

TENANCY TRIBUNAL - Remote Location

APPLICANT: Riverside 2016 Limited
Landlord

RESPONDENT: Raewyn Saul
Tenant

PROPERTY ADDRESS: 54 Riverside Drive, Riverside, Whangarei 0112

ORDER

Riverside 2016 Limited is granted possession of the premises at 54 Riverside Drive, Riverside, Whangarei 0112 at 12 noon on Thursday 23 May 2024.

Reasons:

1. Both parties attended the remote hearing. Riverside 2016 Limited and its director Allan Inglis are represented by counsel Gemma Edwards. Raewyn Saul was not legally represented.
2. The applicant has applied for possession of the premises pursuant to section 65 of the Residential Tenancies Act 1986 ('RTA').
3. Section 65 RTA provides:
 - (1) Where, on the application of any person entitled to possession of any residential premises, the Tribunal is satisfied that any other person is in possession of the premises as a squatter or trespasser, or otherwise than pursuant to any right of occupation granted to that person by any person having lawful authority to grant that right to that other person, the Tribunal shall make a possession order granting possession of the premises to the applicant.
 - (2) ...
 - (3) To avoid doubt, the Tribunal has jurisdiction under this section even though the premises are not subject to a tenancy agreement.

4. Riverside 2016 Limited have applied for a possession order under section 65 RTA on the basis that:
 - a) The premises are residential premises;
 - b) The applicant is entitled to possession of the premises; and
 - c) The occupant Ms Saul is in possession of the premises other than pursuant to any right of occupation granted by the applicant.
5. The certificate of title of the residential premises at 54 Riverside Drive, Riverside, Whangarei 0112 shows that the legal proprietor of the property is Riverside 2016 Limited.
6. On 20 February 2024, solicitors for Riverside 2016 Limited issued a trespass notice to the respondent Ms Saul seeking possession of the premises from 5 March 2024, giving her 2 week's notice to vacate.
7. To date, Ms Saul has not vacated the premises thereby resulting in this present application to the Tenancy Tribunal before me.
8. The parties accept that there is no residential tenancy agreement in place between the parties; Ms Saul does not pay rent in exchange of a right to occupy the premises.
9. Notwithstanding the absence of a residential tenancy agreement between the parties, section 65(3) RTA makes it clear that the Tenancy Tribunal has jurisdiction to grant a possession order in favour of the applicant provided that the requirements of section 65(1) RTA are met.
10. As legal owner of the premises, Riverside 2016 Limited is prima facie entitled to possession of the premises. The onus then shifts on the respondent to satisfy the Tribunal that she is in possession of the premises pursuant to a right of occupation granted by the legal owner of the premises.
11. As director of the company, Mr Inglis has previously accorded Ms Saul a licence to occupy the premises. That licence has since been revoked by the company's solicitors when the trespass notice was issued to Ms Saul in February 2024.
12. Ms Saul's contention that she nevertheless retained a right to continue to occupy the premises because she has a beneficial or equitable interest in the premises as a "family home" and "relationship property" under the Property (Relationships) Act 1976 ('PRA') from her former previous relationship with Mr Inglis is not a matter that the Tenancy Tribunal can address in making a determination under section 65 RTA.
13. There are extant proceedings at the Family Court in Whangarei under FAM-2023-088-000247 where an application has been made by Ms Saul for orders dividing relationship property, including this premises at 54 Riverside Drive, Riverside, Whangarei 0112. A notice of claim of interest pursuant to section

42(2) PRA has been earlier lodged against the title of the property by Ms Saul on 4 October 2023.

14. In *Sergeant v Nigro* [2019] NZHC 328 Gordon J held that undetermined claims in separate proceedings challenging an applicant's entitlement to possession and asserting a right to occupation or other interest in the property are not relevant to the Tenancy Tribunal in considering an application for an order under s65 RTA.
15. The High Court in *Sergeant* held at [83] there was evidence before the Tribunal that the applicant held legal title to the property. There was also evidence that they had not given the respondent any right to occupy. On the contrary, there was evidence that they had given him notice that he was required to vacate the property. At [84] counsel for the respondent had asked the Tribunal or District Court to examine an extant claim in the High Court to decide if it has some merit, in other words that it is not speculative, and then determine the very issues that are awaiting determination in the High Court.
16. In *Sergeant*, the respondent had filed a claim in the High Court against the executors/trustees of his former partner's estate challenging the validity of a 2001 Relationship Property Agreement. The respondent Mr Sergeant pleads that if the agreement is invalid, then the transfer of the property to the trust is equally invalid, and the trustees have no right to demand possession of the property. He further pleads that he has an interest in the property under a constructive trust. Mr Sergeant seeks orders, amongst others, setting aside the Relationship Property Agreement, transferring the property from the trust to Mrs Tapsell's estate and declaring that the trustees hold an equal share of the property as trustees on his behalf.
17. After the hearing in the Tenancy Tribunal, Mr Sergeant filed a further amended statement of claim which included a pleading that he had a reasonable expectation of an interest in the property including, but not limited to, a right to occupy the property for the remainder of his life. As part of the amended relief, Mr Sergeant seeks a declaration that he is entitled to remain in the property for the remainder of his life or such time as his health will allow him to remain in the property.
18. Mr Sergeant's claim was yet to be heard in the High Court at the time the Tribunal heard the trustees' claim for a possession order under section 65 RTA.
19. Mr Sergeant also filed an application dated 14 July 2017 in the Family Court for orders under the PRA brought against the executors of Mrs Tapsell's estate and the trustees seeking an order setting aside the 2001 Relationship Property Agreement and other orders.
20. In an affidavit sworn in support of that application, Mr Sergeant deposes as to a demand served on him by the trustees that he vacate the property by 19

