



Civil and Administrative Tribunal  
New South Wales

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Case Name: Ramjan v Tang

Medium Neutral Citation: [2022] NSWCATCD 98

Hearing Date(s): 20 June 2022

Date of Orders: 20 and 29 June 2022

Decision Date: 30 June 2022

Jurisdiction: Consumer and Commercial Division

Before: P French, Senior Member

Decision: Orders made on 20 June 2022:  
(1) The respondent, Davinia Elaine Tang, is to cause the undertaking of the following work in a proper and workmanlike manner on or before 11 July 2022:  
Details of Work order:  
(a) engage a mould expert to remove mould from the apartment and treat the apartment to prevent mould regrowth;  
(b) remove and replace the bedroom carpet and its underlay with an equivalent quality carpet and underlay;  
(c) replace the bedroom blinds (4) with blinds of an equivalent quality;  
(d) repair and repaint the hallway wall where a hole has been cut during a water leak investigation;  
(e) upon completion of items (a) to (d) provide a general clean of the apartment to remove dust, detritus and marks caused by the water ingress, contractor attendances at the premises, and remedial works.  
Orders made on 28 June 2022:  
(2) The rent payable for the residential premises is excessive and is not to exceed \$325.00 per week from 23 February 2022 until order (1) of these orders has been complied with or 22 February 2023 whichever occurs first.

(3) Order (2) is liquidated up to the date of the hearing. The landlord, Davinia Elaine Tang, must pay the tenants, Rosemarie Ramjan and Mitchell Gilmour, \$4,135.70 immediately.

(4) The amount specified in order (3) is to be applied as a credit to the tenants' rent account. A money order is not to issue in relation to order (3).

(5) The landlord, Davinia Elaine Tang, must pay the tenants, Rosemarie Ramjan and Mitchell Gilmour, \$2,600.00 immediately. A money order may issue in relation to this order.

(6) The tenants' application for an order pursuant to s 65(5) of the Residential Tenancies Act 2010 that rent be paid to the Tribunal until order (1) is complied with is refused.

Catchwords:

LEASES AND TENANCIES - Residential Tenancies Act 2010 (NSW) – rights and obligations of landlords and tenants – maintenance of premises in a reasonable state of repair

LEASES AND TENANCIES – Residential Tenancies Act 2010 (NSW) – remedies – order for repair - excessive rent order – compensation for disappointment and distress

Legislation Cited:

Civil and Administrative Tribunal Act 2013 (NSW)  
Residential Tenancies Act 2010 (NSW)  
Residential Tenancies Regulation 2019 (NSW)

Cases Cited:

Austin v Bonney [1999] QCA 8  
Campbell v Eastern Zone Aboriginal Housing and Community Association [1998] NSWRT  
Makowska v St George Community Housing Ltd [2021] NSWSC 287  
Northern Sandblasting P/L v Harris (1997) 188 CLR 313  
Roberts v Aboriginal Housing Office [2017] NSWCATAP 9  
Southwark London Borough Council v Tanner [2001] 1 AC 1  
Worrall v Commissioner for Housing ACT [2002] FCAFC 127

Texts Cited:

Nil

Category:	Principal judgment
Parties:	Rosemarie Ramjan (First Applicant) Mitchell Gilmour (Second Applicant) Davinia Elaine Tang (Respondent)
Representation:	Applicants (Self-represented) S Pope (Respondent)
File Number(s):	RT 22/13501
Publication Restriction:	Nil

