ACT CIVIL & ADMINISTRATIVE TRIBUNAL

McCARTHY v SHARMA & ANOR (Residential Tenancies) [2020] ACAT 62

RT 807/2019

Catchwords: **RESIDENTIAL TENANCIES** – lessor obligation to repair – extent of lessor obligation – repair or improvement – compensation claimed by tenant for damage to personal possessions because of mould – requirement to mitigate – onus of proof in making claims for compensation

Legislation cited: *ACT Civil and Administrative Tribunal Act 2008* s 8
Residential Tenancies Act 1997 s 83; standard terms 55, 56, 57

Cases cited: *Calthorpe v McCoscar* (1921) 1 KB 716
Lister v Lane (1893) 2 QB 212
Morcom v Campbell Johnson [1956] 1 QB 106

Tribunal: Senior Member K Katavic

Date of Orders: 18 August 2020
Date of Reasons for Decision: 18 August 2020

AUSTRALIAN CAPITAL TERRITORY
CIVIL & ADMINISTRATIVE TRIBUNAL **RT 807/2019**

BETWEEN:

CASEY MCCARTHY
Applicant/Tenant

AND:

SUMAN PRAKASH SHARMA
SUSHILA SUBEDI
Respondents/Lessors

TRIBUNAL: Senior Member K Katavic

DATE: 18 August 2020

ORDER

The Tribunal orders that:

1. The application is dismissed.

…………………………………..
Senior Member K Katavic

REASONS FOR DECISION

Introduction

1. On 5 December 2018, the parties entered into a residential tenancy agreement for a property in Lawson in the ACT. The lease was for a fixed term of 52 weeks commencing 21 December 2018 to 19 December 2019 with rent payable at $370 per week.

2. During the term of the tenancy, two issues emerged which are the subject of these proceedings. Functionality of the external sliding screen door (**the screen doors**) and the formation of mould in the unit.

3. The tenant did not renew the agreement and left the property on 19 December 2019. Despite not giving the required 21 days' notice of her intention to vacate the property the tenant was not required to pay rent for that period. A final inspection was conducted on 19 December 2019 which did not identify any issues, resulting in the tenant receiving a full refund of the bond.

4. The tenant was dissatisfied with the lessors' actions in relation to the screen doors and the mould and commenced these proceedings seeking compensation from the lessors for breach of clause 57 of the Standard Residential Tenancy Terms (**the Standard Terms**).[1] The lessors deny the claim.

The application before the Tribunal

5. The tenant's claim is based on a breach of clause 57 of the Standard Terms. She claims the lessors failed to make repairs within four weeks of being notified of the need for the repair. On 2 February 2019, the tenant reported the issue with the sliding screen doors to Ms Emily Varga, the property manager from Independent Property Group. She says that in the months that followed various contractors attended the property and much correspondence was exchanged with Ms Varga regarding the doors and later mould.

6. On 11 July 2019, the tenant issued a Notice to Remedy pursuant to clause 55 of the Standard Terms claiming the lessors were in breach of clause 54.[2] On 15

---

[1] *Residential Tenancies Act 1997*, Schedule 1, applicable to the Residential Tenancy Agreement between the parties dated 5 December 2018 by virtue of item 18

[2] Exhibit A11

July 2019, Ms Varga responded by email stating, amongst other things "as the issue has been rectified the job has now been closed".[3] The applicant disagreed.[4] I discuss these exchanges further below. The applicant claims that after this a gap remained.

7. She claimed she was unable to sufficiently open the doors each day to ensure ventilation. These doors were the only source of ventilation from the outside. The only other point of ventilation was the front entry door to the premises which opened to the internal corridor. She was concerned neither she nor her possessions were safe and secure. She claims that mould began to form on her possessions which she had to discard.

8. The applicant seeks compensation as follows:[5]

   (a) $5,429.24 for damages to her personal belongings due to mould.

   (b) $400 for cleaning equipment and agents to address insect and vermin and mould growth.