October 2016, failing which the trustees would seek an order from the court to remove him from the property. The current status of this proceeding was not made clear to the High Court at the time of the hearing of the appeal against the possession order issued under section 65 RTA though in his affidavit, Mr Sergeant deposed that the trustees attempted to evict him from the property after Mrs Tapsell died. He says he resisted the eviction by registering a caveat to protect his interest in the property.

21. Ultimately, the High Court held:

[91] The wording of s 65 requires the Tribunal to be satisfied that the applicant is “entitled” to possession. The fact that there is an extant claim challenging that entitlement does not change the present position. Similarly, Mr Sergeant’s undetermined claim as to his rights in respect of the property does not change the position that the legal owners have given him notice to vacate.

...

[94] It is not open to the Tribunal to consider the fact of a claim or the contents of the claim in another court when deciding if the trustees were entitled to possession and/or if Mr Sergeant was in possession as a squatter or trespasser or otherwise than pursuant to any right of occupation granted to him.

...

[104]... As noted, once the statutory pre-requisites under s 65 are satisfied, it is mandatory for the Tribunal to make an order. Accordingly, the existence of alternative remedies is irrelevant.

Conclusion

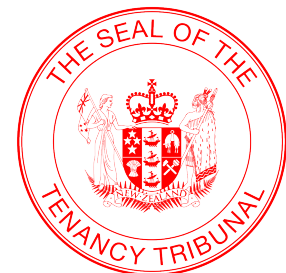
...

[106] ...the Judge was correct to determine that the Tribunal cannot consider claims made by the appellant in another proceeding when deciding if the applicant for an order for possession has proven the pre-condition for an order under s 65. That is the correct position even employing s 85 RTA. That section does not have such a wide ambit so as to allow a consideration of Mr Sergeant’s claim in those other (undetermined) proceedings.

22. Similarly, I cannot inquire into the extant Family Court proceedings filed by Ms Saul in this case, even if ultimately Ms Saul is successful in obtaining an order for possession or occupation order from the Family Court, or an order confirming her legal and beneficial interest in the property. The orders for division of the property as well as occupation of the property as her “family home” under the PRA are all matters that can only be canvassed, addressed and ultimately determined by the Family Court.

23. When dealing with an application for a possession order under section 65 RTA, I cannot consider Ms Saul’s claim in those other undetermined proceedings in the Family Court.

24. Having been satisfied of the statutory pre-requisites under s 65 RTA, it is mandatory for me to make possession order in favour of the applicant company. Ms Saul's undetermined claims as to her rights in respect of the property does not change the position that Riverside 2016 Limited as legal owners have given her notice to vacate when their solicitors served the trespass notice on her in February 2024.
25. Following the High Court's judgment in *Sergeant*, it is not open to me to consider the fact of a claim or the contents of the claim in another court, ie., the Family Court, when deciding if Riverside 2016 Limited was entitled to possession and/or if Ms Saul was in possession as a squatter or trespasser or otherwise than pursuant to any right of occupation granted to her.
26. As to the timing of the possession order, I note that in *Sergeant*, the High Court ordered the unsuccessful respondent Mr Sergeant to vacate the property "within 10 days of the date of the judgment" which, for the avoidance of doubt, the 10 days run from the date of Gordon J's judgment in *Sergeant v Nigro* dismissing the appeal against the decisions of the District Court and Tenancy Tribunal granting the possession order under section 65 RTA.
27. Similarly, I give Ms Saul 10 days from today's order to vacate the premises under section 65 RTA.



J Tam
13 May 2024

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 fesoatai mai le Tenancy Services i le numera 0800 836 262.