

CITATION: *Avery & Ors v Pahwa & Anor* [2018] QCATA 53

PARTIES: Peter John Avery
(First Applicant)

Jill Lesley Avery
(Second Applicant)

Benjamin John Avery
(Third Applicant)
v
Suresh Pahwa
(First Respondent)

Lynnette Pahwa
(Second Respondent)

APPLICATION NUMBER: APL148-17

MATTER TYPE: Appeals

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: **Justice Daubney, President**

DELIVERED ON: 10 May 2018

DELIVERED AT: Brisbane

ORDERS MADE:

- 1. The applicants have leave to appeal.**
- 2. The appeal is allowed.**
- 3. The decision of 11 April 2017 transferring the matter to the Magistrates Court at Southport for further hearing is set aside.**
- 4. The matter is otherwise remitted to the Tribunal at Southport for further hearing.**

CATCHWORDS: APPEALS – MINOR CIVIL DISPUTE – RESIDENTIAL TENANCY DISPUTE – application for compensation – where compensation sought is in excess of prescribed amount – whether Tribunal has jurisdiction when claim over \$25,000

Queensland Civil and Administrative Tribunal Act 2009, s 11, s 13

Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009, s 94

Residential Tenancies and Rooming Accommodation Act 2008, s 516

Hough v Department of Housing and Public Works [2012] QCAT 579

North South Real Estate & Anor v Kavvadas [2017] QCAT 306

APPEARANCES:

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] The applicants were the tenants of a unit owned by the respondents at Main Beach on the Gold Coast. On 13 September 2016, there was a leak from the unit's hot water system. The applicants claim that a considerable amount of their personal property was damaged as a consequence of that leak. The applicants also contend that they were not able to use several of the bathrooms in the unit for a considerable period during their tenancy and also that the property was afflicted by mould issues.
- [2] On 10 March 2017, the applicants filed an "application for minor civil dispute – residential tenancy dispute" in the Tribunal. Relevantly, the application sought orders under the *Residential Tenancies and Rooming Accommodation Act 2008* ("RTRAA") for the payment of money or compensation totalling \$88,173, comprising \$56,923 for the damage to property and \$31,250 for "rent reduction".
- [3] On 10 April 2017, the application came on before a QCAT Adjudicator at Southport. The adjudicator took the view that, because the amount claimed by the applicants was more than \$25,000, it was beyond QCAT's jurisdiction. The adjudicator referred the matter to a Senior Member of the Tribunal with a recommendation that the matter "be heard by a Magistrate with jurisdiction to hear the claimed amount". Consistent with that recommendation, a decision was then formally made that the application "be transferred to the Magistrates Court at Southport for further hearing.
- [4] On 8 May 2017, the applicants filed an "application for leave to appeal or appeal" in respect of the decision to transfer the matter to the Magistrates Court.

- [5] Put simply, the question raised is whether QCAT has jurisdiction in a “tenancy matter”,¹ where the amount claimed exceeds \$25,000, which is the “prescribed amount” for a minor civil dispute under the *Queensland Civil and Administrative Tribunal Act 2009* (“QCAT Act”).
- [6] Differing views about this question have been expressed in a number of QCAT decisions. In *Hough v Department of Housing and Public Works*,² it was decided that, on a proper construction of the RTRAA and the QCAT Act, there was no such monetary limitation on QCAT’s jurisdiction in tenancy matters. A contrary approach, however, was adopted in *North South Real Estate & Anor v Kavvadas*.³ Given that divergence, it is clearly appropriate for the applicants to have leave to appeal so that this discrete issue might be settled.
- [7] In the QCAT Act, “minor civil dispute” is defined in Schedule 3 to mean, amongst other things, “a tenancy matter”. “Tenancy matter” is defined in Schedule 3 as “a matter in relation to which a person may, under the [RTRAA] apply to the tribunal for a decision”.
- [8] Section 11 of the QCAT Act confers jurisdiction on the Tribunal to hear and decide a minor civil dispute. Section 13(1) provides that, in a proceeding for a minor civil dispute, the Tribunal must “make orders that it considers fair and equitable to the parties to the proceeding in order to resolve the dispute but may, if the tribunal considers it appropriate, make an order dismissing the application”. However, that general power is circumscribed by section 13(2) which relevant provides:
- “(2) For subsection (1), the tribunal may make only the following final decisions to resolve the dispute –
- ...
- (b) for a tenancy matter – a decision the tribunal may make in relation to the matter under the [RTRAA].”
- [9] Section 13 then goes on:
- “(3) However, the tribunal can not make an order or decision under subsection (2) that –
- (a) purports to require payment of an amount, performance of work or return of goods of a value of more than the prescribed amount; or
- (b) purports to grant relief of a value of more than the prescribed amount from the payment of an amount; or

¹ As that term is defined in the *Queensland Civil and Administrative Tribunal Act 2009*.

