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Rami Al-Jiab
fyi-request-27917-4acaef68@requests.fyi.org.nz

Our ref: DSC 114747

Tēnā koe Rami

Civil enforcement information

Thank you for your email of 5 August 2024, seeking information on recovering debt established by the Tenancy Tribunal (the Tribunal). Your request has been referred to me for response, as it falls within my responsibilities as Manager, Centralised Services.

In response, I must tell you that while the Ministry of Justice (the Ministry) provides administrative support to the Tribunal and the District Court, these are judicial bodies that must operate independently from Government, Ministers, and officials. It is essential that the judicial process remains free from any outside interference, therefore, it would be inappropriate for the Ministry to comment on the specifics of your case, as to do so would compromise the Tribunal's or Court's independence.

The primary purpose of the court system in civil matters is to reach decisions on cases brought before it. Once a decision has been made and a debt established, the responsibility for recovering that debt lies with the creditor (the person who the order is in favour of).

As your questions relate to court processes and procedures, rather than Ministry processes, I am only able provide you with some general civil enforcement information, including the applications you have mentioned, that I trust will be of assistance to you.

The court's power to enforce the civil debt is enabled through the District Court Act 2016 (the Act). However, the court only seeks to enforce those debts on instructions made by the creditor, via an application made to the court. A creditor can apply to enforce a debt if the judgment or order has not been complied with. The creditor is expected to provide all the necessary information to enforce the debt, including the address details of the debtor (the person ordered to pay the creditor).

Section 146(2)(b) of the Act states that a *Notice to complete Financial Statement* (the Notice) may be used by a creditor to make a formal request to the debtor. The Notice is returned to the creditor, who can then use the information to apply to the court for enforcement. To clarify, both copies of the *Financial Statement* form are for the debtor. There is no requirement to serve a copy of the Financial Statement from on the creditor.

You cannot apply to the court to have the Notice served. It can be served by email, post or in person. Please note that you are only required to complete this step if you want to file a financial statement with the court to assess the debtor's means. It is not required for any other

application. You should seek legal advice if you believe the debtor is providing false information to the court.

I would also like to clarify that an application for a warrant to seize property does not enable the court to seize or force a debtor to sell land or property. It allows a bailiff to seize and sell 'goods' belonging to a debtor, such as vehicles, electronics or furniture. It is also important to note that the bailiff can only seize goods belonging to the debtor named in the Tribunal's order. For example, if an individual is named as the debtor but they own a business, the bailiff cannot seize goods that belong to that business.

To ensure the courts neutrality is maintained, neither the Ministry nor the court can advise a creditor of which application to apply for. A decision will need to be made based on the information available to you as the Creditor. You can find more information about the different options available, including the different types of means assessment applications or charging orders on a debtor's property, on the Ministry of Justice website: justice.govt.nz/fines/about-civil-debt/collect-civil-debt/

You may also find the frequently asked questions section helpful: justice.govt.nz/fines/about-civil-debt/creditors-frequently-asked-questions/ given the

Enforcement costs, such as legal fees and the application fee, may be claimed when completing a civil enforcement application subject to Schedule 4 of the District Court Rules 2014. These costs, if accepted by the court, can then be added on to the civil debt owed by the debtor. Please note that if the civil enforcement was unsuccessful, the creditor is not entitled to a refund.

I am unable to comment on the operations of a private collection agency or provide any information regarding property owned by a debtor.

If you have any further questions about court civil enforcement processes or require help with filling in the forms, please call the Ministry on 0800 233 222. Alternatively, you may wish to seek legal advice, as a lawyer is best placed to advise you of your options and how the law applies to your case. For free legal information and advice, you can consult your local community law centre. More information can be found at: communitylaw.org.nz/your-local-centre/find-a-community-law-centre/

Nāku noa, nā



Reuben Lewthwaite

Manager, Centralised Services