IN THE TENANCY TRIBUNAL
IN CANBERRA IN THE
AUSTRALIAN CAPITAL TERRITORY

TT 232 of 1998

BETWEEN:

Bruce Gibbons and Robyn Gibbons

Applicant

AND:

Dungell Pty Limited

Respondent

REASONS FOR JUDGMENT OF PRESIDENT M. A. SOMES
DATED THE 17TH DAY OF DECEMBER 1998

A Notice of Dispute was filed by Bruce Gibbons and Robyn Gibbons (the tenants) against Dungell Pty Limited (the landlord) dated the 8th of June 1998 in which the following ground was alleged as the basis of the dispute:

"*The fact that the fixed percentage increase of 1997 was not implemented but the 1997 increase was implemented in 1998 together with the 1998 increase (clause 36.1(f)"*.

This Notice of Dispute came on for a conference before the Registrar and subsequently a document was filed by Pamela Ayson whom I assume was an agent for the tenants formally discontinuing the Notice of Dispute.

Subsequent to this document being received an application was filed by the landlord seeking an order for costs in relation to the filing of the Notice of Dispute.

The basis of the costs application is that there was never a dispute between the parties to which the provisions of the Tenancy Tribunal Act (the Act) applied. The question of whether costs might be awarded came on for hearing before me on 27 November 1998 and following hearing of some argument and the handing up of submissions I reserved my decision.

Section 52 of the Act is in the following terms:

"The parties to a hearing shall bear their own costs unless the Tribunal orders otherwise."

There is a similar provision in relation to hearings occurring before the Registrar and this is to be found in section 32 of the Act. I raised with Counsel, during the submissions, the question as to whether in the particular circumstances which exist in relation to this matter there was any jurisdiction in the Tribunal to even consider the question of costs. This concern arose by the presence of the words "*a hearing*" both in section 52 and section 32.

I have considered the matter further and I am of the view that in the particular circumstances of this dispute there is no jurisdiction in the Tribunal to make an order for costs whether it believes such an order to be appropriate or otherwise as there has not been a hearing.

Hearing is defined in section 3 of the Act as follows:

"*"hearing" means -*

(a) a hearing by the Registrar under Part V;

(b) a hearing by the Tribunal under section 35; or

(c) the hearing of an application for an interim order under section 53."

Hearing is defined in the Oxford English Dictionary, inter alia,:

"*The action of actively giving ear, listening (e.g. to a lecture, sermon, play, etc.)."*

Hearing is also defined in Butterworths Australian Legal Dictionary 1997 at page 545 as follows:

"A proceeding, conducted by a court, tribunal or administrator with a view to resolving issues of fact or law, in which oral evidence may be taken and documentary and real evidence tendered. A hearing may be by way of oral or written submission. Legal representation may not be necessary, or even permitted. Where a decision maker would not be able to resolve inconsistencies in the evidence purely on written submissions, an oral hearing may be necessary to satisfy the requirement of procedural fairness: Daguio v Minister for Immigration and Ethnic Affairs (1986) 71 ALR 173. A hearing is a generic term referring to any proceeding where argument is heard to render a decision. A trial is a hearing, although hearings may be conducted with less formality than a trial. Bodies conducting hearings, especially tribunals and administrators, need not be required to observe the laws of evidence, for example, the Administrative Appeals Tribunal: (CTH) Administrative Appeals Tribunal Act 1975 s 33(1)(c). Hearings may be conducted adversarially or inquisitorially, for example by the National Crime Authority: (CTH National Criminal Authority Act 1984 SS 11,25. Where a matter is listed for hearing but does not proceed because the judge becomes unavailable, such a hearing is deemed 'discontinued' without the fault of the parties . . ."

Various other texts refer to hearings and all involve a concept of there being some form of evidence or activity taking place before a court or tribunal as, for example, in a trial.

In this particular matter there was never a hearing in that sense before the Tribunal and it is my view that in those circumstances the Tribunal has no jurisdiction to consider an order for costs.

It might be argued by the landlord that there had been a hearing before the Registrar. It is my understanding of section 32 that any consideration of an application for costs arising out of the hearing before the Registrar needs to be made to the Registrar and considered by the Registrar. The Tribunal in my view has no jurisdiction to hear an order for costs involving a hearing before the Registrar.

I am of the view that the Tribunal has no jurisdiction to hear the application brought by the landlord and it is therefore not necessary to consider whether an order for costs would have been appropriate in the circumstances of the filing of the Dispute. I would only mention as a matter of guidance that there seems on the face of the material before me never to have been a dispute which would have enabled the tenants to have invoked the jurisdiction of the Tribunal.