

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Murray & Anor v Ray Bachmann Real Estate* [2024]
QCATA 45

PARTIES: **CLARA MURRAY**
DOUGLAS MURRAY
(applicants/appellants)

v

RAY BACHMANN REAL ESTATE
(respondent)

APPLICATION NO/S: APL122-23

ORIGINATING
APPLICATION NO/S: MCDT 174-23

MATTER TYPE: Appeals

DELIVERED ON: 17 April 2024

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Deane

ORDERS:

- 1. Leave to appeal is granted.**
- 2. The appeal is allowed as far as it relates to claims other than for termination.**
- 3. The decision of 12 April 2023 in Brisbane claim MCDT174-23 dismissing claims other than for termination is set aside.**
- 4. Claims other than for termination are remitted for reconsideration according to law by a different Adjudicator with the hearing of additional evidence in respect of the Tribunal's jurisdiction to hear the claims, if deemed necessary by the Tribunal, on a date to be determined by the registrar.**

CATCHWORDS: APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES - ERROR OF LAW - PARTICULAR CASES INVOLVING ERROR OF LAW – DENIAL OF NATURAL JUSTICE - whether leave to appeal should be granted – whether appeal should be allowed - minor civil dispute – residential tenancy dispute - where initial application sought termination, compensation and other orders – where application dismissed – where not afforded the opportunity to make submissions about claims other than for termination

APPEAL – GENERAL PRINCIPLES – RIGHT OF APPEAL – WHEN APPEAL LIES - ERROR OF LAW- PARTICULAR CASES INVOLVING ERROR OF LAW — FAILURE TO GIVE REASONS FOR DECISION – EXTENT OF OBLIGATION TO GIVE REASONS – GENERALLY – whether leave to appeal should be granted – whether appeal should be allowed - minor civil dispute – residential tenancy dispute - where application sought termination, compensation and other orders – where application dismissed – where reasons did not address claims other than termination

Acts Interpretation Act 1954 (Qld), s 32CA

Human Rights Act (Qld) 2019, s 8, s 9, s 11, s13, s 24, s 25, s 31, s 48

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 3, s 28, s 142

Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s 246A, s 277, s 309, s 311, s 313, s 315, s 327, s 415, s 416, s 419, s 421, s 424, s 426, s 431

Commissioner for Children and Young People and Child Guardian v FGC [2011] QCATA 291

Gemshell Pty Ltd t/as Swallow Fashion [2018] QCATA 27

Leeds v Turner t/as design2BUILD [2021] QCATA 85

Morrison v Chen [2015] QCATA 129

Saxer v Hume [2022] QCATA 25

APPEARANCES & REPRESENTATION: This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009 (Qld)*

REASONS FOR DECISION

- [1] Clara and Douglas Murray rented residential premises through Ray Bachmann Real Estate (the Property Manager). Disputes arose and the Murrays applied to the Tribunal for various orders including for termination on various bases and compensation in the amount of \$5,980.40. Their compensation claim was calculated as follows:
- (a) Maintenance in the amount of \$620.40;
 - (b) Relocation costs in the amount of \$1,000;
 - (c) ‘Tem Acc, Storage, Urg Pack’ in the amount of \$3,000;
 - (d) Bond in the amount of \$1,360.
- [2] The Murrays seek leave to appeal and appeal against the decision of the Tribunal given on 12 April 2023 to dismiss their application.¹

¹ Application for minor civil dispute – residential tenancy dispute filed 20 January 2023 (Initial Application).