   (c) $2,400 for her time to clean and prevent the recurrence of mould based on $25/hr for 6 hours per week for 16 weeks.

   (d) $1,090.12 for electricity bills.

   (e) $85 for her attendance at Ochre Health and Medical Centre.

   (f) $2,300 for significant loss of peace, comfort, privacy and security during the period the repairs were outstanding at $50/week for 46 weeks.

   (g) $1,600 for loss of use and quiet enjoyment during the period treatment and removal of mould spores was outstanding ($100/week for 16 weeks).

   (h) 50% reduction of the weekly rent paid between 2 February 2019 and 19 December 2019 being the period the door repairs were outstanding.

   (i) 50% reduction of the weekly rent paid between 30 August 2019 and 19 December 2019 being the period the treatment and removal of mould was outstanding.

---

[3] Exhibit R20, pages 101-102
[4] Exhibit R20, page 101
[5] Amended application dated 11 March 2020

(j) $159.50 for the ACAT filing fee.

9. Based on the above, the applicant's claim amounts to $24,933.86.

10. There is no crossclaim brought by the respondents.

11. Both parties filed a significant amount of evidence in support of their respective cases. Some of the email correspondence was duplicated. Where I have referred to emails and those emails were duplicated, I have identified them in the material filed by the respondent for ease of reference.

12. The applicant relied upon 25 documents including an amended application in support of her claim.[6] Again, some of that material was also filed by the respondents. She also relied upon an undated witness statement from Mr Garry McCarthy,[7] her father. Both the applicant and Mr McCarthy gave oral evidence at the hearing.

13. The respondents relied upon a response to the claim, a timeline of events and relevant documents.[8] The respondents also relied upon the following witness statements:

(a) Gidget Palmer, strata manager at Vantage Strata dated 30 March 2020.[9]

(b) Katherine Jeffries, former tenant of the property dated 29 March 2020.[10]

(c) Daniel Segeri, Unique Property Maintenance & Handyman Services dated 26 March 2020.[11]

(d) Lee Jackson, Dream City Cleaning dated 30 March 2020.[12]

(e) Jamie Buckeridge, Independent Maintenance dated 6 April 2020.[13]

(f) Emily Varga, property manager, Independent Property Management dated 8 April 2020.[14]

---

[6] Exhibits A1 to A25 (lodged on 12 March 2020)
[7] Exhibit A26
[8] Exhibit R1 to R32
[9] Exhibit R2
[10] Exhibit R3
[11] Exhibit R4
[12] Exhibit R5
[13] Exhibit R6

(g) Bernie Farmer, carpet technician, dated 6 May 2020.[15]

(h) Cathy Batch, proprietor of Mollymaid cleaning, dated 1 May 2020.[16]

The claim regarding the sliding screen doors

14. The tenant's claim is based on a breach of clause 57 of the Standard Terms. Clauses 55-57 of the Standard Terms govern the lessors' obligations regarding repairs.

> ***Lessor to make repairs***
>
> *55 (1) The lessor must maintain the premises in a reasonable state of repair having regard to their condition at the commencement of the tenancy agreement.*
>
> *(2) The tenant must notify the lessor of any need for repairs.*
>
> *(3) This section does not require the tenant to notify the lessor about anything that an ordinary tenant would reasonably be expected to do, for example, changing a light globe or a fuse.*
>
> *56 The lessor is not obliged to repair damage caused by the negligence or wilful act of the tenant.*
>
> *57 Subject to clause 55, the lessor must make repairs, other than urgent repairs, within 4 weeks of being notified of the need for the repairs (unless otherwise agreed).*

15. A breach of clause 57 arises where a lessor does not make repairs "within four weeks of being notified of the need for repairs". This applies to non-urgent repairs. A lessor is not in breach of clause 57 if repairs are not required.

16. The tenant did not contend that the requested repairs were urgent. Clause 60 of the Standard Terms describes urgent repairs to include a fault or damage that causes the residential premises to be unsafe or insecure. The tenant's complaint regarding the sliding screen doors does not fit that category because the glass sliding doors remained lockable and secure.

