

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI  
TE WHANGANUI-Ā-TARA ROHE**

[2024] NZERA 676  
3252519

BETWEEN	TONY WILSON Applicant
AND	PIC NEW ZEALAND LIMITED Respondent

Member of Authority:	Claire English
Representatives:	Allan Halse, advocate for the Applicant Peter Kiely, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	Up to 16 September 2024 from Applicant Up to 16 September 2024 from Respondent
Determination:	14 November 2024

---

**PRELIMINARY DETERMINATION OF THE AUTHORITY**

---

**Employment Relationship Problem**

[1] At the first case management conference (CMC) in this matter on 23 February 2024, it was identified that there were two preliminary issues that needed to be determined before the applicant's (Mr Wilson's) substantive claims could properly be addressed, namely:

- a. relating to whether the Authority had jurisdiction to determine claims arising from Mr Wilson's service tenancy; and
- b. whether certain of the claims set out in the statement of problem were raised within the relevant statutory timeframes.

[2] Directions were made for the filing of legal submissions by both parties on these issues, and for the exchange of documents related to these issues.

[3] Legal submissions, evidence, and documents have been provided by the respondent (PIC NZ), and shared with Mr Wilson. Although a considerable amount of time has been provided to Mr Wilson to respond, and significant correspondence has occurred, no submissions have been received.

[4] I advised the parties by way of a minute dated 16 September 2024 that these matters would need to be determined. I note that no correspondence was received on behalf of Mr Wilson even after this advice.

[5] Accordingly, I will now proceed to determine the two preliminary matters on the basis of the information I have in front of me.

### **The Authority's investigation**

[6] For the Authority's investigation an affidavit was lodged from Mr Nigel Young (general Manager of PIC NZ) on behalf of PIC NZ, as well as a number of documents related to Mr Wilson's tenancy claims. Written legal submissions were filed by PIC NZ in relation to Mr Wilson's tenancy claims, and a separate set of written legal submissions were filed in relation to the time limitation issue.

[7] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

### **The issues**

[8] The issues requiring investigation and determination were:

- (a) Does the Authority have jurisdiction to determine claims relating to Mr Wilson's service tenancy?
- (b) Have some of the claims raised by Mr Wilson been raised outside the statutory timeframes and therefore should not be considered further by the Authority?
- (c) Should either party contribute to the costs of representation of the other party?

## **First Preliminary Issue - Tenancy Claims**

[9] At the CMC held in this matter, the claims raised by Mr Wilson, and the remedies sought by him were identified and set out in the resulting Directions of the Authority dated 23 February 2024. Relevantly to the first preliminary issue, Mr Wilson raises a claim that he was unjustifiably disadvantaged by being charged rent for substandard housing. In relation to this claim, he seeks remedies in the Authority of compensation for unhealthy/substandard housing (in an unspecified amount); and reimbursement of \$6,889 for personal belongings damaged in relation to the substandard housing provided.

[10] This claim and the remedies sought raises the question of whether the alleged breach is one which is within the jurisdiction of the Authority, or whether it is properly within the jurisdiction of the Tenancy Tribunal.

[11] Mr Wilson had a service tenancy agreement with PIC NZ.

[12] On 28 April 2023, Mr Wilson filed proceedings in the Tenancy Tribunal in relation to this service tenancy. His Tenancy Tribunal application stated: “I want to make claims relating to the Healthy Homes Standards.” Mr Wilson’s application then went on to raise concerns that the ceiling leaked, the guttering was “useless”, the windows did not open or shut, the house was damp, drafty, and cold, and the heat pump was not maintained. Mr Wilson also referred to photos of mould. PIC NZ’s solicitor advises that Mr Wilson claimed approximately \$7,000 in compensatory damages, as well as exemplary damages.

[13] I record that these allegations were rejected by PIC NZ.

[14] The Tenancy Tribunal issued a determination dated 9 October 2023, dismissing Mr Wilson’s claims.

[15] On 16 October 2023, Mr Wilson filed an appeal in the District Court, as provided for in s. 117 of the Residential Tenancies Act 1986. There was a hearing on 22 March 2024, and the matter was dismissed.

