IN THE HIGH COURT OF KIRIBATI)
CIVIL JURISDICTION)
HELD AT BETIO)
REPUBLIC OF KIRIBATI)

HIGH COURT CIVIL CASE 85 OF 2007

BETWEEN: NEI RAN ARETA PLAINTIFF

AND: KIRIBATI HOUSING CORPORATION DEFENDANT

FOR THE PLAINTIFF: MR BANUERA BERINA
FOR THE RESPONDENT: MR BIRIMAKA TEKANENE

DATE OF HEARING: 7TH JANUARY 2008

JUDGMENT

The plaintiff, Nei Ran Areta, is an officer in the Ministry of Commerce. Between 2002 to 2006 she was abroad as a student at USP. She had her family with her.
As a Government employee Nei Ran was entitled to rent a Kiribati Housing Corporation house. Pursuant to a tenancy agreement dated 15th June 2004 she had a house at Bikenibeu, C48U. The lease was to run for 3 years from that date at a monthly rental of $162.00. Nei Ran arranged to have the payments deducted from her salary.
In her absence relatives were to occupy and to caretake the house. It seems that after some time the relatives moved out but visited the house from time to time check on it.
Mr Atonga Tabakea now Kiribati Housing Corporation Service Officer but formerly a property officer stationed at Bikenibeu, went to the house, found it unoccupied. Although Mr Tabakea in evidence several times said the house had been "vandalized" the only damage he described was the glass of the front door broken and replaced by masonite, the door

wouldn't lock and the lock replaced and the back door needing " fixing" and renewed. His boss, now dead, told him to clear up the house and look for another tenant. Accordingly all Nei Ran's things were removed, the interior repainted – Mr Tabakea said this was always done before a new tenant moves in – and the house let to someone else.

The Kiribati Housing Corporation made some effort to notify Nei Ran through a person described by Mr. Tabakea as "the care - taker" of the house but there was no response.

The plaintiff has sued for breach of the tenancy agreement, is claiming $22,479-00 damages. At the hearing it was agreed that liability should first be decided and damages, if any be payable, be assessed later.

I have already set out the only "vandalism" described on behalf of the defendant. The plaintiff had called a near neighbour Nei Emire Tetoa. I accept Nei Emire s evidence:-

"Nei Ran my neighbour
relatives looking after house
came back to check
no damage that we saw" (examination in chief)

"Same people checked in had
occupied
they cleaned up beside house
didn't seem to be a problem with
the house. .....it was OK." (cross examination)

During cross examination of Mr. Tabakea, Berina tendered by consent a letter written to him by the General Manager of the Kiribati Housing Corporation dated 16th February 2007. The General Manager set out the reason for repossession:-

"KHC has no intention to breach the agreement with Nei Ran but KHC re-possesed C28U due to the fact that the house was left completely vacant and unsecured. The house at that time became a playing ground fro children and even a drinking venue for older boys and girls, the house itself became nuisance to closed tenants whom theyoften reported the matter to KHC. To prevent C28U from being vandalized, as it always the case with vacant houses, we have no other alternatives but to re-possess and re-allocate it.

Nei Ran ..... must also accept the fact that KHC, as a landlord, can not stand idle while one of its houses is being threatened by vandalism".

Prevention of vandalism, rather than damage already done through vandalism, seems to have been the reason for repossession.

I remark first that in view of the General Manager's assertion of others close by having complained about what was going on, it is surprising that the defendant adduced no evidence to confirm the complaints. Secondly there is nothing in the tenancy agreement to allow the Corporation to repossess in these circumstances.

Mr Tekanene relied on clause 2 e) of the tenancy agreement to justify the repossession:-

"The tenant shall .... e) not cause or permit any damage to the demised premises"

What Mr Tabakea described could hardly be considered as "damage" to the house, rather it was fair wear and tear: certainly not sufficient to justify terminating the tenancy agreement by repossession.

Furthermore in the tenancy agreement:

3. "The Landlord hereby agrees with the tenant as follows:-...

e) To advise the tenant in writing at least three (3) months in advance of any intention to amend or terminate this agreement".

4. "Any notice under this agreement shall be in writing Notice to the *Tenant* shall be sufficiently served if Delivered to the TENANT at MCIC by mail or by hand.

The defendant simply did not comply with those terms and is in breach of the agreement for non compliance.

I could not regard the trifling damage - even if it can properly be described as damage – of which evidence has been given as nearly sufficient to justify the repossession, especially in the light of the evidence of the contrary of Nei Emire.

There will be judgment for the plaintiff on liability.

Dated the 9th day of January 2008.

THE HON ROBIN MILLHOUSE QC
Chief Justice.