



SUMMARY

Case: Beattie v Porirua City Council - INTERIM DECISION

File No: TRI 2010-101-000009/ DBH 06006

Citation: [2010] NZWHT Wellington 14

Court: WHT

Adjudicator: C Ruthe

Date of Decision: 14 May 2010

Background

Pursuant to sections 72 and 73 of the WHRS Act 2006, the Tribunal heard and determined the claim against the sixth respondent, Ms Donaldson separately. Ms Donaldson did not pursue a removal application as it was unlikely to succeed due to the requirements for removal outlined in *Fenton v Building Code Consultants Ltd*.

Claim against Ms Donaldson, Previous Owner

The claimants allege that Ms Donaldson provided false and misleading information to secure the sale of the property thereby amounting to a negligent misstatement. A number of allegations were made by the claimants against Ms Donaldson but were all withdrawn prior to and at the hearing. Ms Donaldson however remained concerned that she was accused of acting fraudulently during the sale. The claimants also argued that the WHRS Assessor identified Ms Donaldson as a party in relation to the earlier attempts undertaken to repair the window sill.

Decision

The Tribunal held that Ms Donaldson did not have any repairs undertaken and therefore she could not have been or should not have been aware that the house leaked. Instead the owners prior to Ms Donaldson were the ones who were concerned about the leaks and even sought the original contractors to fix the faults. The Tribunal also found that the carpet stain left by a pot plant was not an attempt by Ms Donaldson to cover up an underlying defect. The claim against Ms Donaldson was therefore dismissed.

Costs

Ms Donaldson sought costs pursuant to section 91(1) of the WHRS Act stating that the claims against her were without any evidential basis and therefore were without substantial merit and made in bad faith. However the Tribunal dismissed her application in accepting that the claimants, their representative or the assessor had no knowledge of who carried out the repairs.

Result

The claims against Ms Donaldson and Ms Donaldson's application for costs are dismissed.