[16] PIC NZ submits that Mr Wilson’s claims in relation to the service tenancy must be dismissed in the Authority for two reasons: one, these claims are within the

exclusive jurisdiction of the Tenancy Tribunal as set out in the relevant Act; and two, they have already been heard and determined in that body (and on appeal from that body). Having been disposed of by the proper body, they cannot be relitigated by way of a claim in the Authority.

## **Analysis**

[17] The Residential tenancies Act 1986 (RTA) applies to all residential tenancies, as set out in s 4 of that Act. It applies to service tenancies, which are defined in s 2 of the RTA, meaning “a tenancy granted under a term of, or otherwise as an incident of, a contract of service or a contract for services between the landlord as employer and the tenant as employee...”.

[18] There is no dispute that Mr Wilson had a service tenancy while employed by PIC NZ. He lived in a house owned by PIC NZ on PIC NZ property, paid rent to PIC NZ, and PIC NZ was the landlord.

[19] I have considered whether the claims set out in the Statement of Problem might properly be within the jurisdiction of the Tenancy Tribunal. The statement of problem refers to maintenance issues of a leaking roof, mould, holes in garage walls, rotten window frames. It also refers to photos of mould, the issuing of 14 day notices, and the allegation that PIC NZ had not taken sufficient action.

[20] It will be apparent that these claims are the same or almost the same as those I have described as being made on 28 April 2023 before the Tenancy Tribunal.

[21] In addition, Mr Wilson has sought at paragraphs 3.3 and 3.4 of the Statement of Problem remedies of \$6,889 in specific damages, and a general compensatory payment for “unhealthy” housing. These remedies are the same or almost the same as those already sought in the Tenancy Tribunal.

[22] When considering these claims, they arise squarely from the service tenancy agreement between Mr Wilson and PIC NZ, and from obligations under that agreement.

[23] Mr Wilson is claiming that his landlord owes him obligations to maintain its rental property to certain standards required of landlords in accordance with tenancy standards (the Healthy Home standards) in exchange for his rent payments. These particular claims do not arise in a work context. Instead, the relevant relationship that

Mr Wilson relies on to support his claims is that of landlord and tenant, and the dispute arises as to whether PIC NZ met its obligations as a landlord to Mr Wilson as a tenant. The Tenancy Tribunal has jurisdiction over these matters.

[24] In addition, it is important to note that Mr Wilson has already attempted to progress these claims in that jurisdiction, and has not been successful. By filing those same claims in the Tenancy Tribunal, and again by appealing that decision in accordance with the RTA, Mr Wilson has demonstrated that he understands and accepts the jurisdiction of that Tribunal on tenancy matters.

[25] Having received adverse findings from that body, Mr Wilson now seeks a more favourable outcome by raising the same claims and seeking the same remedies from a different body. Mr Wilson cannot now relitigate these claims, which have been determined.

[26] Accordingly, the Authority will not progress any claims in relation to Mr Wilson's service tenancy. In particular, the following paragraphs in the statement of problem will not be considered further:

- a. paragraph 1.2,
- b. paragraphs 2.15 to to 2.21,
- c. paragraphs 2.28 to 2.29,
- d. paragraphs 2.34 to 2.35, and
- e. paragraphs 3.3 to 3.4.

### **Second Preliminary Issue – Claims made out of time**

[27] PIC NZ states that some of Mr Wilson's claims have been made outside the statutory timeframes for the raising and pursuing of personal grievance claims, and accordingly, certain claims made in the statement of problem cannot now be pursued. This relates to a specific claim of bullying which was raised in February 2020, and more generally, claims raised by Mr Wilson relating to events prior to 23 January 2023.

[28] Mr Young, PIC's General Manager, provided an affidavit and supporting documents. His evidence is that he is responsible for employment relations matters together with site managers.

[29] He commenced employment in March 2020, just after Mr Wilson raised a personal grievance claim regarding bullying in February 2020. Mr Young does not recall being advised about Mr Wilson's complaint when he joined PIC NZ. He refers to records held on behalf of PIC NZ, and says that on 20 February 2020, PIC NZ invited Mr Wilson to a disciplinary meeting about a pig feeder that had been left empty. Later that day, Mr Wilson raised a grievance claim of bullying. In the event, no action was taken in relation to either issue.