## REASONS FOR DECISION

### Introduction

- 1 This is an application by tenants for an order under s 65(1)(a) of the *Residential Tenancies Act* 2010 (RT Act) that would require their landlord to carry out repairs to the rented premises. The tenants also apply for an order pursuant to s 44(1)(b) that would declare that rent payable under the residential tenancy agreement has been excessive by 50% per week since 23 February 2022 (or \$325.00) due to the withdrawal and reduction of facilities provided with the residential premises, and an order pursuant to ss 50, 63, 187(1)(d) and 190 that would require the landlord to pay them a total of \$5,606.24 in compensation for economic and non-economic loss, including for disappointment and distress, they contend they have suffered due to the state of disrepair of the premises. Additionally, the tenants apply for an order pursuant to s 65(5) that would direct that rent be paid to the Tribunal until repairs to the premises have been completed. This application was made to the Tribunal on 28 March 2022 (the application).
- 2 For the reasons set out following, the Tribunal has determined that the premises has been and remains in a serious state of disrepair since 23 February 2022 because of water ingress into the bedroom and another water leak. The water ingress and leak occurred in the common property and have been repaired by the Owners Corporation. However, the landlord has failed to repair the lot property damaged by the water. This state of disrepair of the premises has resulted in the constructive withdrawal of the bedroom from the tenants' use and in an overall reduction in the use of the remainder of the

premises to a level far below that required of a landlord under a residential tenancy agreement. The Tribunal has therefore made orders that will require the landlord to carry out necessary repairs, reducing the rent payable under the residential tenancy agreement until these repairs are completed, and compensating the tenants for the disappointment and distress they have suffered due to the state of disrepair of the premises. The Tribunal has refused to order that rent be paid to the Tribunal until the repairs have been completed.

### **Procedural history**

- 3 The application was first listed before the Tribunal, differently constituted, for Conciliation and Hearing in a Group List in a Virtual Meeting Room on 22 April 2022. Both tenants appeared in person at that listing of the application. A property manager in the employ of the landlord's Managing Agent (whose name is not recorded on the Tribunal file) attended on the landlord's behalf. In accordance with the usual practice where both parties are present at the first listing of an application, the Tribunal attempted to assist the parties to resolve the dispute cooperatively by conciliation without the need for a formal hearing. Those efforts were not successful. Consequently, the application was adjourned to a Special Fixture Hearing. Directions were also given to the parties for the filing and exchange of the documentary evidence that they intended to rely on at the final hearing.

### **Evidence and hearing**

- 4 Both parties have complied with the Tribunal's directions for the filing and exchange of their documentary evidence. The tenants' bundle was marked Exhibit A1. The landlord's bundle was marked Exhibit R1.
- 5 The Special Fixture Hearing was conducted in a Virtual Meeting Room. The tenants both attended the Special Fixture Hearing. Ms Ramjam presented their case and gave oral evidence under affirmation. Ms Sarah Pope, Property Manager, attended the hearing on behalf of the landlord and gave oral evidence under affirmation. The parties had the opportunity to present their respective cases, to ask each other questions, and to make final submissions to the Tribunal.

## **Material facts**

- 6 The dispute arises from a residential tenancy agreement that was made on 6 October 2021. It is a fixed term agreement which is expressed to commence on 18 October 2021 and end on 16 October 2022. The rent payable under the agreement is \$1,300.00 per fortnight (\$650.00 per week). There is no issue that this was a market rent at the time the agreement was made.
- 7 The residential premises is a relatively new apartment in a residential tower and strata scheme in Haymarket. It comprises one bedroom, one bathroom, an open plan kitchen and living area, a study alcove, laundry, balcony, basement car park and storage cage. The premises includes reverse cycle air-conditioning, a dishwasher and clothes dryer.
- 8 The tenants are domestic partners who are both self-employed and work from home. Ms Ramjan is also a student who studies on-line from home. She worked from a desk/workstation situated in a corner of the bedroom. Mr Gilmour worked from the study alcove.
- 9 When the tenants took possession of the property, while completing their copies of the Condition Report, they noted a tape on the bedroom window and damp stained carpet beneath it. They reported this to the landlord's agent on 1 November 2021 as a suspected water leak. The agent referred this to the Owners Corporation's Building Manager who inspected the area on 5 November 2021. The Building Manager did not initiate any action at that time but asked the tenants 'to keep an eye' on the area to see if there was any active leak.
- 10 On 12 November 2021 the tenants notified the Building Manager by email that there was an active water leak from the bedroom window, attaching photographs. The landlord's agent was copied into that email. Despite several follow up attempts by the tenants, the Building Manager did not respond to the tenants until 19 November 2021. In response to their enquiry on that day, the Building Manager informed the tenants that the Owners Corporation was arranging for a repair to the window which would be carried out externally by abseilers. However, this work was not carried out at that time.

