

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CIV-2021-004-000734  
[2022] NZDC 855**

BETWEEN

KELLY ALEXANDRA ROE  
Appellant

AND

GULF VIEW PROPERTY  
MANAGEMENT LTD AND  
MIKE COTTON  
Respondents

Hearing: 19 January 2022

Appearances: Ms Roe in Person  
Mr Cotton in Person

Judgment: 21 January 2022

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**DECISION OF JUDGE G M HARRISON**

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**NAME SUPPRESSION ORDERS APPLY TO THIS DECISION**

[1] Ms Roe appeals against a decision of the Tenancy Tribunal of 21 April 2021.

[2] The claim brought by Ms Roe in the Tribunal was for exemplary damages against the respondents for an alleged failure to comply with s 45(1) of the Residential Tenancies Act 1986 in respect of faulty/incorrect installation of a wall heater. Her claim was dismissed.

**Approach on appeal**

[3] Section 117 of the Act provides in subs (4) as follows:

The provisions of s 85, with any necessary modifications, shall apply in respect of the hearing and determination by the District Court of an appeal brought under this section.

[4] Section 85 provides:

- (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
- (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[5] That section was interrupted by Asher J in *Ziki Investments (Properties) Ltd v McDonald*<sup>1</sup> as follows:

- [69] Section 85(2) states specifically that each dispute shall be determined “according to the general principles of law relating to the matter”. Significantly the reference to determining in accordance with the substantial merits and justice comes after the reference to determining the dispute according to the general principles of law. The overarching application of those general principles is not undermined by the provision that the Tribunal is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities. This simply means that technical requirements, such as matters of form and time, may not be strictly applied. In this the subsection indicates that general principles of law should be interpreted or applied consistently with the merits and justice of the case where possible.

## **Background**

[6] At the material time Ms Roe occupied Flat 16, 5 Park Road, Grafton, Auckland.

[7] Gulf View Property Management was the owner’s agent, and Mr Cotton owned the building through another entity. The Adjudicator did not specify the legal owner of the building and in view of his conclusions was not obliged to.

[8] The proceedings before the Tribunal were somewhat complicated. Ms Roe succeeded at the first hearing of her complaint, but a rehearing was ordered. Ms Roe succeeded again at the second hearing but that also was directed to be reheard.

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<sup>1</sup> *Ziki Investments (Properties) Ltd v McDonald* [2008] 3 NZLR 417.

[9] It is understandable that Ms Roe would endeavour to rely upon the previous decisions of the Tribunal in her favour but as stated correctly by Adjudicator Tam in this case:

2. Being a rehearing, I am not bound by previous findings of the initial Adjudicator who heard this claim. My determination must be based on my own assessment of the evidence and the applicable law before me.

[10] Ms Roe's claim was that the landlord had breached its obligations under s 45 of the Act because the wall heater at her unit had not been installed properly nor in accordance with the manufacturer's instructions. She also contended that the installation was unsafe and a potential fire hazard.

[11] The Adjudicator referred to s 45 of the Act as requiring a landlord to provide and maintain the premises in a reasonable state of repair and comply with any relevant enactment in relation to buildings, health and safety.

[12] That is a correct statement of the relevant law.

[13] Section 45 as relevant provides:

- (1) Landlord shall—
  - (c) comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises.

### **Did the Tribunal err?**

[14] In my view, no. Ms Roe's submission was essentially that the wall heater in question should have been certified by a registered electrician as being safe. She did not refer to any statute or regulation imposing that requirement.

[15] For his part Mr Cotton claimed that an electrician had conducted the necessary supervision.

[16] At [11] of the decision the Adjudicator stated:

The landlord had relied on its electrician in the installation of the device and had duly engaged an electrician to recheck the heater after being notified of the tenant's concern. The electrician advised the landlord that the heater was correctly installed and safe. The landlord was entitled to rely on its electrician's advice.

[17] That was an evidentiary finding open to the Adjudicator with no evidence to the contrary. Not only that, but the Adjudicator had evidence from the importer of the heater.

[18] He said:

[7] However, I accept the opinion expressed by the importer of the Gold Air heater CBD Electrical that it is in order for the power cord to run down the inside of the panel in this manner, even though this appear (sic) to contradict the instruction's manual itself. CBD Electrical confirmed the supplier Gold Air's clarification that what the instruction is meant to prohibit is the running of the cable diagonally behind the heater i.e. passing from right to left of the heater. The tenant's heater (sic, cord) had not been installed diagonally behind the heater.

[19] The Adjudicator also noted that no evidence had been adduced from electricians or other experts to contradict the landlord's evidence, or that the wall heater had been installed in an unsafe manner or that it constitutes a fire hazard.

[20] On that basis the Adjudicator dismissed Ms Roe's application. I am of the view that the decision accords with the relevant law and has not been demonstrated to be incorrect.

## **Conclusion**

[21] The Adjudicator went on to consider that if the heater had been installed incorrectly whether an award of exemplary damages was justified.

[22] The Adjudicator recorded that s 109(3) of the Act requires a finding that a party committed an unlawful act intentionally before an award of exemplary damages may be made. The Adjudicator concluded that the landlord had not committed any

unlawful act intentionally. Indeed, at the hearing Ms Roe accepted that she was not claiming that Mr Cotton had intended to burn the building down.

[23] For the foregoing reasons the decision of the Adjudicator has not been established to be wrong in any respect, and the appeal is dismissed accordingly.

[24] The Tribunal suppressed the names and identifying details of the parties, and that order continues in force.

A handwritten signature in black ink, appearing to read 'G M Harrison', with a stylized, cursive script.

G M Harrison  
District Court Judge