

**UNDER** The Retirement Villages Act 2003

**In the matter** of a dispute

**BETWEEN** **Mr. Brian and Mrs. Eleanor  
Teviotdale**

Applicants

**AND** **Settlers Albany Limited**

Respondents

### **Decision of Disputes Panel**

**Date of Disputes Notice:** 1 February 2021

**Date of Disputes Hearing:** 24 June 2021

**Date of Decision:** 5 July 2021

The Disputes Panel was appointed under the Retirement Villages Act 2003 to resolve the dispute between the Applicants and Respondents and has decided upon the dispute as follows:

#### **Matters in dispute:**

The Dispute Notice filed and the response to the notice is repeated below:

#### The Applicants:

- The Respondents failed to comply with section 6.7 of the Occupational Right Agreement and section 7 of Settler's Code of Resident's Rights.
- The Respondents failed to provide within five working days the requirements under article 6.7 of the Occupational Right Agreement and section 7 of Settler's Code of Resident's Rights.
- The Respondents promised storage which has been withdrawn without alternative arrangements being made.

### The Respondents:

Settlers accepts that Mr. and Mrs. Teviotdale and Settlers entered into an Occupational Right Agreement dated 18 April 2013.

Settlers do not accept:

- That Settlers failed to comply with clause 6.7 of the Occupational Right Agreement and article 7 of the Settlers Code of Resident's Rights.
- That Settlers did not provide within 5 working days the requirements under article 6.7 of the Occupational Right agreement and section 7 of the Settlers Code of Resident's Rights.
- That Settlers promised the storage described in the disputes notice, and that it withdrew that promise without making alternative arrangements.

### **Panel's Decision:**

The Disputes Panel finds in favour of the Respondents. Any application by the Respondents for costs is to be made in writing to me and copied to the Applicants no later than 14 working days from the date of this decision.

### **Decision of Disputes Panel**

### **BACKGROUND**

1. Mr Brian Teviotdale and his wife Mrs Eleanor Teviotdale (the Teviotdales) reside in townhouse Orchid 240 (the unit) at Settlers Lifestyle Village in Albany (Settlers).
2. A dispute has arisen in relation to an under-stair storage space, being a communal cupboard under a common area staircase in the townhouse block where their unit is located (the storage cupboard), that the Teviotdales and other Village residents have had the use of to store items since approximately 2013.
3. The Teviotdales claim that by oral statements made to them, and an email sent to them by Settlers staff, that Settlers had made a promise of this storage cupboard to the Teviotdales and that Settlers is obliged to continue to provide the promised storage cupboard.
4. The storage cupboard forms part of the townhouse block's fire escape route. Up until mid-2020, Settlers had understood that it was not in breach of any fire safety standards by allowing residents to store their personal items in the storage cupboard.

5. In mid-2020, Fire and Emergency New Zealand inspected the Village premises and provided a report on fire and safety issues at the Village. Due to safety concerns raised by both Fire and Emergency New Zealand and Auckland Council, Settlers advised the Teviotdales that the storage cupboard under the stairs was no longer able to be used for storage purposes in order to maintain a safe fire escape route. Settlers relies on the advice and recommendations they have received from Fire and Emergency New Zealand in making the decision not to allow storage of any items in the storage cupboard.
6. The Teviotdales say that clause 6.7 of the Occupational Right Agreement and article 7 of the Settlers Code of Resident's Rights requires Settlers to undertake fire safety improvements to the storage cupboard.
7. Settlers' response is that it is not required under either clause 6.7 of the Occupational Right Agreement or under article 7 of the Settlers Code of Resident's Rights to undertake fire safety improvements to the storage cupboard. Settlers state that this is not routine maintenance and they did not make any binding promise or agreement regarding storage facilities or use of the storage cupboard.
8. Settlers state they have informally and on an *ad hoc* basis allowed residents to store small personal items in the storage cupboard but rights to access and use of the storage cupboard do not form part of the terms of the Teviotdales' Occupational Right Agreement, and is neither a contractual term nor a binding promise.

## RELEVANT PROVISIONS

9. Clauses 6.1 and 6.7 of the Teviotdales' Occupation Right Agreement provides:

### **6. Obligations of Settlers**

#### **Settlers must:**

6.1 Provide the services and facilities listed in Schedule B

...