- 11 On 23 February 2022 the tenants notified the landlord's agent and the Building Manager that there was significant water leaking into the bedroom through the window and the ceiling of that room. This water leak worsened over the following days during torrential rain affecting Sydney at that time. The tenants put out containers and towels to attempt to capture the falling water. Within a few days the carpet was saturated, and the apartment was affected by a serious damp and mould odour.
- 12 The Building Manager inspected the leaks on 23 February 2022 and arranged to provide the tenants with tubs to capture the water and a carpet dryer. The tenants operated the carpet dryer, the air-conditioning, and the laundry and bathroom exhaust fans continuously to attempt to dry the carpet and prevent the proliferation of mould.
- 13 A plumber engaged by the Building Manager attended the property on 25 February 2022. The plumber found evidence of historical water leaks and concluded that the water was penetrating from the balcony of the apartment immediately above the bedroom. He advised that the balcony would need to be re-sealed.
- 14 By 6 March 2022 the tenants were unable to use the bedroom to sleep in due to the falling water, damp and mould. They had relocated their mattress, bedding and Ms Ramjan's workstation and some other furniture, including a chest of drawers, into the kitchen/living room area. This is where the tenants continue to sleep and work up to the date of the hearing.
- 15 A contractor, apparently arranged by the Building Manager, attended the premises on 8 March 2022 to clean and sanitise the bedroom carpet. However, the sanitisation was unsuccessful and exacerbated the odour. The tenants notified the Building Manager and landlord's agent later that day that the damp and mould odour had intensified.
- 16 On 9 March 2022 building contractors attended the site to inspect and attempt to repair the water ingress by abseiling down the exterior of the building. The tenants provided the contractors with access to the apartment via the balcony throughout the day. The contractors identified a hole in the façade of the building which they sought to repair.

- 17 On 10 March 2022 the contractors returned to the premises to water test the repair completed the previous day. The tenants provided them with access throughout the day. The water testing involved running a hose from the laundry to the exterior of the bedroom window through the balcony and spraying water around its external surface (the contractors again abseiled the exterior). The water testing revealed that the attempted repair had not been successful (water continued to penetrate the bedroom). Further repairs were conducted but were not completed. A window piece was removed and was left detached. The bedroom blinds were removed during this work.
- 18 The carpet cleaning contractor reattended the premises on 11 March 2022. He lifted the carpet and found extensive mould which was the cause of the foul odour. He advised that the carpet had to be removed and replaced. However, as he attended on the instruction of the Building Manager, not the landlord, he did not remove the carpet (it being lot property that was the responsibility of the landlord).
- 19 Between 23 February 2022 and 14 March 2022 the tenants sent multiple email requests to the landlord's agent requesting, inter alia, assistance with the capturing of leaking water, the extraction of water from the carpet, the treatment of mould, the repair of the water damaged bedroom ceiling and the repair of the source(s) of water ingress. In various of these emails they also complained about the inconvenience and disruption they were experiencing and repeatedly requested a reduction in rent having regard to this.
- 20 On 14 March 2022 the tenants issued the landlord's agent with a Notice to Remedy a breach of the residential tenancy agreement in relation to the state of disrepair of the premises requesting that this breach be remedied by 21 March 2022. In response to this Notice, the landlord's agent offered orally to terminate the residential tenancy agreement without penalty. The tenants responded by insisting on repairs being carried out.
- 21 On 16 March 2022 there was further water ingress into the bedroom from the right side of the windows. The tenants notified the Building Manager and he attended to inspect it later that day. The Building Manager arranged for a contractor to attend later that day to remove the bedroom water damaged

ceiling and water soaked insulation to attempt to identify the source of the leak from the interior of the building. A site of water penetration was identified, and a temporary patch was applied until a permanent repair and further water testing could be carried out.

