

CITATION: *Amos v Knights and Ors* [2012] QCAT 88

PARTIES: Mr Edward Amos
(Applicant/Appellant)
v
Mrs Carol Knights
Mr Jason Knights
Mr John Knights
(Respondents)

APPLICATION NUMBER: MCDT2127-11

MATTER TYPE: Residential tenancy matters

HEARING DATE: 2 February 2012

HEARD AT: Brisbane

DECISION OF: **Dr Bridget Cullen, Member**

DELIVERED ON: 14 February 2012

DELIVERED AT: Brisbane

ORDERS MADE: [1] **The Application of Mr Edward Amos is dismissed.**
[2] **Mr Edward Amos is not to list the Respondents on the TICA database or any other like database arising out of the tenancy at 118 Oriel Road, Clayfield.**

CATCHWORDS: Minor Civil Dispute – Residential Tenancies – Claim by landlord for damages following tenants vacating the property – Council issued notice that building was dilapidated and infested with vermin – landlord’s application dismissed

Residential Tenancies and Rooming Accommodation Act 2008, ss 66, 429

APPEARANCES and REPRESENTATION (if any):

The parties were self-represented.

REASONS FOR DECISION

- [1] In this application, commenced under section 429 of the *Residential Tenancies and Rooming Accommodation Act 2008* the applicant, Mr

Edward Amos, seeks to recover damages following the ending of a tenancy at 118 Oriel Road, Clayfield. The respondents, Mrs Carol Knights, Mr Jason Knights and Mr John Knights, were tenants at the property, owned by Mr Amos, for a period commencing on 9 September 2009 and ending on or about 10 September 2011.

[2] The damages sought by Mr Amos consist of the following:

- \$1,200.00 for internal cleaning;
- \$149.50 for repairing a smashed window;
- \$465.00 for building repairs;
- \$200.00 for mowing and rubbish removal;
- \$95.00 QCAT filing fee.

Interplay of the Entry Condition Report and Council Enforcement Notice

[3] Central to this dispute are the circumstances surrounding the ending of the tenancy. In her evidence before the Tribunal, and in her sworn affidavit of 30 January 2012, Mrs Knights explains that she and her co-tenants vacated 118 Oriel Road following receipt of an order from the Brisbane City Council requiring them to leave. I have been provided by the parties with a copy of the Council's "Enforcement Notice", which indicates that the Compliance and Regulatory Services section of the Brisbane City Council delivered the Enforcement Notice on the basis that the Council believed that 118 Oriel Road was in a dilapidated condition and infected with vermin.

[4] In his affidavit material, Mr Amos explained that he believed that the Enforcement Notice was delivered vexatiously, and attached a chain of legal correspondence, indicating that the Enforcement Notice was invalidly delivered for the reason that it was sent to the Knights, rather than to Mr Amos as the owner of the property. On this basis, Mr Amos successfully contested the matter in the District Court before the Honourable Justice Jones, and was awarded his costs in the matter.¹ Despite this success, the Enforcement Notice itself was not declared invalid, and having been now issued to Mr Amos, stands.

[5] In support of his argument that the Knights caused damage to the property, Mr Amos sought to rely upon the Entry Condition Report prepared by himself, and signed by the Knights at the time that they entered into the lease for 118 Oriel Road. The entry condition report itself is undated. In any event, and surprisingly so, the Entry Condition Report indicates that all was "clean, undamaged, and working" at the time of commencement. The report does contain notations to indicate that the carpet was "old". I say that this surprising, for the reason that the Enforcement Notice issued by the Council, in sharp contradistinction to the Entry Condition Report, refers to the building itself as being

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Christopher McCahon and Edward Amos, D1047/11, order of 20 July 2011.