17. Two issues arise:

(a) Were the sliding screen doors in need of repair?

(b) If so, were they repaired within four weeks of being notified of the need for repairs?

---

[14] Exhibit R7
[15] Exhibit R31
[16] Exhibit R32

18. On 5 December 2018, the tenant attended a rental exhibition for the property and signed a tenancy agreement the same day.

19. The property is a one-bedroom unit with an open plan kitchen, living and dining area. The bedroom is internal. The only external opening in the property, apart from the front door is the sliding door to a private courtyard. It comprises fly screen sliding doors which meet in the middle of the opening and glass sliding doors which also meet in the middle. The glass sliding doors were lockable. At the time of the exhibition and commencement of the tenancy, the fly screen doors were not lockable and did not latch in any way.

20. On 20 December 2018, Ms Varga completed an Inventory & Condition Report for the property (**the Incoming Condition Report**). On 14 January 2019, the tenant signed the Incoming Condition Report with handwritten annotations made throughout the document.[17] In relation to the sliding door the Incoming Condition Report relevantly states:

    Handle: Black flick lock, clean, intact and no marks
    Screen: No major marks or damages

21. In addition, the tenant made the following notation to the screen element "not secure, constantly unhinges when used."

22. On 2 February 2019, the tenant sent an email to Ms Varga with the subject Sliding Screen Door Issue. She raised four issues summarised as follows:[18]

    (a) She reported having trouble opening and closing the screen doors and reported that they were constantly detaching from the tracks and do not securely reattach.

    (b) She reported gaps at each end of the sliding doors as well as when they are closed in the middle and complained of flies and other insects being able to enter the unit.

    (c) She stated there was no lock on the sliding doors limiting the security of the property and her possessions and requested a lock on the sliding doors to add to the security of the property and her possessions.

---

[17] Exhibit R9
[18] Exhibit R16, pages 55-56

(d) She observed that the property had no other windows or openings in the back door was the only access to allow fresh air into the unit but was unable to leave the doors open due to the gaps creating an insect problem and the lack of security due to the absence of a lock.

23. The tenant enquired if the "screen doors could be repaired with a lock, attached to new tracks so they do not detach and be fixed to be free of gaps."[19]

24. I am satisfied that this email constitutes notification to the respondent of the need for repair regarding the sliding screen door for the purposes of clause 55(2) of the Standard Terms. Whether there was a need for repair is a different issue.

25. On 6 February 2019, Ms Varga responded and characterised the reported maintenance as "courtyard door does not slide or lock properly (ground level)" and referred the issue to the maintenance team for rectification.[20] Ms Varga gave evidence that she initially interpreted the tenant's request to refer to the glass sliding doors and regarded that as a security issue.

26. On 11 February 2019, an employee at Independent Property Management issued a work order to Mr Daniel Segeri at Unique Property Maintenance and Handyman Services with the description "courtyard door doesn't slide or latch."[21]

27. Mr Segeri provided a witness statement dated 26 March 2020[22] and gave evidence at the hearing. On or about 11 February 2019, Mr Segeri attended the property and looked at the doors. He observed the doors were sliding screen doors and could not see anything wrong with them. He reported they were sliding properly and do not latch by design. He observed that the sliding screen doors were installed correctly and functioning as they were designed. He considered they were not designed to latch or provide any form of security and were purely to stop flying insects entering the property when the sliding glass doors open.