- 22 On 19 March 2022 there was further water ingress into the bedroom over the (missing) ceiling. The tenants notified the Building Manager. On 22 March 2022, he advised he would arrange for contractors to inspect the property again by abseil. On 30 March 2022, in response to repeated complaints and requests for assistance from the tenants, a plumber organised by the Building Manager attended the property to inspect this water leak in the bedroom. He supplied and installed a plastic tub to capture the water and brought back a carpet dryer which he asked the tenants to keep running on the carpet.
- 23 On 1 April 2020 the landlord's agent issued the tenants with a termination notice under s 109 of the RT Act (Frustration of agreement) on the ground that the premises had become uninhabitable. The tenants notified the agent that they she refused to vacate the premises in response to that notice because the premises remained habitable if the necessary repairs were carried out by the landlord.
- 24 On 28 March 2022 an unrelated water leak occurred in the interior of the hallway wall outside the bathroom. The tenants notified the landlord's agent of this on that date requesting its repair. On 4 April 2022 a plumbing contractor apparently arranged by the landlord's agent attended the premises to inspect the water leak in the hallway. The plumber cut a hole in the wall to inspect the source of the leak, but he was unable to carry out a repair at that time. This leak was not repaired until on or about 12 May 2022. The cut-out wall has not been repaired up to the date of the hearing.
- 25 Contractors attended the premises on 5 April 2022 to carry out further repairs to the exterior flashing of the building by abseil, after which they conducted successful water testing. There was torrential rain over the next few days which did not result in any water ingress into the building. However, on 8 April 2022 the tenants did observe some minor water ingress in another area, which they notified to the Building Manager.



- 26 On or about 21 April 2022 the Building Manager notified the tenants and the landlord's agent that the water leaks into the bedroom of the premises had been repaired in the work carried out by the abseilers on 5 April 2022, but the situation would continue to be monitored.
- 27 The ceiling of bedroom 1 was reinstated by contractors on behalf of the Owners Corporation between 12 and 19 April 2022. The window blinds were also reinstated but had been broken during their removal, storage and reinstatement by the contractors. They are seriously affected by mould.
- 28 The landlord has persistently refused or failed to replace the bedroom carpet, to repair the hallway wall, or to treat the premises for mould. She has also refused to arrange for the premises to be cleaned to remove dust created in the various works.
- 29 As I have already noted above, in February 2022 the tenants requested the landlord's agent for a rent reduction because of the state of disrepair of the premises. They originally requested a reduction of \$50.00 per week, then later \$100.00 per week, and on 8 March 2022 they requested a \$200.00 a week reduction. At some time in later March or early April the \$200.00 per week reduction was agreed to by the landlord commencing from 23 February 2022. On 27 April 2022 the landlord's agent terminated this rent reduction with effect from 4 April 2022 because of the Building Manager's advice that the water leak into the bedroom had been repaired on 5 April 2022. That unilateral action had the effect of taking the tenants from a rent credit to arrears position without prior notice to them of the change.
- 30 After 14 March 2022 up to and after these proceedings were instituted, the tenants continued to send multiple email requests to the landlord's agent requesting, inter alia, assistance with the capturing of leaking water, the extraction of water from the carpet, the treatment of mould, the repair of the water damaged bedroom ceiling, the repair of the source(s) of water ingress, the repair of the hallway wall and the replacement of the bedroom carpet and blinds. They also continued to complain about the inconvenience, disruption and distress they were experiencing due to the state of disrepair of the premises.