[30] Mr Wilson refers in the statement of problem to the disciplinary invite letter of 20 February 2020, and to his claim of that same date, but does not say what occurred or if or how either matter was resolved. Instead, his next paragraph in the statement of problem moves on to refer to events that occurred on 25 January 2021.

[31] It is submitted for PIC NZ that Mr Wilson did not file proceedings in the Authority within 3 years of 20 February 2020, (eg by 20 February 2023) as the statement of problem was not filed until 29 September 2023. Therefore, in accordance with s 114(6) of the Act, no action may be commenced the Authority in respect of the 20 February 2020 claim, that is more than 3 years after the date on which the personal grievance was raised.

[32] Mr Wilson has provided no submissions or documents to suggest that his 20 February 2020 grievance was commenced in the Authority within 3 years, as required by s 114(6). In fact, he has provided no information to suggest that it remained a "live" or unresolved claim, and indeed Mr Young the incoming general manager was not advised of it.

[33] As the 20 February 2020 grievance has not been commenced in the Authority within 3 years, it cannot now be pursued. References to it in the statement of problem will not be considered further.

[34] I now come to consider the other time-frame issue raised by PIC NZ. PIC NZ states that Mr Wilson made a formal complaint of bullying on 23 April 2023, and then raised personal grievance complaints on 29 April and 22 May 2023. It is submitted for PIC NZ that "on the most generous analysis" Mr Wilson can only rely on events that occurred in the 90 days prior to 23 April 2023, and that claims relating to events that occurred prior to 23 January 2023 have not been raised within time, and cannot properly proceed.

[35] PIC NZ does not consent to any claims being raised out of time, and submits that there is no evidence of any relevant exceptional circumstances which might apply, even if there had been an application for leave to raise a personal grievance out of time, which there is not.

[36] The detail set out in Mr Wilson's statement of problem refers to a bullying claim being made by him in February 2020 (which I have dealt with above). The next reference to a formal complaint being made by Mr Wilson is the complaint dated 23 April 2023. On Mr Wilson's own documents, the complaint dated 23 April 2023 is the earliest date on which he claims he raised further complaints with PIC NZ. Section 114(1) and 114(7)(b) of the Act provide that Mr Wilson must raise any personal grievance claim with PIC NZ within 90 days of the action occurring, or coming to his notice.

[37] This means that Mr Wilson's complaint dated 23 April 2023 could only properly raise events that had occurred on or after 23 January 2023. I am reinforced in this view as the statement of problem refers to a number of events occurring in April 2023, but prior to this only refers to events in 2021 which are clearly out of time. The statement of problem also states that Mr Wilson sought advice from an employment advocate in 2019, but chose not to pursue a personal grievance claim at that time.

[38] Accordingly, the Authority will not progress any claims relating to matters occurring prior to 23 January 2023, as Mr Wilson has not raised a personal grievance claim in relation to these matters within time. In particular, the following paragraphs of the statement of problem will not be considered further:

- a. Paragraphs 2.4 to 2.27 inclusive.

## **Orders**

[39] The Authority will not progress any claims related to Mr Wilson's service tenancy, as they do not arise within a work context and have already been raised by Mr Wilson and determined by another specialist body, the Tenancy Tribunal.

[40] The Authority will not progress any claims related to Mr Wilson's claim of 20 February 2020, as it has not been commenced in the Authority within 3 years after the date on which it was raised.

[41] The Authority will not progress any claims relating to matters occurring prior to 23 January 2023, as no grievance was raised about such matters within 90 days.

### **Next Steps**

[42] The Authority will contact the parties in due course to arrange for a further CMC to progress this matter.

### **Costs**

[43] Costs are reserved. The parties can anticipate the Authority will determine costs, if asked to do so, on its usual “daily tariff” basis unless circumstances or factors, require an adjustment upwards or downwards.<sup>1</sup>

Claire English  
Member of the Employment Relations Authority

---

<sup>1</sup> For further information about the factors considered in assessing costs see: [www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)