“dilapidated”. The Council has taken the trouble to indicate that as early as 24 February 2009, and prior to the Knights’ tenancy, the Council had received information that the dwelling at 118 Oriel Road had the following defects:

- Numerous windows in the external walls of this dwelling have been smashed allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - Boarding on an external wall of the dwelling was missing, allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - A number of windows were unable to be fully closed thus allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - Numerous window awnings were in a poor state of repair and presented a potential risk of falling away from the main building.
 - Vegetation waste beneath the dwelling was infested with vermin.
3. An external inspection of the premises by Council Officers, to assess the condition of the dwelling, revealed that the dwelling appeared to be in a poor state of repair.
4. The dwelling was considered dilapidated for the following reasons:
- Numerous windows in the external walls of this dwelling have been smashed allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - Boarding on an external wall of the dwelling was missing, allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - A number of windows were unable to be fully closed thus allowing for water/moisture to penetrate into the habitable areas of the dwelling.
 - Numerous window awnings were in a poor state of repair and presented a potential risk of falling away from the main building.
5. The dwelling was considered to be infected with vermin for as a result of vegetation waste beneath the dwelling being infested with vermin.

[6] It strikes me as highly unusual that the Entry Condition Report would reflect a pristine living environment in circumstances where the Council documents suggest the contrary. Mr Amos provided QCAT with photographic evidence, in support of his application, which he submitted reflected the damage by the Knights to the property. In my view, the photographs do not assist Mr Amos in this respect, but rather suggest that the property is dilapidated, with exposed ceiling and door joints that are not vermin proof, partially painted walls, and carpet that is beyond “old” and is well and truly past its use by date.

[7] Mrs Knights’ evidence offered an entirely plausible explanation for the incongruous depiction of the property as immaculate on the Entry Condition Report, and the uninhabitable condition reflected on the Council’s Enforcement Notice. She explained that when the tenants entered into the lease they were “desperate”. She agreed to take the lease on the basis that that the rent was low, and her family needed somewhere to live. It has been my experience that when people are

desperate, they are quite possibly willing to sign anything that ends their short term pain and agony. It is my view that Mrs Knights was less concerned with what was on the Entry Condition Report than she was with having a roof over her head. For this reason, and with regard to the Enforcement Notice, I do not accept that the Entry Condition Report reflected the property's condition in an accurate state.

- [8] At the hearing, Mr Amos drew my attention several times to the fact that the Knights had failed to complete an "Exit Condition Report", as required by s 66 of the *Residential Tenancies and Rooming Accommodation Act 2008*. However, the fact that there was no exit condition report prepared does not, in and of itself, mean that Mr Amos is entitled to the relief that he seeks.
- [9] I agree with Mr Amos that tenants are obliged to return properties to the condition they were at commencement of the lease, subject to reasonable wear and tear. However, in these circumstances, I do not believe that the premises were in a suitable condition to be rented, at least not during the period of the Knights' lease. The Council's Enforcement Notice refers to the property being in a dilapidated condition and infected with vermin as early as 24 February 2009, approximately half a year before the property was leased to the Knights.

Claim for cleaning costs

- [10] I endeavoured to hear Mr Amos's concerns carefully, to ensure that there was not some part of the picture that I was missing. One of Mr Amos' concerns was that the Knights allegedly left the property unclean. In this regard, Mr Amos presented QCAT with an invoice from *Jannies Cleaning Services*, in the amount of \$1,200.00. As the invoice contained little detail about the work that was going to be performed by *Jannies* at the property, and was for a substantial amount, during the course of the hearing, the Tribunal contacted "David," the gentleman whose telephone number appeared on the invoice provided to Mr Amos, to obtain further details.
- [11] David explained that the property was in a filthy state when he saw it, and it was his view that it had been run down for years, and that it couldn't have been put into that condition over the two-year period that the Knights were in occupation. In fact, David explained that it would have, in his view, taken "forty people living in the property to get it in the condition" that it was. It was very apparent that David was indicating that the work required to bring the property up to a habitable state was considerable, and was the result of many years of accumulated grime and filth, as opposed to that which might be expected following the ending of a two-year tenancy. David then went on to say that he was actually hoping that *Jannies* did not get the job, as they didn't really want to do the work.
- [12] I then allowed Mr Amos to ask questions of David. Mr Amos asked David if it was true that he had not seen the property at the time that the Knights had entered into the lease. David responded that this was the case.