- 31 It would not be fair to say that the landlord's agent staff were unresponsive to the tenants' pleadings. However, it is clear from the email correspondence taken as a whole that the landlord's agents were slow to take substantive action, did not grasp the seriousness of the situation, or if they did, they failed to properly engage with it, and that they considered it to be a problem for the Building Manager and Owners Corporation to address rather than the landlord.

### **Jurisdiction**

- 32 There is no issue that the Tribunal has jurisdiction to deal with this application in accordance with the provisions of the RT Act. In this respect, the s 44(1)(b) claim has been made before the end of the tenancy as is required by s 44(3) and the s 50 (breach of covenant of quiet enjoyment) and s 63 (breach of covenant in relation to repair) claims have been made within the three-month time period permitted by s 190(1) of the RT Act and Regulation 39(9) of the *Residential Tenancies Regulation 2019* (NSW).

### **Applicable law**

- 33 The landlord's covenant not to interfere with the tenant's quiet enjoyment of the premises is found in s 50 of the RT Act, which is made a term of every residential tenancy agreement by operation of s 50(4). Relevantly, to the tenant's claim in this case, s 50(1) provides that a tenant is entitled to quiet enjoyment of the residential premises without interruption by the landlord, and s 50(2) provides that a landlord or landlord's agent must not interfere with, or cause or permit interference with, the reasonable peace comfort and privacy of the tenant in using the residential premises.
- 34 The obligation of a landlord not to interfere with a tenant's quiet enjoyment of premises is strict. It does not matter that the interference may be for a proper purpose, such as carrying out repairs to premises: *Worrall v Commissioner for Housing ACT* [2002] FCAFC 127. To constitute breach, conduct amounting to an interference with the tenant's quiet enjoyment by or under the landlord must be substantial rather than a mere inconvenience. This will not be found lightly: *Southwark London Borough Council v Tanner* [2001] 1 AC 1.
- 35 The landlord's covenant to maintain the premises in a reasonable state of repair is found in s 63 of the RT Act. The covenant is made a term of every

residential tenancy agreement by operation of s 63(4). Section 63(1) provides that a landlord must provide and maintain the residential premises in a reasonable state of repair, having regard to the age of, rent payable for and prospective life of the premises.

- 36 The duty of a landlord to provide and maintain premises in a reasonable state of repair is strict (subject only to the reasonableness test). It is no defence that delays in repairs being carried out were caused by contractors or other external factors: see for example, *Campbell v Eastern Zone Aboriginal Housing and Community Association* [1998] NSWRT 138. The term 'provide' refers to the state of repair at the commencement of the tenancy, and the word 'maintain' refers to the state of the premises during the tenancy: *Austin v Bonney* [1999] QCA 8. The obligation to 'provide' premises in a reasonable state of repair imposes a duty on a landlord to repair any defects in the premises that were discoverable by a thorough but non-technical inspection: *New South Wales v Watton* [1998] NSWSC 589. The obligation to 'maintain' premises in a reasonable state of repair requires notice to the landlord of the existence of a defect in the premises requiring repair: *Northern Sandblasting P/L v Harris* (1997) 188 CLR 313 at 370-371 per Gummow J.
- 37 In the circumstances of this case, in determining what is a 'reasonable state of repair', it is relevant to also have regard to the landlord's general obligations which are found in s 52 of the RT Act and made a term of every residential tenancy agreement by operation of s 52(4). The section relevantly states:

**52 Landlord's general obligations for residential premises**

(1) A landlord must provide the residential premises ... fit for habitation by the tenant.

(1A) Without limiting the circumstances in which residential premises are not fit for habitation, residential premises are not fit for habitation unless the residential premises –

(a) are structurally sound, and

...

(e) have adequate plumbing and drainage, and

...

(1B) For the purposes of subsection (1A)(a), residential premises are structurally sound only if the floors, ceilings, walls, supporting structures

(including foundations), doors, windows, roof, stairs, balconies, balustrades and railings –

- (a) are in a reasonable state of repair, and
- (b) with respect to the floors, ceilings, walls and supporting structures – are not subject to significant dampness, and
- (c) with respect to the roof, ceilings and windows – do not allow water penetration into the premises, and

...

