



HIGH COURT OF AUSTRALIA

1 November 2023

YOUNG v CHIEF EXECUTIVE OFFICER (HOUSING) [2023] HCA 31

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of the Northern Territory. The appeal concerned whether the Civil and Administrative Tribunal of the Northern Territory ("the Tribunal") is empowered by s 122(1) of the *Residential Tenancies Act 1999* (NT) ("the Act") to order that a landlord compensate a tenant for distress or disappointment suffered by the tenant as a result of the landlord's failure, in breach of a tenancy agreement, to take reasonable steps to provide and maintain security devices necessary to ensure that the premises are reasonably secure.

Ms Young was the tenant of residential premises at Ltyentye Apurte, also known as Santa Teresa, an Aboriginal community approximately 85 kilometres from Alice Springs. The respondent, a corporation sole established under the *Housing Act 1982* (NT), was the landlord. The operative tenancy agreement was the standard form agreement prescribed by the Act. As required by s 49(1) of the Act, that agreement provided that "[t]he landlord will take reasonable steps to provide and maintain the locks and other security devices that are necessary to ensure the premises and ancillary property are reasonably secure". For 68 months, the premises had no back door. Ms Young applied to the Tribunal for an order under s 122(1) of the Act that the respondent compensate her for loss or damage she claimed to have suffered because of non-compliance by the respondent with the tenancy agreement. Her application included a claim to be compensated for loss or damage by way of distress and disappointment due to the insecurity she felt because of the respondent's failure to provide a back door.

The Tribunal took the view that an external door is not "a security device" within the meaning of s 49(1) of the Act, and on that basis dismissed Ms Young's application for compensation. On appeal on a question of law, the Supreme Court of the Northern Territory set aside so much of the decision of the Tribunal as had dismissed the application for compensation and substituted an order that the respondent pay compensation to Ms Young in the sum of \$10,200. On further appeal, the Court of Appeal set aside the order made by the court below that the respondent pay compensation to Ms Young. The Court of Appeal construed s 122(1) of the Act as importing principles of remoteness that limit the assessment of damages for breach of contract at common law. Consequently, it held that those principles excluded compensation for distress or disappointment arising from breach of a term of a tenancy agreement other than in consequence of physical inconvenience.

The High Court, by majority, held that the Court of Appeal erred in construing s 122 of the Act to import common law principles of remoteness. The statutory compensation under s 122 is rather to be seen as an alternative, and likely more accessible, remedy to common law damages for breach of a tenancy agreement. As such, Ms Young's distress and disappointment was compensable on application to the Tribunal under s 122(1)(a) of the Act, subject to the Tribunal's consideration of the factors prescribed by s 122(3). The connection between the landlord's breach and the distress and disappointment suffered by Ms Young readily satisfied the causal connection required by the term "because" in s 122(1). It was therefore unnecessary for the majority to consider whether the distress and disappointment suffered by Ms Young would have been compensable in an action for damages at common law.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*