QCAT update: Residential tenancy dispute on appeal

WORDS BY CARTER NEWELL SENIOR ASSOCIATE, ANDREW PERSIJN

In this article, we consider a recent decision of the Queensland Civil and Administrative Tribunal, in its appellate jurisdiction, which shows that the Tribunal is prepared to consider decisions on appeal in order to ensure that the correct outcome is achieved. This decision also provides property managers with some useful information and guidance when dealing with residential tenancy disputes in the Tribunal.

***RWW Holdings Pty Ltd t/as Living Here Wilston v Clavarino* [2017] QCATA 63**

Background

The Respondent rented a property through the Appellant agency. At the end of the tenancy, the Appellant filed an Application for minor civil dispute – *residential tenancy dispute* in the Tribunal, seeking compensation for rental arrears, outstanding water bills and repair costs totalling approximately $5,200. The Tribunal ordered that the Respondent pay only $1,490.01. The Appellant sought leave to appeal the Tribunal's decision.

Decision on appeal

Gardens

The Appellant claimed $470 for gardening costs, but the Tribunal only awarded the Appellant half of the amount claimed. Despite being satisfied that the Respondent did not leave the gardens in a suitable condition, the Tribunal found that the invoice provided by the Appellant was *"…well over the top and I think your landlord has done work here".*[1]

The invoice provided by the Appellant lists seven jobs that were carried out, but it does not specify the hours for each job, or the hourly rate. The Senior Member hearing the appeal disagreed with the Tribunal's finding that the invoice does not give sufficient information. Further, the Senior Member held that there was no evidence before the Tribunal to challenge the reasonableness of the invoice and the Tribunal failed to explain why the invoice was excessive.

The Senior Member determined that the Tribunal was in error and the Appellant is entitled to an additional $235 for the gardening costs.

Replacement of light globes

The Appellant claimed $170.55 for the replacement of thirteen light globes. The Tribunal rejected this aspect of the claim on the basis that it was unreasonable to send an electrician to replace light bulbs and a handyman could have performed the work for a lot cheaper than what was claimed.

The Appellant questioned who should be sent to change light bulbs other than an electrician, in circumstances where property managers are not covered by insurance if anything goes wrong with the installation of light globes.

The Senior Member stated that the Tribunal *"cannot unilaterally state that an invoice is unreasonable simply because a particular member might be able to get the same work done at a lower rate".*[2] The Senior Member determined that the Tribunal was in error and the Appellant is entitled to recover $170.55 for the replacement of light globes.

Damage to the bath tub and vanity top

The Appellant claimed $1,179 for damage to the bath tub and vanity top. The Tribunal rejected the claims because it could not tell what the damage was or how it occurred.

The Tribunal also found that the claim for repair was grossly overstated and did not take into account depreciation. Further, the Tribunal rejected the claim because the damage had not been repaired prior to the commencement of the next tenancy.

The Appellant produced photographs at the hearing, taken at entry and exit, showing that both the bath tub and vanity top had been damaged during the Respondent's tenancy. The Appellant also submitted to the Tribunal that the lessor had arranged for the bath tub to be repaired during the new tenancy, compensating the new tenant for the loss of use of the bathroom. The Respondent maintained that he did not cause the damage.

The Senior Member held that in finding that it could not tell how the damage was caused or what the damage was, the Tribunal did not refer to Appellant's evidence, which should be accepted. In relation to depreciation, the Senior Member stated that the replacement of bathroom fixtures are not subject to depreciation and are regarded by the Australian Taxation Office as a capital works item.

Accordingly, the Senior Member determined that the Appellant should be entitled to recover these items as the lessor would not have replaced them if they were not damaged.

Damage to paintwork

The Appellant claimed $2,097 to repair the damage to paintwork on the walls and ceilings of the property. The Tribunal rejected this aspect of the claim, again, because the claim was grossly overstated and the next tenancy had commenced.

Whilst it was accepted that the Respondent should not have to pay for damage that would be fair wear and tear during his tenancy, evidence produced by the Appellant showed that some of the damage was due to stickers, which were expressly prohibited in the tenancy agreement. The Appellant also submitted that some damage was caused by the Respondent's pet, which was not permitted to be kept inside the property.

The Senior Member stated that the Appellant took steps to mitigate the lessor's loss by finding a new tenant quickly and it did not charge the Respondent for the rent lost between tenancies.

The Senior Member added that there is a difference between mitigating the lessor's loss (by locating a new tenant) and repairing damage caused by a previous tenant. Section 362 of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) (**RTRA Act**) provides that a lessor is required to mitigate loss. However, section 188 of the RTRA Act provides that a tenant is required to return the property in the same condition as it was in at the start of the tenancy, fair wear and tear excepted. The Senior Member stated that these two concepts should not be consolidated.

The Senior Member held that the quote provided by the Appellant should have been accepted by the Tribunal as there was no evidence to suggest that the quote was inflated, and the Tribunal gave no reasons for its findings. The Senior Member determined that the Tribunal was in error and the Appellant should be entitled to recover this item.

The Senior Member held that the Tribunal was in error and the errors created substantial injustice. The Senior Member granted leave to appeal and allowed the appeal. The original decision should be set aside and a new order, that the Respondent pay the Appellant $4,380.85, should be substituted.[3]

Conclusion

This appeal decision is a timely reminder for property managers to ensure that they familiarise themselves with all aspects of their cases before the Tribunal. Property managers should ensure that they focus on the facts of their case and provide as much evidence as possible in support of their submissions. Being able to respond to any allegations with well documented evidence will greatly increase the prospects of success.

Whilst all parties involved in residential tenancy disputes before the Tribunal must represent themselves (some exceptions apply), they are of course, always able to seek legal advice in regard to all aspects of a dispute. If property managers have any concerns about a residential tenancy dispute, including compliance with the RTRA Act or any other relevant legislation, it is strongly recommended that they seek legal advice.

Members of the REIQ Professional Indemnity Insurance Scheme (brokered by Aon Risk Solutions and underwritten by QBE Insurance), may call the Carter Newell REIQ Scheme toll free telephone number (*1800 624 264*) and take advantage of free advice regarding the steps that they can take to mitigate the risk of a dispute escalating into a formal claim.

---

[1] *RWW Holdings Pty Ltd t/as Living Here Wilston v Clavarino* [2017] QCATA 63 [13]

[2] Ibid [26]

[3] The reduction in the total amount claimed was due to the Appellant receiving 30% of the cost of new carpet instead of the 75% claimed due to depreciation.