---

[19] Exhibit R16, pages 55-56
[20] Exhibit R16 page 55
[21] Exhibit R17
[22] Exhibit R4

28. On 20 March 2019, the tenant complained to Ms Varga in an email that she had not heard back from her regarding the faulty sliding door issue following an inspection several weeks before. She sought a response from Ms Varga as to the next step in the process to have the issue resolved as soon as possible.[23] Ms Varga responded by email on the same day advising that it would be followed up.[24]

29. On 25 March 2019, the tenant again emailed Ms Varga stating it had been eight weeks since the sliding door issue had been inspected and she had still not heard from the maintenance team regarding what the next step in the process was. She claimed the issues raised are important and had been paying rent for five months now with no opportunity to have fresh air flow into the property. She again requested Ms Varga urgently attend to the issue.[25]

30. On 26 March 2019, Ms Bronte Ashton, a Maintenance Team Assistant with Independent Property Management, sent an email to the lessors advising that Unique Maintenance had been sent to the property to resolve the faulty lock on the sliding door and stated the quote is anywhere between $110-$120. It further stated that "your property manager Emily has approved this as being located on the ground level this presents a safety issue and is classified as an urgent repair."[26]

31. Mr Segeri confirmed he was later asked to provide a quote to retrofit a latch on the existing sliding fly screen doors which was the subject of a work order on 27 March 2019. However, he did not complete the work order. While the precise date is unclear, Mr Segeri recalls a conversation with the tenant in relation to booking a time to install the latch. Mr Segeri recalled the effect of the conversation was the tenant was not happy with the installation of just a latch and wanted the doors to be more secure.

32. Between 26 March 2019 and 11 April 2019, there were several email exchanges between the tenant, Ms Varga and Mr Segeri regarding arrangements for the

---

[23] Exhibit R16 page 54
[24] Exhibit R16 page 53
[25] Exhibit R16 page 53
[26] Exhibit R16 page 57

installation of the latch. The tenant claims she was waiting to be contacted by Mr Segeri, Mr Segeri reported several occasions of unsuccessfully attempting to contact the tenant. In an email dated 10 April 2019, Mr Segeri reported to Ms Varga that he thought the tenant would be calling him as he had already called her and tried to book a time but she refused and he understood if and when she was ready to make a time she would call him.[27]

33. On 11 April 2019, Mr Segeri and Ms Varga exchanged emails.[28] Mr Segeri reported the following:

> *Called the tenant again. She wants the doors fixed properly, not just a latch. I wont [sic] be able to help with that sorry.*

34. In her reply, Ms Varga asked, “did you mention the screw to her to put that in the middle to prevent the doors from sliding all the way across?” To which Mr Segeri responded:

> *yes but as I have also explained that is not the only issue. I can’t do anything about the gaps. The screw will only stop the doors sliding together. I said to her if she decides she wants the latch installed then to call me to book a time.*

35. On 15 April 2019, Ms Varga attended the property and inspected the screen doors. She gave evidence that after this inspection she continued to take steps to address the tenant’s concerns in good faith. She stated that based on her observations on 15 April 2019 she should have advised the tenant that the screen doors were fit for purpose and nothing more was required as the glass doors provided reasonable security which was the extent of the lessors’ obligation.

36. What followed between 15 April 2019 and mid-July 2019 was a series of protracted exchanges between Ms Varga, the tenant, the builders who constructed the units, and a contractor from Stoked Group regarding the screen doors.

37. It was decided that the rollers under the screen doors would be replaced as a construction defect had been identified. At one point it was suggested the screen

---

[27] Exhibit R18 page 62
[28] Exhibit R18 page 63

doors should be replaced. The tenant's expectation was that the screen doors would be replaced. There was delay due to the builder being able unable to access the replacement rollers and then ultimately the builder refused to replace the screen doors as they did not regard them to be a defect.[29]

38. On or about 9 July 2019, Stoked Group replaced the rollers to the screen doors and fitted a lock to the screen doors. Stoked Group also undertook to install a seal to the screen doors. This was completed by 11 July 2019. The tenant remained dissatisfied with this course and in a series of emails between 9 and 11 July 2019 to Ms Varga she repeated her request for the screen doors to be replaced.

39. On 11 July 2019, the tenant issued a Notice to Remedy. The tenant's Notice to Remedy is defective because it did not identify how the lessors breached the Standard Terms or what they were required to remedy.