² [2012] QCAT 579.

³ [2017] QCAT 306.

(c) combines 2 or more orders mentioned in subsection (2)(a)(i) to (iv) and purports to award or declare entitlements or benefits (or both) of a total value of more than the prescribed amount.

(4) Subsection (3) does not apply to –

(a) a claim for repair of a defect in a motor vehicle under the *Motor Dealers and Chattel Auctioneers Act 2014*, schedule 1, section 13; or

(b) a tenancy matter; or

Note –

See the *Residential Tenancies and Rooming Accommodation Act 2008*, section 516 for tenancy matters involving amounts greater than the prescribed amount.

(c) a claim that is the subject of a dispute under the *Building Act 1975*, chapter 8, part 2A.”

[10] The “prescribed amount” referred to in section 13(3) is \$25,000.⁴

[11] Directly relevant for present purposes is section 13(4)(b) which expressly provides that the monetary limitation imposed on QCAT’s minor civil dispute jurisdiction by reference to the “prescribed amount” does not apply to a tenancy matter.

[12] Section 13(4)(b) also expressly calls up consideration of section 516 of the RTRAA.⁵ Recalling that, for the purposes of the QCAT Act, a “tenancy matter” is one in which a person may, under the RTRAA, apply to QCAT for a decision, applications to QCAT under the RTRAA are dealt with in Chapter 6 Part 2 of the RTRAA. It is unnecessary for present purposes to traverse the broad range of applications which may be made to the Tribunal under the RTRAA, but is sufficient to note that a tenant under a residential tenancy agreement may apply to QCAT for an order about a breach of a term of a residential tenancy agreement under section 419. Section 420 then nominates a range of orders which the Tribunal is empowered to make on an application about a breach of a residential tenancy agreement, including an order for the payment of money and an order for compensation.

[13] Section 516 of the RTRAA provides:

“(1) This section applies to an application if –

(a) a provision of this Act provides that the application may be made to a tribunal; and

⁴ See definition of “prescribed amount” in QCAT Act, Schedule 3.

⁵ The “note” in section 13(4)(b) is part of the QCAT Act – *Acts Interpretation Act 1954*, section 14(4).

(b) the application seeks the payment of an amount (the **application amount**) greater than the prescribed amount under the QCAT Act.

- (2) In a provision of this Act about the application, a reference to a tribunal is taken to be a reference to a court with jurisdiction for the application amount.
- (3) A provision of this Act about the application applies with necessary changes as if the tribunal were the court.”

[14] Section 516(1)(b), clearly contemplates an application being made to the Tribunal which seeks payment of an amount greater than “the prescribed amount under the QCAT Act”, i.e. \$25,000.

[15] The following subsections of section 516 then facilitate the conferral of jurisdiction on QCAT to make orders as if QCAT were a court which otherwise has jurisdiction with respect to the amount sought in the respective application. In other words, section 516 confirms QCAT’s jurisdictional capacity to make orders under the RTRAA for monetary amounts which would otherwise exceed the “prescribed amount” limit applicable to minor civil disputes.

[16] Lest it be considered that there is any ambiguity about the interpretation of section 516, regard may be had to the Explanatory Note to the *Residential Tenancies and Rooming Accommodation Bill* 2008 which relevantly stated:⁶

“Clause 516 provides that, where an application to a tribunal is for an amount greater than that allowed under the *Small Claims Tribunals Act* 1973, the relevant tribunal is to be considered the Court with jurisdiction for the application amount.”

[17] After the passing of the RTRAA, the small claims jurisdiction was effectively folded into QCAT’s jurisdiction. In 2009, with the establishment of QCAT, the definition of “tribunal” in the RTRAA was amended so as to refer to QCAT rather than the Small Claims Tribunal.⁷

[18] Accordingly, I would hold that QCAT has jurisdiction in a “tenancy matter” (as that term is defined in the QCAT Act) where the amount claimed exceeds the “prescribed amount” of \$25,000.

[19] It follows that the decision to transfer the application to the Magistrates Court was made in error and the appeal should be allowed.

[20] There will be the following orders:

1. The applicants have leave to appeal.

⁶ At pages 78 – 79.

⁷ *Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act* 2009, section 94.

2. The appeal is allowed.
3. The decision of 11 April 2017 transferring the matter to the Magistrates Court at Southport for further hearing is set aside.
4. The matter is otherwise remitted to the Tribunal at Southport for further hearing.