- [3] The Tribunal found that a termination order was not required as the Residential Tenancy Agreement had been terminated because the Murrys issued a Notice of Intention to Leave dated 19 January 2023 (Notice) and vacated the premises and the Property Manager, on behalf of the lessor, did not object to the Notice.²
- [4] The Initial Application relied upon sections 246A, 309, 311, 313, 315, 419, 421 and 426 of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (RTRAA).
- [5] Sections 309, 311, 313 and 315 of the RTRAA all relate to applications for termination. Section 246A of the RTRAA provides for an application to set aside the lessor's action if the tenant reasonably believes the action was taken to intimidate or punish the tenant for a matter mentioned in section 246A(1)(a). Such applications must be brought within a very short time frame of the tenant becoming aware of the lessor taking the action.³ Section 419 of the RTRAA relates to applications about breach of agreements, section 421 of the RTRAA relates to matters which the tribunal must have regard to for orders for compensation and section 426 of the RTRAA relates to disputes about lessor's notices.
- [6] The parties were ordered to file any documents upon which they relied in respect of the Initial Application prior to the oral hearing.⁴
- [7] The Murrys contend that they were denied natural justice. They say the learned Adjudicator did not allow them to present their case before making his decision and only took into account the Notice and section 327 of the RTRAA. They say that they issued the Notice on the grounds of objectionable behaviour by the Property Manager and that although they vacated the premises in January 2023 the tenancy agreement had an end date of 4 August 2023 so that they ought to be entitled to compensation for the breaches they rely upon.
- [8] In these appeal proceedings the Murrys seek orders that:
- (a) The residential tenancy agreement is terminated by way of three unremedied breaches and objectionable behaviour;
 - (b) they be compensated \$5,980.40 for repudiation of the Residential Tenancy Agreement 'which ceased by force and duress, yet had seven months remaining';
 - (c) 's 104RBA and s 104RD of the Fire and Emergency Services Act do not give rise to the lessor to test the smoke alarms at renewal unless the provisions of s 277 of the RTRAA have been fulfilled';
 - (d) 's 192 RTRAA does not enliven entry into premises complying with Fire and Emergency Services Act 1990 unless the provisions of s 277 of the RTRAA have been fulfilled'.
- [9] The parties were directed to file submissions and for the Application for leave to appeal and appeal to be determined on the papers. Submissions have been received from the Murrys. No submissions have been received from the Property Manager. I am satisfied that the Property Manager has been served with a copy of the

² Application for leave to appeal or appeal filed 2 May 2023.

³ *Residential Tenancies and Rooming Accommodation Act 2008* (Qld), s 246A(3) (RTRAA).

⁴ Decision 22 February 2023.

Application for leave to appeal or appeal⁵ and received copies of the Appeal Tribunal's directions.

- [10] A party may appeal to the appeal tribunal against a decision of the tribunal if a judicial member did not constitute the tribunal.⁶ The learned Adjudicator is not a judicial member.
- [11] An appeal of a decision in a proceeding for a minor civil dispute may only be made if the party has obtained leave to appeal.⁷
- [12] This is an application for leave to appeal and to appeal the decision of 12 April 2023. The Murrays seek to raise issues about other decisions of the Tribunal and other administrative matters. This is not an application for leave to appeal and to appeal those decisions or administrative matters. I do not consider those issues further.

Should leave to appeal be granted?

- [13] I grant leave to appeal.
- [14] Leave to appeal will usually be granted where:
 - (a) there is a reasonable argument that the decision is attended by error; and
 - (b) an appeal is necessary to correct a substantial injustice to the applicant caused by that error; or
 - (c) there is a question of general importance upon which a decision of the Appeal Tribunal would be to the public advantage.⁸
- [15] I am satisfied that the learned Adjudicator erred in dismissing the entire application without considering issues of entitlement to orders other than termination. The appeal is necessary to correct a substantial injustice. The Murrays are entitled to have their claims to orders other than for termination considered and determined by the Tribunal.
- [16] During the hearing, the learned Adjudicator acknowledged that the Initial Application was made under multiple sections⁹ and that the parties had rights to bring monetary claims even though the tenancy agreement had been terminated.¹⁰
- [17] In dismissing the Initial Application without allowing submissions on matters other than termination he denied the Murrays natural justice. The Tribunal is obliged when conducting proceedings to observe the rules of natural justice.¹¹ As previously observed by the Appeal Tribunal unless it can be shown that the failure did not deprive the Murrays of the possibility of a successful outcome a denial of natural justice or procedural fairness error is established.¹²

⁵ Affidavit of service filed 25 May 2023.