40. Regardless, on 15 July 2019 Ms Varga effectively denied there was any breach and responded by email in the following terms:[30]

> *I have spoken with Dom and he has explained what has happened attending the property last week. He has provided pictures along with his explanation (attached).*
>
> *After speaking with the maintenance team leader David he has confirmed the state of doors are now in livable* [sic] *and in working condition. David and Dominic had confirmed that when locks are put onto screen doors this can sometimes result in the extremely minor gapping at the tip and this is normal.*
>
> *As the issue has been rectified the job has now been closed.*

Was there a need to repair the screen doors?

41. Even though the tenant requested repairs to the screen doors, central to this dispute is whether there was a need for repairs at all. That issue is not resolved in the tenant's favour simply because she made the request, or in her mind considered there was a need for repair. That is, despite the exchanges between the tenant and Ms Varga regarding the doors and despite the attempts deployed on behalf of the lessors to address the tenant's issues, was there anything to repair?

[29] Exhibit R20 page 99
[30] Exhibit R22 page 109

42. The tenant's expectation as to the performance of the screen doors does not give rise to a need for repairs nor have the lessors failed to repair the screen doors because they were functioning in a particular way. There is a tension between what is a genuine repair or an improvement to the premises.

43. The distinction between improvements and repairs was considered by Denning LJ and Hodson LJ in *Morcom v Campbell Johnson*.[31] They considered in effect that if something new is provided which is beneficial it is an improvement but if something is replaced because it had deteriorated or worn out that is repair, even though the thing is replaced by its better modern equivalent.

44. Further, in *Calthorpe v McCoscar*[32], the Court of Appeal held that:

> *repair... connotes the idea of making good damage so as to leave the subject, so far as possible, as though it had not been damaged. It involved renewal of subsidiary parts; it does not involve renewal of the whole. Time must be taken into account; an old article is not to be made new; but so as repair can make good, or protect against the ravages of time and the elements, it must be undertaken.*

45. In *Lister v Lane*,[33] on the question of 'repair', the Court of Appeal held:

> *However large the words of the covenant may be, the covenant to repair a house is not a covenant to give a different thing from that which the tenant took when he entered into the covenant. He has to repair that thing which he took; he is not obliged to make a new and different thing, and, moreover the result of the nature and condition of the house itself, the result of time upon that state of things, is not a breach of the covenant to repair.*

46. While the above cases were decided at a time when, at Common Law, tenants shouldered the responsibility for maintenance and repairs, the consideration of whether something constitutes a repair or not is helpful.

47. The tenant attended an open house and inspected the premises prior to signing the lease. Although she noted her concerns regarding the screen doors on the Incoming Condition Report and later requested the screen doors be repaired, the screen doors were of a particular design and quality from the beginning of the tenancy and performed a certain way. This was not satisfactory to the tenant.

[31] [1956] 1 QB 106 by Denning LJ at page 115 and Hodson LJ at page 118
[32] (1921) 1 KB 716
[33] (1893) 2 QB 212

The Tribunal does not accept the lessors were required to install a different type of screen door nor does the Tribunal accept the lessors were required to alter the design of the existing screen doors to the satisfaction of the tenant.

48. A need for repair arises if the screen doors were inoperable or broken in some way. The tenant's issue with the screen doors falling off the tracks falls within that category. This is an operational failure of the screen doors. To the extent she wanted them to lock and close a certain way falls outside the ambit of that category. The design of the screen doors, including the absence of a lock was subjectively unsatisfactory to the tenant, that does not constitute a need for repair. To change the screen doors in the manner expected by the tenant would have constituted an improvement for which the lessors were not responsible.

49. Steps were taken on behalf of the lessors to investigate and address the tenant's concern. Ms Varga responded to the tenant's request within several days and raised a work order on 11 February 2019. It was apparent from Mr Segeri's attendances on about 11 February 2019 and again on 11 April 2019, that the screen doors were fit for purpose and by design did not latch or lock. Mr Segeri also observed they were sliding properly. Arguably, that is end of the matter. Within the applicable four-week period found in clause 57, the screen doors were inspected and found to be sliding properly and there was no latch or lock by design. Based on Mr Segeri's inspection and observations nothing more was required by the lessors. Any obligation to repair had been discharged.