- 38 The test for whether premises are fit for habitation is whether the premises can be dwelt in with reasonable comfort and safety, having regard to contemporary standards: *Finn v Finato* [2204] NSWCTTT 179.
- 39 The Tribunal's power to order that the rent payable for the premises is excessive having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the residential premises is found in s 44(1)(b) of the RT Act. That section empowers the Tribunal to order that from a specified day the rent for the residential premises must not exceed a specified amount. Such an order can have effect for a period of up to 12 months: s 44(6)(a). Section 41(5) provides that the Tribunal, may, relevantly, to the circumstances of this case, have regard to the following factors in determining whether the rent is excessive without limiting the factors that may be considered: the general market level of rents for comparable premises in the locality or similar locality and the state of repair of the premises.
- 40 In *Roberts v Aboriginal Housing Office* [2017] NSWCATAP 9 at [123] an Appeal Panel cited with approval a decision of McClellan J in *Eliezer v Residential Tribunal and Ors* [2001] NSWSC 1092 in which his honour held at [37] with respect to an antecedent provision to s 44(1)(b) of the current RT Act that the words "goods, services and facilities provided" are confined to the physical and other facilities, goods or services, provided within, or as part of, the premises and that the section is only engaged if it is the landlord (as opposed to a third party) who reduces or withdraws those facilities. As to the distinction between the terms 'reduction' and 'withdrawal' the Appeal Panel held at [124]:

As to what constitutes a reduction, in our view this means the goods, services or facilities are of a qualitative or quantitative standard which is less than what a landlord is required to provide under a residential tenancy agreement. On

the other hand, a withdrawal suggests there must be a removal or inability to use the particular goods, services or facilities. That is, the goods services or facilities or part of them are no longer available to a tenant.

## **Consideration**

### *Repairs*

41 There was no issue between the parties at the final hearing as to the following matters:

- (a) The bedroom carpet and underlay are seriously damaged by water and mould and require replacement;
- (b) The bedroom blinds are broken and seriously affected by mould;
- (c) The hallway wall still has a cut-out hole which requires repair and repainting;
- (d) The water ingress and subsequent persistent damp has led to a mould infestation throughout the premises;
- (e) The repairs to the bedroom ceiling and window and various contractor and other attendances to the property to inspect for and carry out required repairs have created an accumulation of dirt/dust on many surfaces which extends materially beyond anything the tenants would cause in the course of ordinary use. This is likely to be increased during the repairs that remain outstanding.

42 In the absence of any dispute about these matters, I make these findings. These findings entitle the tenants to the orders for repair I have made. In this respect I am satisfied that the various states of disrepair are not reasonable having regard to the age and condition of the premises and the rent payable under the residential tenancy agreement. As this state of disrepair has a significant impact on the tenants' amenity and comfort the repairs and related work must be completed promptly. In this respect I allow the landlord 21 days from the date of the hearing. I note that in order to facilitate prompt action I made the repair orders at the end of the hearing and reserved the remainder of the claim for determination in due course.

### *Excessive rent*

43 In relation to this element of the claim, I make the following findings of fact on the evidence before me:

- (a) The rent payable for the premises (\$1,300.00 per fortnight) was and is a market rent. It follows from this that any reduction or withdrawal of goods, services and facilities provided with the

rented premises by the landlord is a factor of the rent, rather than of any under-market value of possession the tenants already have the benefit of;

