareholder account. Mr Bearsley states that the dispute has had a significant impact on Mrs Bearsley's emotional wellbeing to the extent that they felt forced to leave the property which, after giving notice, they did on 13 September 2020.
14. Mr Bearsley states that for several reasons, including Mr and Mrs Reymer having in 2016 built a home on 272 Ormsby Road, a property in which he, as a shareholder in Narrow Way Farms has an interest, there is in place an enforceable transfer of ownership agreement. The Reymers deny that there is in place such an enforceable agreement. The matter remains unresolved.
15. On 13 March 2021 Mr Bearsley filed an application with the Tribunal claiming that the collateral occupancy agreement between Narrow Way Farms and himself in 2015 was a tenancy agreement, and that Narrow Way Farms had breached the terms of the agreement.

Decision on jurisdiction

16. The onus is on the party contending that the tenancy is excluded, to prove that the Act does not apply. The standard of proof required is on the balance of probabilities.
17. The starting point under section 4 of the Act is that the provisions of the Act apply to all tenancies of residential premises unless excluded under Section 5.
18. Section 5 of the Act sets out several tenancies or occupancy agreements expressly excluded from the Act.
19. For the Tribunal not to have jurisdiction, only one of the exclusions in section 5(1) of the Act need to apply.
20. In my view the clearest impediment in the Tribunal considering the claims made by the tenant is under section 5(1)(r) of Act: where the tenancy arises wholly or

depends wholly upon the ownership by the tenant of any shares in a company that owns the premises.

21. At the time of entering into the occupancy agreement, the parties did so on the basis that a legal transfer of the property between Thousand Hills Cattle and Narrow Way Farms had been completed, Mr and Mrs Reymer had relinquished their directorship and shareholding in Narrow Way Farms with the Bearsleys becoming the sole directors and shareholders. But for the Bearsleys' shareholding in Narrow Way Farms would this occupancy agreement have been entered? In my view the answer is no. I am satisfied more likely than not the occupancy agreement between Narrow Way Farms and the Bearsleys arose wholly out of the Bearsleys' shareholding in Narrow Way Farms. It is for this reason the exclusion in section 5(r) of the Act applies.
22. The issue now turns to whether the parties to this excluded tenancy have agreed in writing that all or any of the provisions of the Act shall apply in respect of the tenancy. There is no evidence written or otherwise, that at the time of entering the occupancy agreement the parties turned their minds to or discussed the relevant provisions of the Act.
23. I am satisfied that the Tribunal does not have jurisdiction to hear the tenant's claims.
24. I apologise to the parties for any inconvenience caused by the delay in delivering this decision.



G Barnett
19 July 2021

Please read carefully:

Visit justice.govt.nz/tribunals/tenancy/rehearings-appeals for more information on rehearings and appeals.

Rehearings

You can apply for a rehearing if you believe that a substantial wrong or miscarriage of justice has happened. For example:

- you did not get the letter telling you the date of the hearing, **or**
- the adjudicator improperly admitted or rejected evidence, **or**
- new evidence, relating to the original application, has become available.

You must give reasons and evidence to support your application for a rehearing.

A rehearing will not be granted just because you disagree with the decision.

You must apply within five working days of the decision using the Application for Rehearing form: justice.govt.nz/assets/Documents/Forms/TT-Application-for-rehearing.pdf

Right of Appeal

Both the landlord and the tenant can file an appeal. You should file your appeal at the District Court where the original hearing took place. The cost for an appeal is \$200. You must apply within 10 working days after the decision is issued using this Appeal to the District Court form: justice.govt.nz/tribunals/tenancy/rehearings-appeals

Grounds for an appeal

You can appeal if you think the decision was wrong, but not because you don't like the decision. For some cases, there'll be no right to appeal. For example, you can't appeal:

- against an interim order
- a final order for the payment of less than \$1000
- a final order to undertake work worth less than \$1000.

Enforcement

Where the Tribunal made an order about money or property this is called a **civil debt**. The Ministry of Justice Collections Team can assist with enforcing civil debt. You can contact the collections team on **0800 233 222** or go to justice.govt.nz/fines/civil-debt for forms and information.

Notice to a party ordered to pay money or vacate premises, etc.

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.

If you require further help or information regarding this matter, visit tenancy.govt.nz/disputes/enforcing-decisions or phone Tenancy Services on 0800 836 262.

Mēna ka hiahia koe ki ētahi atu awhina, kōrero ranei mo tēnei take, haere ki tenei ipurangi tenancy.govt.nz/disputes/enforcing-decisions, waea atu ki Ratonga Takirua ma runga 0800 836 262 ranei.

A manaomia nisi faamatalaga poo se fesoasoani, e uiga i lau mataupu, asiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesootai mai le Tenancy Services i le numera 0800 836 262.