50. Despite these findings, the tenant persisted in her requested remediation and Ms Varga, on behalf of lessors, continued her efforts to appease the tenant.

51. Replacement rollers were fitted on 9 July 2020 and by 15 July 2019, the lessors regarded all works associated with the screen doors were complete regardless of whether they were obliged to do anything further or not. I do not regard the lessors' efforts to address and ameliorate the tenant's concerns regarding a lock and affixing a seal to the screen doors as evidence of a need for repair or acceptance of a need for repair.

52. Having regard to the history set out above between the parties and my findings in respect of the extent of the lessors' obligations under clause 57, I do not find

there has been a breach by the lessors. As a result, the tenant is not entitled to any compensation regarding the screen doors.

The claim regarding mould

53. The tenant submitted her claim for damages in respect of mould arose in two ways. First, she claimed that she was unable to adequately ventilate the premises due to the screen doors not being repaired therefore mould developed on her possessions and caused damage. Secondly, and in the alternative, the tenant submitted adequate ventilation was incapable of being achieved due to the design of the unit, with it having only one external opening: the glass doors. This caused mould to develop thus damaging her possessions.

54. On 30 August 2019, the tenant reported the presence of mould to Ms Varga. The photos suggest that the mould on various items was present as early as 14 July 2019.[34] All works to the screen doors was completed by 15 July 2019. I am satisfied there was mould on some of the tenant's possessions, including shoes, clothes and some furniture.

55. The evidence does not establish the cause of the mould, or any responsibility on the part of the lessors. The Tribunal heard evidence from several witnesses, relied upon by the lessors as experts. None of those witnesses had any specific qualifications or expertise regarding mould. The opinions expressed by those witnesses were based on experience alone in the areas of cleaning, second-hand/salvage operations and carpet. Although the Tribunal is not bound by the rules of evidence,[35] some basic principles should be observed in respect of expert evidence so as to ensure the weight the Tribunal might give to such evidence is not diminished.[36]

56. The tenant took issue with the evidence of Ms Jackson, Mr Quinn, Ms Batch and Mr Farmer, among other things, because none of those witnesses had any relevant qualifications regarding mould.

---

[34] Exhibit R23
[35] Section 8 of the ACAT Act
[36] See: *Makita (Aus) Pty Ltd v Sprowles* [2001] NSWCA 305

57. Mr Farmer, however, did have qualifications of limited scope. He is a member of the Institute of Inspection, Cleaning and Restoration Certification. To obtain and retain membership Mr Farmer completed certain courses one of which included a unit on mould. Mr Farmer met the lessors' solicitor through a business networking event. He was retained to inspect the premises and provide a report because of his expertise and experience.

58. Apart from Mr Farmer, the Tribunal cannot give much weight to the evidence of Mr Quinn, Ms Batch and Ms Jackson, to the extent she was relied upon as an expert. I regard Ms Jackson to be a witness of fact rather than an expert as she attended the property on 6 December 2019 to clean but did not find any mould present. Mr Quinn gave evidence as to the value of the tenant's possessions from a second-hand/salvage perspective in their damaged state. He based this on his experience working for St Vincent de Paul retail outlets. The tenant's approach was based on a replacement cost. She did not have evidence to support the value she had attributed to the items. Neither approach is helpful. Ms Batch was given a 'scenario' by the lessors' solicitor to comment on. It was not helpful.

59. The tenant questioned the relationships between Independent Property Group and some of the witnesses. The businesses operated by those witnesses are simply part of a referral service from Independent Property Group. There is no contract or other affiliation between them and no guarantee of work.

60. I am not satisfied there is any issue regarding the independence or impartiality of those witnesses. The Tribunal was concerned that one of the witnesses, Ms Batch provided domestic services to the wife of the lessors' solicitor and because of this relationship she was asked to give evidence. However, nothing turns on this as I do not regard Ms Batch's evidence to have any probative value in respect of the issue I have to decide.