- (b) The single bedroom of the premises has been constructively withdrawn from the tenants' use since 23 February 2022 up to the date of the hearing because of water ingress, persistent damp, and mould. It could not, and still cannot, reasonably be used as a bedroom due to its condition. Because Ms Ramjan also had a workstation to conduct her home based business and her studies in this room, its use for these additional purposes has also been withdrawn;
- (c) The tenants have had to move their mattress, bedroom soft-furnishings, a chest of drawers and a workstation and equipment into the kitchen/lounge area to prevent them from becoming water damaged, and to enable them to sleep. This has very seriously disrupted their ordinary use of the kitchen/living room area. This constitutes a reduction in the use of these rooms that is far below that which is required to be provided by a landlord to a tenant under a residential tenancy agreement;
- (d) The whole of the premises is affected by a foul damp and mould smell emanating from the water damaged bedroom and its carpet and underlay. This also constitutes a reduction in the use of these rooms that is far below that which is required to be provided by a landlord to a tenant under a residential tenancy agreement;
- (e) While the source of the water ingress is a state of disrepair of common property for which the Owners Corporation is responsible, as between the tenant and the landlord, it is the landlord who has reduced and withdrawn facilities from the tenants' use for the purposes of s 44(1)(b) because:
  - (i) The landlord has a contractual obligation to the tenants to provide these facilities under the residential tenancy agreement;
  - (ii) The landlord, as Lot Owner, is a member of the Owners Corporation that is responsible for maintaining the common property of the Strata Scheme in a responsible state of repair. She has remedies available to her against the Owners Corporation in relation to the state of disrepair of the common property under the *Strata Schemes Management Act 2015* (NSW);
  - (iii) Leaving aside the state of disrepair of the common property, lot property, in particular the water damaged carpet and underlay resulted in the withdrawal of the bedroom and the reduction in use of the premises as a whole.

- 44 I am satisfied on the evidence that the reductions and withdrawal of facilities outlined above had a severe impact on the tenants' peace, comfort and privacy, as well as their amenity. Among other things, they have had to suffer the inconvenience and discomfort of sleeping on a mattress on the floor, and of having to lift up the mattress and pack away bedding during the day when it was not in use so the kitchen/living area could be used. Their work and study has been disrupted. They could not use the living room for its ordinary function due to the furniture crowded into it. This includes the inability to entertain visits by friends and family. They have had suffer a foul odour. The condition of the bedroom and the hallway wall were unsightly.
- 45 For the foregoing reasons I have no difficulty in accepting the tenants' claim that rent has been excessive by 50% of the rent payable from 23 February 2022. Although it appears that the sources of water ingress have been repaired by the Owners Corporation, the interior of the premises remains in a highly unsatisfactory condition. For this reason, the rent payable should continue to be reduced by 50% until the repairs which are the subject of Order 1 have been completed. Because the Tribunal's power to make an excessive rent order is limited to a 12 month period, I am obliged to specify an end date for the order. It will therefore be 22 February 2023, or until compliance with order 1, whichever occurs first.
- 46 For simplicity and finality, I will liquate the excessive rent order up to the date of the hearing. The tenants have had the benefit of a \$200.00 rent reduction up to 4 April 2022 which must be factored into the calculation. Allowing for that, the rent claimed by the landlord which is excessive up to the date of the hearing is \$4,135.70. I will direct that this be applied as a credit to the tenants rent account. That will satisfy any claimed arrears owing by the tenants up to the date of the hearing. If, as a result of the credit, rent is paid in advance by more than two weeks the tenants can request any amount not owed to be refunded to them pursuant to s 47 of the RT Act.

### **Compensation claim**

- 47 In relation to this element of the claim I make the following findings of fact on the evidence before me:

- (a) The landlord's failure to remove and replace the water and mould damaged carpet, and repair and repaint the cut-out in the hallway wall constitutes a breach of her obligation to maintain the premises in a reasonable state of repair. There is no issue that these items are lot property for which the landlord is responsible as lot owner. The landlord has been on notice for considerable periods in both cases that repairs were required but has failed to act with reasonable diligence to effect the repairs.
- (b) The inconvenience, disruption, and embarrassment caused or related to the state of disrepair of the premises constitutes an interference by the landlord with the tenants' quiet enjoyment. It has had, and continues to have, a serious impact on their peace, comfort and privacy. This interference includes the following elements:
  - (i) Disappointment and embarrassment about the condition of the premises;
  - (ii) Distress about the substantial inability to use the premises for its intended purposes;
  - (iii) Distress caused by the water ingress events themselves, the insufficient responses of the landlord's agent and the Building Manager to the tenants many requests for assistance to deal with the water ingress and its impact in the premises;
  - (iv) Distress caused by the landlord's attempt to evict the tenants from the premises by issuing a termination notice under s 109, instead of properly attending to repairs.