⁶ QCAT Act, s 142(1).

⁷ Ibid, s 142(3)(a)(i).

⁸ *Saxer v Hume* [2022] QCATA 25 at [2].

⁹ Transcript, page 1-2, line 32.

¹⁰ Ibid, page 1-3, lines 19-21.

¹¹ QCAT Act, s 28(3)(a).

¹² *Leeds v Turner t/as design2BUILD* [2021] QCATA 85 at [36].

- [18] I am satisfied that the failure to afford the Murrays procedural fairness denied them the possibility of a different outcome. This was an error of law.¹³
- [19] The Murrays contended that the residential tenancy agreement was still in place despite them giving the Notice and leaving the premises and the Property Manager, on behalf of the lessor, not taking any steps to dispute the Murrays' Notice.¹⁴ They say that they were forced out by the conduct set out in their notices to remedy breach and that the agreement can only be ended when the lessor and the tenant agree in a separate document or, as I understand it, by order of the Tribunal.
- [20] Section 277 of the RRTA provides a number of ways in which a residential tenancy agreement ends. Most relevantly, one of them is that the lessor and the tenant agree in a separate document.¹⁵ Another is that the tenant gives to the lessor a notice of intention to leave under section 327 and hands over vacant possession of the premises on or after the handover day for the notice.¹⁶ Another is the Tribunal making an order terminating the agreement.¹⁷ Upon a proper construction of section 277, any one of the ways provided for in section 277 brings the residential tenancy agreement to an end.
- [21] It is apparent that the learned Adjudicator considered the Initial Application as an application for a termination order.¹⁸ To the extent that the learned Adjudicator found that the residential tenancy agreement had ended pursuant to section 277(c) I am not satisfied there is an error. Further, I am not satisfied that there is an error in his decision to dismiss the application for a termination order.
- [22] A precondition to applying to the Tribunal about an issue such as compensation for claimed breach is making a dispute resolution request.¹⁹ There was evidence before the Tribunal that dispute resolution had been requested by the Murrays and the dispute could not be resolved.²⁰
- [23] The evidence before the Tribunal is that the request was received on 9 September 2022, which is a date after the first claimed unremedied breach dated 24 August 2022²¹ but before both the second claimed unremedied breach dated 13 December 2022²² and the third claimed unremedied breach dated 4 January 2023.²³
- [24] Different applications about an agreement may be considered and decided together.²⁴ The use of the term 'may' indicates that the power is discretionary rather

¹³ Ibid, at [42].

¹⁴ RTRAA, s 424.

¹⁵ Ibid, s 277(a).

¹⁶ Ibid, s 277(c).

¹⁷ Ibid, s 277 (g).

¹⁸ Ibid, s 415(f).

¹⁹ Ibid, s 416.

²⁰ Letters Residential Tenancies Authority to each of Clara Murphy and Douglas Murray and Ray Bachmann Real Estate dated 14 October 2022.

²¹ A copy of a Notice to remedy breach signed by the Murrays on 25 August 2022 is attached to the Initial Application. Its attachment is dated 24 August 2022.

²² A copy of a Notice to remedy breach signed by the Murrays on 13 December 2022 is attached to the Initial Application.

²³ A copy of a Notice to remedy breach signed by the Murrays on 4 January 2023 is attached to the Initial Application.

²⁴ RTRAA s 431.

than mandatory.²⁵ If the learned Adjudicator did not consider it appropriate to deal with the balance of the Initial Application then he ought to have given directions for its future determination or reasons why it should be dismissed.