61. The tenant's claim is not clearly particularised. It appears the first of her claims rests on a finding the lessors breached clause 57 of the Standard Terms by failing to repair the screen doors. The tenant submitted that because the lessors did not repair the screen doors, she was required to keep the glass doors closed

and unable to achieve adequate ventilation. Damages are said to arise as a result. As I have found above, the lessors did not breach clause 57 as the screen doors were not in need of repair. To the extent the tenant did not adequately ventilate or considered she could not do so was based on a mistaken belief that the screen doors required repairing. She was nonetheless under an obligation to mitigate against mould.[37] Even if I was satisfied the mould was caused by a lack of ventilation due to the tenant keeping the glass doors closed, I am not satisfied there was a need to keep the glass doors closed in the manner the tenant did. If the tenant kept the glass doors closed on the belief, albeit mistaken one, that the screen doors were not fit for purpose and mould developed it is not the responsibility of the lessors.

62. However, the tenant gave evidence that she was able to ventilate the premises and did so in the following way. She would open the glass doors and air the premises between 2-3 hours each day. This contradicts the tenant's submission, and the premise of her claim regarding the mould. On her own evidence she was able to ventilate the premises and did so.

63. The tenant's second claim regarding the mould is not expressed in terms of the lessors breaching clause 57 of the Standard Terms. If it was intended to be expressed in such a way, what are the lessors expected to repair? While the claim is not particularised at all, in so far as it can be ascertained, the tenant claims she could not adequately ventilate the premises due to its design. Again, this is contrary to the tenant's own evidence that she could and did ventilate the premises. The adequacy of ventilation is a different question.

64. Mr Farmer, a carpet technician, gave evidence at the hearing that on 6 May 2020 he inspected the underside of the carpet and timber frame in areas of the premises where mould affected items had been located. He based these locations on photos provided by Ms Varga. He considered there likely to be some transfer from the affected items and any evidence of mould would be found on the underside of the carpet and the timber frame. He stated that he expected to find evidence of mould but did not. Mr Farmer also gave evidence that a usual 'end of lease' carpet clean would not remove evidence of mould to

---

[37] Items 16 and 24 of the Tenancy Agreement

the underside of the carpet or timber frame and this would remain present if it existed in the first place.

65. Mr Farmer's findings are helpful and support the conclusion that, by design, adequate ventilation could be and was achieved, even if the tenant could not or did not open the glass doors. I am therefore unable to conclude on the balance of probabilities that mould developed due to a lack of ventilation attributable to the design of the premises or because the tenant believed she could not adequately ventilate due to the issue with the screen doors.

66. The tenant bears the evidentiary burden of establishing that the mould damage to her possessions was caused by the lessors' breach of the Standard Terms. The tenant has not done so. The evidence does not establish how or why the mould developed on her possessions, particularly where there is no evidence of its existence elsewhere in the premises, and therefore the lessors are not liable for any damages arising from the mould.

Conclusion

67. Based on the above reasons, the lessors did not breach clause 57 of the Standard Terms in relation to the screen doors. Further, the lessors are not liable for any damage to the tenant's possessions caused by mould.

68. The application is dismissed.

…………………………………..
Senior Member K Katavic

HEARING DETAILS

FILE NUMBER:	RT 807 2019
PARTIES, APPLICANT:	Casey McCarthy
PARTIES, RESPONDENTS:	Suman Prakash Sharma & Sushila Subedi
COUNSEL APPEARING, APPLICANT	N/A
COUNSEL APPEARING, RESPONDENT	N/A
SOLICITORS FOR APPLICANT	N/A
SOLICITORS FOR RESPONDENT	Mr W Stefaniak
TRIBUNAL MEMBERS:	Senior Member K Katavic
DATES OF HEARING:	20 April 2020, 16 June 2020 & 27 July 2020