48 The tenants' claims for compensation arising from these breaches are based upon additional utility costs they intend they incurred running the carpet dryer, air conditioner and fans to combat water saturation and internal humidity. I accept that the operation of this equipment did result in additional costs being incurred. However, there is no objective evidence of what these additional costs are (for example, in the form of electricity bills). I will therefore allow nominal damages of \$100.00 only in relation to this element of the claim.

49 The tenants also claim payment of their time thrown away in chasing the landlord's agent and Building Manager in relation to the water ingress and repairs and in dealing with contractors etc. While it may be accepted that the tenants did experience inconvenience in this regard, it did not result in actual economic loss to them in terms of remunerated employment foregone, for example. I will therefore not allow this head of compensation.



50 I am however prepared to recognise part of the substance of this compensation head as a claim for compensation for non-economic loss in the form of distress and disappointment. This distress and disappointment is additional to the loss or reduction in the use of facilities which is recognised by the order under s 44(1)(b) and is compensable separately: *Makowska v St George Community Housing Ltd* [2021] NSWSC 287 at [46]. I award the tenants \$2,500.00 in compensation for this damage.

#### *Payment of rent to Tribunal*

51 I refuse to order that the tenants pay rent to the Tribunal until order 1 is complied. The tenants have a right of renewal of their application under clause 8 of Schedule 4 of the *Civil and Administrative Tribunal Act* 2013 if the landlord fails to comply with order 1, and they can obtain further remedies pursuant to such an application. Although there is no direct evidence on this point, as a matter of general principle, it is counter productive to deprive a landlord of rent in circumstances where there are costs of repairs to be met.

#### **Orders**

52 For the foregoing reasons I make the following orders:

Orders made on 20 June 2022:

- (1) The respondent, Davinia Elaine Tang, is to cause the undertaking of the following work in a proper and workmanlike manner on or before 11 July 2022:

Details of Work order:

- (a) engage a mould expert to remove mould from the apartment and treat the apartment to prevent mould regrowth;
- (b) remove and replace the bedroom carpet and its underlay with an equivalent quality carpet and underlay;
- (c) replace the bedroom blinds (4) with blinds of an equivalent quality;
- (d) repair and repaint the hallway wall where a hole has been cut during a water leak investigation;
- (e) upon completion of items (a) to (d) provide a general clean of the apartment to remove dust, detritus and marks caused by the water ingress, contractor attendances at the premises, and remedial works.

Orders made on 28 June 2022:

- (2) The rent payable for the residential premises is excessive and is not to exceed \$325.00 per week from 23 February 2022 until order (1) of these orders has been complied with or 22 February 2023 whichever occurs first.
- (3) Order (2) is liquidated up to the date of the hearing. The landlord, Davinia Elaine Tang, must pay the tenants, Rosemarie Ramjan and Mitchell Gilmour, \$4,135.70 immediately.
- (4) The amount specified in order (3) is to be applied as a credit to the tenants' rent account. A money order is not to issue in relation to order (3).
- (5) The landlord, Davinia Elaine Tang, must pay the tenants, Rosemarie Ramjan and Mitchell Gilmour, \$2,600.00 immediately. A money order may issue in relation to this order.
- (6) The tenants' application for an order pursuant to s 65(5) of the Residential Tenancies Act 2010 that rent be paid to the Tribunal until order (1) is complied with is refused.

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I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.  
Registrar

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