

[2016] NZSSAA 012

Reference No. SSA 158/15

IN THE MATTER

of the Social Security Act 1964

AND

IN THE MATTER

of an appeal by **XXXX** of Christchurch
against a decision of a Benefits Review
Committee

BEFORE THE SOCIAL SECURITY APPEAL AUTHORITY

Ms M Wallace - Chairperson
Mr K Williams - Member
Lady Tureiti Moxon - Member

HEARING at CHRISTCHURCH on 9 February 2016

APPEARANCES

The appellant in person
Mr G Moore for the Chief Executive of the Ministry of Social Development

DECISION

Introduction

[1] The appellant appeals against a decision of the Chief Executive upheld by a Benefits Review Committee:

- (a) relating to the notice given of an increase in the income-related rent for his home in Christchurch; and
- (b) to provide assistance for payment of rent arrears by way of an advance of benefit rather than non-recoverable assistance.

Background

[2] The appellant was granted New Zealand Superannuation from 11 August 2014. Prior to the grant being made the appellant attended an appointment to discuss his application. At this appointment he was advised that his rent would go up as a result of his receipt of New Zealand Superannuation. The case manager who dealt with him was uncertain as to precisely how much the increase would be but she would put a figure of \$91 into the system. The appellant said he was told the increase could be less but it would not be more. The appellant says he indicated at the time that he would not be liable for any rent arrears that accrued.

[3] On 25 August 2014 the appellant received a letter from Housing New Zealand advising that the Ministry of Social Development had completed a review of his income-related rent and that the letter constituted notice under s 74 of the Housing Restructuring and Tenancy Matters Act 1992 that his rent would increase to \$91 per week starting on 16 October 2014. The appellant took exception to this letter because he considered that the letter did not give him the 60 days' notice required for an increase in rent under the Residential Tenancies Act. He sought a review of decision. He specifically requested that deductions from his benefit for rent not be increased until the matter was resolved. The Benefits Review Committee hearing took place on 4 November 2014.

[4] In the meantime, because the appellant had not paid the full amount of his rent increase, arrears accumulated. On 5 February 2015 Housing New Zealand threatened to apply to the Tenancy Tribunal for a termination of the appellant's tenancy. As a result, on 13 March 2015 the appellant applied for financial assistance of \$651 to meet the rent arrears. Assistance was granted by way of an advance of benefit. The appellant also sought a review of that decision on the basis that he considered that the assistance provided should be non-recoverable.

[5] The appellant's position is that he has not been given proper notice of the increase in his rent, the advance of benefit for arrears of rent should not be recoverable and he would like the additional rent paid from his benefit to be refunded to him.

Decision

Income-related rent

[6] Income-related rents are provided for under the Housing Restructuring and Tenancy Matters Act 1992 (the Act). This Act sets out the terms and conditions on which the government makes provision for income-related rent for Housing New Zealand tenants. Income-related rent is a type of housing subsidy. A person living in a state house who does not meet the eligibility criteria is not entitled to the subsidy and must pay market rent.

[7] Section 74 of the Act specifically provides that if Housing New Zealand receives notification from the Agency (the Ministry of Social Development) of an increase in an income-related rent due to a change in the tenant's circumstances then:

- (a) Housing New Zealand must give the tenant notice stating the date on which the increased income-related rent takes effect;
- (b) the effective date must be a date no earlier than 61 days after the date that the change in circumstances occurred; and
- (c) Housing New Zealand must give notice to the tenant at least two weeks before the effective date.

[8] In this case, the change in circumstances was the increase in the appellant's income as a result of his transfer to New Zealand Superannuation. That change in circumstance occurred on 11 August 2014. In accordance with its obligations under s 74, Housing New Zealand then gave notice to the appellant of the effective date of the increase in rent. The effective date was 16 October 2014, which was at least 61 days after 11 August 2014 (the date of the change in the appellant's circumstances).

[9] The notice was given on 25 August 2014, which was more than two weeks before the rent increase was to take effect as required by s 74(1)(c). Housing New Zealand has complied with the provisions of s 74 of the Act.