6.7 Reply to non-urgent maintenance requests within 5 Working Days of written notice with a time frame for undertaking such work. Requests for non-urgent maintenance should be directed to Onsite Village Manager referred to in Schedule F, who shall provide the expected time frame for the maintenance to be carried out;

10. Schedule B of the Teviotdales' Occupation Right Agreement provides:

### **SCHEDULE B**

## YOUR DWELLING AND TERMS

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### I. SERVICES AND FACILITIES

Settlers offers the following services: gardening, lawn mowing, repair and maintenance, emergency call out service, housekeeping, laundry, administration services, transport and security services.

The following facilities are available: temporary community area with lounge, library, dining and television facilities together with a selection of gym equipment available for use.

11. Article 7 of the Settlers Code of Resident's Rights provides:

**7. You have the right to promised services and facilities of an appropriate standard.**

## THE PANEL'S DECISION

12. I am not satisfied that there is either a contractual obligation under the Teviotdale's Occupation Right Agreement nor a binding promise that requires Settlers to provide the Teviotdales with continued access to the storage cupboard.
13. Schedule B of the Teviotdale's Occupation Right Agreement does not expressly refer to any obligation on Settlers to provide access to/use of any (or this particular) storage cupboard as a service or facility.
14. Mr. Teviotdale, in his sworn evidence at the Disputes Hearing, accepted there was no contractual obligation on Settlers to provide the storage cupboard. Nor did Mr. or Mrs. Teviotdale provide any evidence to suggest that they required such a term to be included within their Occupation Right Agreement either prior to signing the agreement or as a recommended amendment to the agreement after it had been signed.
15. The Teviotdales both stated in their sworn evidence that a staff member at Settlers, Mrs. Rosalie Keegan, made oral promises about the provision of the storage cupboard and also made promises by email. In an email exchange between the Teviotdales and Mrs. Rosalie Keegan of approximately March 15 2014, Mrs Rosalie Keegan states to the Teviotdales:

"Good morning

Sorry for my late reply.

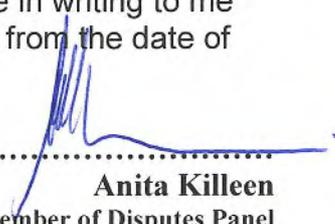
I make sure Keith has the power point in hand, which I am sure he has. The cupboard at the bottom of the stairs is usually made available for all of the Orchard residents to share just for the odd items like suitcases etc, not really for a large excess of bulk storage.  
Can you please advise your availability to complete a pre inspection of your townhouse any time from Monday 24 March and prior to your settlement date of 1 April, at a time that suits you.

Look forward to hearing from you".

16. I am not satisfied that the oral statements and email exchange above constitute a binding promise or an intention on behalf of Settlers to make a permanent commitment and obligation to the Teviotdales to provide them with access to/use of the storage cupboard.
17. The evidence given by Mr. Terry Middlemost, on behalf of Settlers, made it plain that the opportunity for residents at the Village to have shared use of the storage cupboard was merely a goodwill gesture, and an informal offer to use the storage cupboard from time to time. There was no promise or commitment made to the Teviotdales that use of the storage cupboard would be permanently made available to them on an unencumbered basis. I accept the evidence of Mr Terry Middlemost on this point and I also accept that the decision Settlers made to no longer allow storage of items in the storage cupboard by any resident to be a prudent health and safety measure which is intended to benefit all Village residents.
18. Furthermore, I am not satisfied that Settlers are required under either clause 6.7 of the Occupational Right Agreement or under article 7 of the Settlers Code of Resident's Rights, to undertake fire safety improvements to the storage cupboard. In my view, this work is not routine maintenance and clause 6.7 of the Occupational Right Agreement is not relevant. In any event I do not accept that Settlers made any binding promise to the Applicants regarding storage facilities or use of the storage cupboard such that this would give rise to any obligations on Settlers to maintain the ability for the Applicants to access the storage cupboard.

## **COSTS**

19. The Respondents have reserved the right to be heard on costs.
20. Any application by the Respondents for costs is to be made in writing to me and copied to the Applicants no later than 14 working days from the date of this decision.

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**Anita Killeen**  
Single Member of Disputes Panel

**5 July 2021**  
Date of Decision

**Note to parties**

You have the right to appeal against the decision of the Disputes Panel (or of the District Court sitting as a Disputes Panel) under section 75 of the Retirement Villages Act 2003. An appeal must be filed in the appropriate court within 20 working days of the panel's decision.

Any costs and expenses awarded by the Disputes Panel must be paid within 28 days.