However, based upon the Council's Enforcement Notice, and Mrs Knights' evidence relating to the condition of the property, I think it far more likely that the property was run down and dilapidated before the Knights ever moved in.

Claim for building repairs

[13] I next endeavoured to get to the bottom of Mr Amos' \$465.00 claim for "building repairs". On this issue, I was presented with two very different versions about how an interior and exterior door came to be damaged. Mrs Knights explained that she was in the shower one day, when the window fell out of the door frame and smashed. She also explained that she had asked Mr Amos to repair a swelling exterior door, which they could not open or close properly, and that Mr Amos did not do so. Following Mr Amos's failure to rectify the swollen exterior door, Mrs Knights admits that the tenants shifted an interior door to sit in place of the exterior door. Over time, as the interior door was not suitable for external use, it began to weather.

[14] Mrs Knights' evidence was substantiated by the evidence of Mr Greg Hobson, the builder from whom Mr Amos obtained a quotation for repair. During the hearing, the Tribunal called Mr Hobson to ask him to explain the reasons that it was necessary to replace the doors. Mr Hobson explained that the door was an interior door that was not suitable to be in an exterior position.

Nature of the parties' relationship

[15] Mr Amos disputed Mrs Knights' evidence on the door issue, alleging that he had not been asked to repair the external door, and pointing out that as he lived next door to the Knights, they could have discussed the matter over the fence. Having had the parties in front of me in QCAT, and having also had the opportunity to read the tenor of the correspondence delivered by Mr Amos to the Knights following the ending of the tenancy, I do not believe that an "across the fence" exchange would have been possible. This relationship was certainly not one of convivial chats, social barbeques, and the watering of one another's plants during holiday sojourns.

[16] In contrast, I believe that Mr Amos created an environment of intimidation. As evidence of this, I refer to the letters delivered by Mr Amos to the Knights on 19 September 2011, wherein he advises them:

"if I do not hear from you in writing within 24 hours then I would assume you have no intention of honouring your legal obligation to reinstate the premises in which case I will contact the TV current affairs and papers to film the interior of the property to show the way you lived and the dirt and rubbish left behind to expose and identify you in the public interest as a warning to other landlords to avoid you. I will have your details recorded on TICA in due course. In any event I will sue you for all lost rent and damage and after judgment garnish your wages. You will be liable for all legal expenses. You will see it is in your

best interests to promptly reinstate the premises to their former condition when leased to you."

- [17] This is not a straightforward landlord/tenant dispute in any way. QCAT has seen numerous cases where irresponsible and careless tenants damage a landlord's property, and then disappear. In such circumstances, landlords deserve the full support afforded by the *Residential Tenancies and Rooming Accommodation Act 2008*. Landlords have every right to anticipate that their hard earned dollars invested in rental property will not be frittered away by tenants who do not keep up their end of the rental bargain. This is not one of these cases. Rather, the reality here is that the Knights were forced to vacate following the Council's issuance of an Enforcement Notice declaring the property to be dilapidated and infected with vermin.

Decision

- [18] For the reasons set out above, I do not accept Mr Amos' evidence that the Entry Condition Report reflected the true condition of the property at 118 Oriel Road. As I have found that this property was not in a condition that it could have reasonably been let out to begin with, I am dismissing Mr Amos' Application.
- [19] Finally, as Mr Amos has threatened to place the Knights on the TICA list or "black list", I will make an order that Mr Amos is not to place the Knights on the TICA database, or any other similar database, arising out of the tenancy at 118 Oriel Road, Clayfield.