[10] The appellant argues vigorously that under the Residential Tenancies Act landlords must give 60 days' notice before rent can be increased. This submission overlooks the provisions of s 74(5) of the Act which specifically states that ss 24(1)(c)-(h) and 24(1A) & (2) of the Residential Tenancies Act 1986 do not apply in the case of an increase due to change of circumstances under s 74. The sections of the Residential Tenancies Act which do not apply include the provision that 60 days' notice of a reduction in rent be given.

[11] Section 74 of the Housing Restructuring and Tenancy Matters Act is a special provision relating to tenants in State houses which does not apply to other tenants. It is very clear that the provisions relating to notice of rent increase under the Residential Tenancies Act do not apply in this instance.

[12] We are not satisfied that there was any breach of the law in relation to the notice given to the appellant relating to the increase in his rent.

[13] More significantly, the Housing Restructuring and Tenancy Matters Act 1986 provides that notice of increase in rent must be given by Housing New Zealand. Notice is not and was not given to the tenant by the Ministry of Social Development. That is significant because pursuant to s 12J of the Social Security Act 1964 this Authority only has jurisdiction to

consider a decision of the Chief Executive of the Ministry of Social Development which has been confirmed or varied by a Benefits Review Committee or made by the Chief Executive in person. The notice in this case was given by Housing New Zealand. The Authority does not have jurisdiction to consider the actions of Housing New Zealand.

Advance of benefit

[14] There is very limited provision for non-recoverable assistance under the social security legislation. The only possible avenue of assistance would be under the Special Needs Grant Programme. This programme provides for food grants and assistance in certain emergency situations. Assistance with arrears of rent is not one of the specific situations provided for.

[15] The only possible provision that might cover the appellant's situation would be Clause 14 of the Programme. This provides that a recoverable or non-recoverable grant can be made if special circumstances exist and that without the particular item or service for which assistance is sought, the applicant would suffer extreme hardship. In addition, assistance can only be given if an emergency situation exists.

[16] Criteria for assessing whether or not an emergency situation exists are provided in Clause 12.2 of the programme as follows:

- (a) whether or not the situation was unforeseen;
- (b) whether the applicant could have reasonably been expected to have made provision in advance in order to meet the need; and
- (c) the extent to which making a grant would:
 - (i) worsen the applicant's position;
 - (ii) increase or create any risk to the life or welfare of the applicant; and
 - (iii) cause serious hardship to the applicant.

[17] In this particular case, the arrears of rent accumulated because the appellant considered that his rent should not be increased until after the review had been heard by the Benefits Review Committee. He expressly declined to allow an increase in rent deductions from his benefit to be made on two occasions. His decision was based on his strong view that the notice given was illegal. Unfortunately, he was mistaken about this. It must have been apparent to the appellant that if his review was not upheld, he may be left facing significant arrears. It would have been wise to pay the increase and seek a refund if he was proved to be correct. The situation that arose was foreseeable. Moreover, the appellant could have made provision for any arrears that might accumulate. Finally, we note that at the point at which assistance was sought there was no eviction order in place and therefore no

immediate threat to eviction. We are not satisfied that the appellant's need for assistance with rent arrears was an emergency situation.

[18] It is also relevant to consider that the Special Needs Grant Programme is stated to be complimentary to the programme for the advance payment of benefit. It was relevant for the Chief Executive to consider whether an advance payment of benefit should be made. While there was no emergency; he did have a particular immediate need for an essential item or service.

[19] We are not satisfied that it could be said that there was either an emergency situation or special circumstances which should have resulted in assistance by way of a non-recoverable Special Needs Grant to the appellant.

[20] We are satisfied that it was appropriate to meet the appellant's need for assistance with rent arrears by way of an advance of benefit.

[21] The appeal is dismissed.

DATED at WELLINGTON this 2nd day of March 2016

Ms M Wallace
Chairperson

Mr K Williams
Member

Lady Tureiti Moxon
Member