

**NOTE: TENANCY TRIBUNAL ORDER PROHIBITING PUBLICATION OF
THE NAME AND ANY IDENTIFYING PARTICULARS OF THE PARTIES IN
[2024] NZTT DUNEDIN 4826717 PURSUANT TO S 95A(1A) OF THE
RESIDENTIAL TENANCIES ACT 1986 REMAINS IN FORCE.**

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 3/2025
[2025] NZSC 29**

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|---------|---|
| BETWEEN | D (SC 3/2025) Applicant |
| AND | MELISSA ALLAN First Respondent |
| | MICHAEL B T TURNER Second Respondent |

Court: Williams, Kós and Miller JJ

Counsel: Applicant in person

Judgment: 4 April 2025

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
- B There is no order as to costs.**
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REASONS

[1] The applicant seeks leave to appeal directly to this Court from a judgment of the High Court striking out her proceedings against the respondents, a Tenancy Tribunal adjudicator and a District Court judge, as an abuse of process.¹

¹ [D] v Allan [2024] NZHC 3821 (Harland J) [HC judgment] at [28]–[29].

Background

[2] The present proceedings originate from a dispute between the applicant and her landlord.² The dispute arose after a co-tenant of the applicant's gave notice to withdraw from their tenancy under s 56B of the Residential Tenancies Act 1986, claiming there had been family violence:

56B Withdrawal from tenancy following family violence

- (1) A tenant under a fixed-term or periodic tenancy may withdraw from the tenancy by giving at least 2 days' notice to the landlord if—
 - (a) the notice is accompanied by qualifying evidence that the tenant has been a victim of family violence while a tenant of the premises; and
 - (b) the notice is in the approved form and includes the prescribed information.

...

[3] The landlord accepted the withdrawal and advised the applicant accordingly. A few weeks later, the applicant stopped paying rent. She failed to remedy the situation after her landlord issued her with a 14-day notice. The applicant's landlord then applied to the Tenancy Tribunal to terminate the tenancy, recover rent arrears and refund the bond. The applicant opposed the landlord's claim, disputing the validity of her co-tenant's withdrawal from the tenancy (submitting there had been no family violence) and claiming damages from the landlord.

[4] The landlord succeeded. The Tenancy Adjudicator terminated the tenancy and ordered the applicant to pay her landlord the rental arrears (minus the bond).³

[5] The applicant filed a series of proceedings challenging this decision, including an appeal to the District Court. Importantly for our purposes, the applicant also applied for a stay of the Tribunal proceedings, pending determination of her District Court appeal, and for leave to apply for summary judgment. In the

² See at [7]–[14].

³ *[L] v [D]* [2024] NZTT Dunedin 4826717.

District Court, Judge Turner refused the applicant’s stay application on the basis of s 117(11) of the Residential Tenancies Act:⁴

- (11) Where the appeal relates to an order terminating the tenancy made on the ground of non-payment of rent, a stay of proceedings shall not be granted unless the application for stay is supported by a receipt or other written evidence tending to show that the rent was not in fact in arrear at the date of the hearing before the Tribunal.

[6] Judge Turner also refused the applicant’s leave application for lack of jurisdiction.⁵ Several months later, the applicant’s substantive appeal to the District Court was dismissed for non-prosecution under r 15.2 of the District Court Rules 2014.⁶

The present proceedings

[7] The applicant then filed the present (fresh) proceedings in the High Court against the Tenancy Adjudicator (the first respondent) and District Court Judge (the second respondent). She alleged misfeasance and “nonfeasance” in public office alongside breaches of s 27(1) of the New Zealand Bill of Rights Act 1990.⁷

[8] The High Court struck out the applicant’s proceedings as an abuse of process.⁸ Both the Tenancy Adjudicator and District Court Judge had immunity from suit,⁹ neither acted without jurisdiction,¹⁰ and the applicant had a right of appeal to the District Court under s 117 of the Residential Tenancies Act.¹¹ While the applicant had requested to be heard on the matter if the High Court was inclined to strike out the proceeding as an abuse of process, her request was declined on the basis that an oral hearing was not required nor necessary.¹²

⁴ [D] v [L] DC Dunedin CIV-2024-012-234, 1 May 2024 (Minute of Judge Turner) at [1].

⁵ At [2].

⁶ [D] v [L] [2024] NZDC 31594 at [8] and [16].

⁷ HC judgment, above n 1, at [5]–[6].

⁸ At [28]–[29].

⁹ At [15]–[16].

¹⁰ At [19]–[22].

¹¹ At [23].

¹² At [27].

The applicant's submissions

[9] The applicant now submits the High Court erred in rejecting her arguments that the Adjudicator lacked jurisdiction to make determinations regarding disputes raising questions of whether a person has been a victim of family violence,¹³ and that the principles of natural justice were violated when the Court struck out her claim without allowing her to be heard. The applicant says her intended appeal involves a substantial miscarriage of justice and raises matters of public importance and general commercial significance.¹⁴ She also submits there are exceptional circumstances justifying an appeal directly to this Court flowing from her right to be heard being violated.¹⁵

Analysis

[10] The applicant's application does not meet the ordinary criteria for leave to appeal nor the narrower criteria for leave to bring a direct appeal from the High Court.¹⁶ Leaving aside the question of the Tenancy Adjudicator and District Court Judge's immunities, the applicant's proceeding is plainly a collateral challenge to the correctness of the Tenancy Tribunal and District Court decisions in circumstances where an appeal was the appropriate procedural pathway. While she filed an appeal from the Tenancy Tribunal decision, she failed prosecute it. Allowing a direct appeal from the High Court in these circumstances would also circumvent s 120(5) of the Residential Tenancies Act, which provides that decisions of the Court of Appeal are to be final. As to the applicant's arguments regarding her right to be heard, Harland J complied with the requirements of r 5.35B(3) of the High Court Rules 2016, and the right to appeal referred to in that provision does not mean an automatic right to bring a leapfrog appeal to this Court.

Result

[11] The application for leave to appeal is dismissed.

[12] There is no order as to costs.

¹³ By virtue of s 77(7B) of the Residential Tenancies Act 1986.

¹⁴ Senior Courts Act 2016, s 74(2).

¹⁵ Section 75(b).

¹⁶ Sections 74–75.