

CITATION: *Albertoni Pty Ltd v Kenneth Wu* [2022] NTLC 014

PARTIES: Albertoni Pty Ltd

v

Kenneth Wu

TITLE OF COURT: LOCAL COURT

JURISDICTION: CIVIL

FILE NO(s): 2022-00249-LC

DELIVERED ON: 9 May 2022

DELIVERED AT: Darwin

HEARING DATE(s): 5 and 22 April 2022

DECISION OF: Acting Judge Ben O'Loughlin

CATCHWORDS:

Notice to quit – authorised in writing

Business Tenancies (Fair Dealings) Act 2003

Project Blue Sky Inc v Australian Broadcasting Authority [1998] 194 CLR 355

TCG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd [2020] NTSC 4

REPRESENTATION:

Applicant: Ms A Howland, Ward Keller

Respondent: Self-Represented

Decision category classification: B

Decision ID number: [2022] NTLC 014

Number of paragraphs: 21

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA
No. 2022-00249-LC

BETWEEN:

Albertoni Pty Ltd

Applicant

AND:

Kenneth Wu

Respondent

REASONS FOR DECISION

(Delivered 9 May 2022)

ACTING JUDGE O'LOUGHLIN

Introduction

1. The Respondent has fallen behind in paying rent and the Applicant has applied for a warrant of possession pursuant to the *Business Tenancies (Fair Dealings) Act 2003* ("the Act").

Background

2. The parties entered into a business tenancy in February 2016 which was for a term of three years, but continued as a monthly periodic tenancy thereafter.
3. The Respondent's failure to pay due rent caused the Applicant to apply a warrant of possession under section 131 of the Act.
4. The Applicant relied on one affidavit which was sufficient to prove most of the necessary matters for a warrant of possession to issue. However, after the Court raised concerns, leave was granted for the Applicant to file further evidence and submissions on 1) the period of the notice to quit; and 2) whether the landlord gave its agent written authorisation to sign the notice.

Period of Notice

5. The first issue was whether the Applicant had given the correct amount of notice where section 130 (1) provides:
"The period of the notice to quit premises is the period fixed by the lease or, whether rent is payable at regular intervals, the period of one such interval".

6. Here the term of the lease provided for 7 days notice and Respondent was (mostly) paying rent at regular intervals of 7 days. Thus to comply with section 131, the Applicant was required to give notice of 7 days.
7. The evidence shows that the landlord gave eight days notice. This is a minor difference which goes in favour of the tenant and any reading of Division 2 of the Act, dealing with repossession of business premises, does not suggest that giving one extra days notice would invalidate the notice of possession.

Authorised in Writing

8. The second issue was whether the Applicant gave written authorisation to its agent to issue the notice. This is required by section 125 of the Act:
*"A notice to quit given by landlord is to be in writing and signed by the landlord or the landlord's agent **authorised in writing**"* (emphasis added).
9. In this matter the notice to quit was in writing, and signed by the agent of the Applicant, but there was no evidence of the agent having obtained written authorisation from the landlord.
10. Further submissions were filed on 21 April 2022 but the Applicant was unable to produce a written authorisation permitting the agent to sign the notice.
11. The Applicant argued *Project Blue Sky Inc v Australian Broadcasting Authority*¹ claiming a proper reading of the Act meant this failure did not invalidate the notice.
12. Repossession of a business premises is a serious step where section 124 actually creates an offence:
"a person must not, except in accordance with an order of a court, enter a business premises of which a person has possession as a tenant under a business lease... for the purpose of recovering possession of the premises, whether entry is affected peaceably or otherwise".
13. Thus a person cannot take possession except with a court order, where anyone breaching this provision can be sentenced to a term of imprisonment of six months.
14. As stated above section 125 states that "a notice to quit given by landlord is to be in writing and signed by the landlord or the landlord's agent authorised in writing".
15. Section 131 (1) repeats the requirement of an agent's authorisation in writing:
*"where a landlord has given a tenant a notice to quit **which complies with this division**, the landlord **or agent authorised in writing**, may any time within 60 days after the expiry of the term of the notice, apply to the Local Court for a warrant of possession"*.
16. There are only 10 sections in this Division dealing with repossession of business premises and yet the legislature as twice stated that a notice by an agent must be authorised in writing.

¹ [1998] 194 CLR 355

17. Further subsection 131 (1) clearly states that a landlord can only apply for a warrant of possession if it has given a tenant a notice to quit which complies with this Division. This notice was signed by an agent who was not authorised in writing and it therefore does not comply with the Division 2.
18. Mildren J. in *TCG Nominees Pty Ltd v Aileron Pastoral Holdings Pty Ltd*² dealt with a notice which gave 20 days notice (30 were required), was unsigned by landlord or agent, and was not properly served. Given these three defects, it was unsurprising that His Honour found the notice to be invalid³.
19. Here the lack of written authorisation to the agent is only one deficiency but it is sufficient to conclude that the notice to quit does not comply with the Act and is therefore invalid.

Orders

20. The Applicant's proceeding is dismissed; and
21. The Applicant is to pay the costs of the Respondent at 100% of the Supreme Court scale to be taxed or agreed.

² [2020] NTSC 4

³ at [39]