- [25] To the extent it could be said that the learned Adjudicator dealt with all aspects of the Initial Application, he failed to give adequate reasons as to why the entire Initial Application was dismissed. The Appeal Tribunal has recognised that:

the tribunal's reasons for decision should set out the material findings of fact, the applicable law and the reasons for applying the law in the way expressed in the decision.²⁶

- [26] Although he gave reasons in respect of the termination issue, he did not give reasons for dismissing the claims for compensation and other orders sought. Failure to give adequate reasons for decision is an error of law.²⁷

Should the appeal be allowed?

- [27] I allow the appeal, set aside the decision of 12 April 2023 to the extent that it dismissed claims other than for an order for termination and remit those matters for determination by a different Adjudicator with the hearing of additional evidence.

- [28] Section 146 of the QCAT Act provides:

In deciding an appeal against a decision on a question of law only, the appeal tribunal may—

- (a) confirm or amend the decision; or
- (b) set aside the decision and substitute its own decision; or
- (c) set aside the decision and return the matter to the tribunal or other entity who made the decision for reconsideration—
 - (i) with or without the hearing of additional evidence as directed by the appeal tribunal; and
 - (ii) with the other directions the appeal tribunal considers appropriate; or
- (d) make any other order it considers appropriate, whether or not in combination with an order made under paragraph (a), (b) or (c).

- [29] Given the nature of the errors of law their determination does not resolve the matter as a whole. It is not appropriate for the Appeal Tribunal to substitute its decision where there has been a denial of natural justice. The claims other than for an order for termination as made in the Initial Application should be further considered by a different adjudicator.

- [30] An issue raised by the Property Manager in its submissions emailed 23 February 2023 is that it had not received notice of an unresolved dispute in relation to the latter two breach notices. This raises an issue for determination as to whether the necessary precondition for applying to the Tribunal and therefore its jurisdiction to

²⁵ *Acts Interpretation Act 1954 (Qld)*, s 32CA.

²⁶ *Morrison v Chen* [2015] QCATA 129, [17]; *Commissioner for Children and Young People and Child Guardian v FGC* [2011] QCATA 291 at [47].

²⁷ *Gemshell Pty Ltd t/as Swallow Fashion* [2018] QCATA 27 at [24].

make orders has been enlivened in relation to disputes in the second and third notice to remedy breach. That is a matter which should be remitted to the Tribunal for determination. It is appropriate to allow further evidence to be adduced to allow the jurisdiction issue to be determined.

Human Rights Act (HR Act)

- [31] The HR Act commenced on 1 January 2020. All individuals in Queensland have human rights.²⁸ A human right may only be subjected to reasonable limitations.²⁹
- [32] In deciding this application:
- (a) I am not acting as a public entity because I am not acting in an administrative capacity.³⁰
 - (b) I have interpreted statutory provisions, to the extent possible that is consistent with their purpose, in a way that is compatible with human rights.³¹
- [33] I accept that this application and the on the papers hearing potentially impacts the Murrays' rights to a fair hearing and I considered them in conducting the on the papers hearing and in coming to my decision by considering the documents filed in this appeal proceeding and the proceeding below and by also considering the oral evidence and submissions given by or on behalf of each party by considering the transcript of the hearing before the learned Adjudicator.³²
- [34] I accept that these proceedings and my decision potentially impacts other rights, in particular property rights³³ and the right to privacy and reputation.³⁴ I have considered the Murrays' human rights and am satisfied that the decision is compatible with their human rights as any limitations on those rights are reasonable and justifiable.³⁵ Any limitation of the Murrays' human rights is consistent with the objects of the objects of the QCAT Act.³⁶

²⁸ *Human Rights Act (Qld) 2019*, s 11 (HR Act).

²⁹ *Ibid*, s 13.

³⁰ *Ibid*, s 9(4)(b).

³¹ *Ibid*, s 48.

³² *Ibid*, s 31.

³³ *Ibid*, s 24.

³⁴ *Ibid*, s 25.

³⁵ *Ibid*, s 8, s 13, s 31, s 48.

³⁶ QCAT Act, s 3.