

[1] Ms Clements has filed three appeals with this Court. The first, CIV-2017-404-002512, is an appeal against a decision of Judge G M Harrison in the District Court at Auckland on 13 October 2017.¹

[2] The second, CIV-2017-404-002823, is an appeal against a decision of Judge G M Harrison in the District Court at Auckland on 2 November 2017.²

[3] The third, CIV-2018-404-000196, is an appeal against a decision of Judge B Gibson in the District Court at Auckland dated 9 February 2018.³

Background

[4] The background can be shortly stated. At material times a Ms Karen Merrett was the tenant occupying the property known as 27A Park Avenue, Takapuna. The property was managed by Griffiths Holdings Limited on behalf of the landlord Parktrust Limited (Parktrust).

[5] On about 27 April 2017 Ms Merrett agreed that Ms Clements could occupy part of the premises comprising a bedroom, bathroom and balcony.

[6] On 23 May 2017 Parktrust gave a 90 day notice pursuant to s 51 of the Residential Tenancies Act 1986 (the Act) to terminate the tenancy as at 24 August 2017.

[7] By the time the 90 day notice was issued unhappy differences had arisen between Ms Merrett and Ms Clements. Ms Clements filed an application with the Tenancy Tribunal claiming the 90 day notice was retaliatory. She also sought compensation and exemplary damages.

[8] Both Ms Merrett and Parktrust queried the jurisdiction of the Tribunal to hear Ms Clements' claim, on the basis she was a flatmate of Ms Merrett and not a tenant of Ms Merrett.

¹ *Clements v Parktrust Limited* [2017] NZDC 23241.

² *Clements v Griffiths* DC Auckland CIV-2017-044-001460, 2 November 2017, Minute of Judge Harrison.

³ *Clements v Parktrust Limited* [2018] NZDC 2208.

[9] In a decision delivered on 5 July 2017 the Tenancy Tribunal Adjudicator determined that the agreement between Ms Clements and Ms Merrett was a residential tenancy creating a sub-tenancy of part of the subject premises with Ms Merrett as landlord and Ms Clements as tenant.

[10] In a subsequent decision of 18 September 2017 a Tenancy Tribunal Adjudicator determined the termination notice was valid and granted Parktrust possession as of midnight 21 September 2017.

[11] Although Ms Merrett appealed the 5 July decision she subsequently discontinued her appeal on 21 September 2017. She also accepted the validity of the termination notice. Ms Clements purported to appeal the decision of 5 July 2017 by notice of appeal filed on 22 September 2017.

13 October 2017 decision (2512 appeal)

[12] In the decision issued on 13 October 2017 Judge G M Harrison dismissed an appeal against the decision of the Tenancy Tribunal Adjudicator dated 18 September 2017 determining that the 90 day notice issued by Parktrust was valid and that it was entitled to a possession order of the premises as of 21 September 2017. The Judge noted that the Tribunal's decision was based upon its earlier finding that Ms Clements was a sub-tenant. Ms Clements appeals that decision.

2 November 2017 decision (2823 appeal)

[13] In the decision of 2 November Judge Harrison noted that Ms Clements had applied for a stay of proceedings pending the appeal. The Judge considered that to be an abuse of process as Ms Clements had already unsuccessfully applied to this High Court for a stay which had been declined. On 19 October 2017 Downs J dealt with Ms Clements' urgent interim relief application to preclude Parktrust from obtaining vacant possession of the property at 27A Park Avenue, Takapuna from Friday, 20 October 2017.

[14] The Judge dismissed that application. He was unpersuaded Ms Clements had an arguable case. Ms Clements then sought "a detailed reason" as to why her appeal

was rejected. The Judge pointed out that he had not dealt with Ms Clements' appeal substantively. All that he had done was to reject as untenable her claim for interim relief pending the appeal. The Judge then expanded on that in a minute of 6 November 2017 in which he dismissed Ms Clements' application for leave to the Court of Appeal from his decision declining interim relief.

[15] Judge Harrison's decision of 2 November that Ms Clements' application to the District Court for a stay of proceedings was an abuse of process is unimpeachable. The issue of a stay pending appeal has been determined against Ms Clements by this Court. The appeal from Judge Harrison's decision of 2 November 2017 is dismissed as an abuse of process.

9 February 2018 decision (196 appeal)

[16] The decision of Judge Gibson of 9 February 2018 relates to Ms Clements' belated appeal against the finding of the Tenancy Tribunal of 5 July 2017 that she was a sub-tenant of Ms Merrett. Judge Gibson struck out the appeal on the basis that Ms Clements' appeal against that decision lodged on 22 September 2017 was outside the time provided for appeal by s 117(6) of the Act. Section 117(6) of the Act provides:

- (6) Every such notice of appeal shall be filed within 10 working days after the date of the decision to which the appeal relates.

[17] The purpose of the Act is to achieve a speedy resolution of disputes. The time period for bringing the appeal is mandatory. It expired on 19 July 2017. There is no ability to extend the time period for appeal under the District Court Rules. There is no prospect of the appeal against the decision of Judge Gibson of 9 February 2018 succeeding. It is dismissed.

Other issues

[18] That leaves the appeal against the original decision of Judge Harrison of 13 October 2017 confirming the Tenancy Tribunal's decision that the 90 day notice issued was valid and that Parktrust was entitled to possession.

[19] Although the merits of that appeal, given that under s 119 it must be an appeal on a question of law are questionable, the appeal was brought in time and has not previously been determined by this Court. On that basis the Court would normally make directions for a hearing of the appeal.

[20] However, there is a further complicating factor. Ms Clements is currently an undischarged bankrupt. Although she was adjudicated bankrupt on 26 February 2013 Mr Singh's inquiries of the Insolvency Register confirm that she remains undischarged at this stage. I understood Ms Clements to accept she was undischarged at this stage. She considers that the matter should have been addressed while she was overseas. She intends to address that matter.

[21] If Ms Clements remains an undischarged bankrupt then she has no ability to pursue this proceeding in her own right. It will be for the Official Assignee to determine whether to pursue the appeal. The other course of action is for Ms Clements to seek to be discharged from bankruptcy.

[22] To enable Ms Clements to address the issue of her bankruptcy I adjourn the only remaining appeal in CIV-2017-404-002512 to 9.00 am on 27 February 2018.

[23] Costs reserved.

Venning J