

CITATION: JACKSON v GABRIEL [2009] NTMC 38

PARTIES: PRINCE JACKSON
v
MEDHAT GABRIEL
and
SOUZAN GABRIEL

TITLE OF COURT: LOCAL COURT

JURISDICTION: RESIDENTIAL TENANCIES

FILE NO(s): 20930861

DELIVERED ON: 11 SEPTEMBER 2009

DELIVERED AT: DARWIN

HEARING DATE(s): 7 SEPTEMBER 2009

JUDGMENT OF: ACTING JUDICIAL REGISTRAR SMYTH

CATCHWORDS:

PROCEDURE - Application to file appeal out of time – appeal to be lodged within 14 days - unless the court allows an extension of time – considerations which apply

Residential Tenancies Act (NT) s 150(5)(a), 154

Interpretation Act (NT) s 25

Parutu v Gabriel [2009] NTMC 34

REPRESENTATION:

Counsel:

Appellant: NA
Respondent: NA

Solicitors:

Appellant: Self Represented
Respondent: Self Represented

Judgment category classification: B
Judgment ID number: [2009] NTMC 38
Number of paragraphs: 14

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20930861

BETWEEN:

PRINCE JACKSON
Appellant/Applicant

AND:

MEDHAT GABRIEL and
SOUZAN GABRIEL
Respondents

REASONS FOR JUDGMENT

(Delivered 11 September 2009)

Mr SMYTH, ACTING JUDICIAL REGISTRAR:

1. This is an interlocutory application filed by the appellant applicant, seeking an order for an extension of time in which to file a notice of appeal against a decision of the delegate of the Commissioner of Tenancies (“the delegate”). The burden in proving that the extension should be granted lies with the applicant. That is, the applicant needs to prove that sufficient reasons exist to grant the extension of time.
2. Section 150(5) of the *Residential Tenancies Act* (NT) provides:
 - (5) Subject to subsection (6), an application for appeal may be lodged:
 - (a) before 14 days after the date of the order, determination or decision appealed against, unless the court allows an extension of time; or
 - (b) if the Commissioner does not give reasons for the order, determination or decision at the time of making it – within 14 days after the parties are given the reasons.

3. Evidence was given at the interlocutory application by affidavit material filed by both the applicant and respondents.
4. The background to this matter is as follows:
 - (i) An inquiry pursuant to the *Residential Tenancies Act* was held before the delegate on 3 April 2009.
 - (ii) At that inquiry the applicant did not appear. The respondents appeared.
 - (iii) Following the inquiry the delegate made an order and published his reasons. The order and reasons were dated 6 April 2009. The delegate ordered the applicant, along with his co-tenants (Florence Jackson, Tardi Brown, Caroline Brown), to pay \$3669.05 or \$1869.05 nett (after deduction of the security deposit). The co-tenants were the applicant's mother and sisters, and presently reside in Perth. The delegate's order was made for compensation for unpaid rent, excess water consumption and the costs of various repairs and cleaning.
 - (v) The delegate's order was registered with the Local Court on 23 April 2009.
 - (vi) In May 2009 the respondent commenced recovery proceedings against the applicant in the Local Court. The applicant was personally served with documents pertaining to those proceedings on 29 June 2009.
 - (vii) On 10 August 2009 the applicant filed a Notice of Appeal, appealing the delegate's order.
5. It was the applicant's evidence that, his appeal was filed out of time because he was not made aware of the delegate's inquiry nor the orders which were made. It was his evidence that on 16 December 2008 he had moved from the premises at Bradshaw Terrace (the rental property the subject of dispute) to a premises in Nightcliff. He did not receive the

notice of inquiry and did not attend the inquiry. It was his evidence that he knew nothing of the processes brought against him until a process server served him with papers relating to the recovery proceedings on 29 June 2009.

6. In relation to the substantive matter, it was the applicant's case that no outstanding rent was due and that the tenancy expired on 20 December 2008, not 10 January 2009 as the respondents claim. The applicant alleges that the document presented to the delegate, showing a lease expiry date of 10 January 2009, was not correct, and that it had been altered by the respondents. That was denied by the respondents.
7. In relation to compensation for costs of repairs and cleaning, it was the applicant's case that he fully intended to prosecute his appeal, that he cleaned the premises with two friends (one who he may call to give evidence) and that he took photographs as proof. Various photographs appear on the Court file.
8. Case law in relation to applications for an extension of time make it clear that there needs to be "good reason" to disturb a vested interest in a judgment (see *Parutu v Gabriel* [2009] NTMC 34 and the cases cited therein). The factors to be considered in an extension of time application include the length of the delay in commencing the appeal, the reasons for the delay, the chances of the appeal succeeding if the extension was granted and the degree of prejudice to the respondent if the time was extended.
9. The respondents have a vested interest, they have a registered judgment of the Local Court and have commenced recovery proceedings in that Court.
10. The length of delay in filing the appeal is some 3.5 months. The applicant's explanation was that he did not receive the notice of inquiry from the delegate or the Department of Justice - Consumer Affairs. Given

that the applicant had moved out of the premises in December 2008, and the inquiry was held in April 2009, it is entirely feasible that he did not receive any notice, notwithstanding the operation of s 154 of the *Residential Tenancies Act* (NT) and s 25 of the *Interpretation Act* (NT). I am inclined to believe the applicant, namely that he did not receive notice of the delegate's inquiry or order. Although the length of delay is long, it is not inordinately long.

11. In relation to the chances of the appeal succeeding, I was, through the submissions of the parties, able to gain an impression as to the prospects of the appeal. It is the applicant's claim that the respondents altered the lease document so, it is assumed, they could claim extra rent. That is a serious claim, proof of which will require a high civil standard. I am not persuaded that, on the basis of the submissions made, such a ground has any great chance of success. However, the issue of cleaning costs and repairs is a different matter. The applicant clearly believes he has a case, he claims he has witnesses and photographic evidence, and he wishes to put that evidence before the Court on appeal.
12. In relation to the prejudice the respondents face by the granting of an extension, I note a further delay would deprive them of the \$1869.05 which has been ordered. Further, as submitted, they would be put through the burden of going through the process again and having to prove their case again. Although those matters may cause some prejudice, they are not, in my mind and in these circumstances, significant. There was no issue that the respondents were unable to properly respond to an appeal, they still retained all documentary evidence necessary. The only issue related to photographs in the possession of the Department of Justice – Consumer Affairs, which may be required for the appeal (having been presented to the delegate at the inquiry). If the Department of Justice - Consumer Affairs possesses materials which were tendered by the respondents to the

delegate, then I would expect they could be returned voluntarily, otherwise a summons for their production could be sought.

13. In summary, the applicant has sworn on affidavit that he did not receive notification from the delegate in relation to either the inquiry or orders. Further, he was only made aware when recovery proceedings were served on him. That explains the delay. Although the delay is long it is not inordinately long, the appeal is not totally hopeless and there is little relevant prejudice to the respondents.

14. I therefore make the following orders:

1. The application to extend time to file an appeal from a decision of the delegate is granted; and
2. The appeal is listed for a pre-hearing conference on Friday 25 September 2009 at 11.00am.

Dated this 11th day of September 2009

CRAIG SMYTH
ACTING JUDICIAL REGISTRAR