



Civil and Administrative Tribunal  
New South Wales

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Case Name: Wu v Liu

Medium Neutral Citation: [2022] NSWCATCD 90

Hearing Date(s): 14 January 2022, 11 February 2022 and 13 April 2022

Date of Orders: 15 June 2022

Decision Date: 15 June 2022

Jurisdiction: Consumer and Commercial Division

Before: P French, Senior Member

Decision: (1) The tenant, Yifan Liu, must pay the landlord, Zheng Wu, \$599.00 immediately.  
(2) Rental Bond Services is directed to pay the landlord, Zheng Wu, \$599.00 from Rental Bond No.S786344-4. Any amount received is to be credited against the money order (order 1). Any balance of the bond is to be paid to the tenant, Yifan Liu.  
(3) The application is otherwise dismissed.

Catchwords: LEASES AND TENANCIES - Residential Tenancies Act 2010 (NSW) – Rights and obligations of landlords and tenants – Rental bond

Legislation Cited: Residential Tenancies Act 2010 (NSW)  
Residential Tenancies Regulation 2019 (NSW)

Cases Cited: Adoncello v Sazdanoff (Tenancy) [2006] NSWCTTT 577  
Alamdo Holdings Pty Ltd v Australian Window Furnishings (NSW) P/L [2006] NSWCA 224  
Bell & Bell v Boccola, Campbell & Lawrence (Residential Tenancies) [2009] ACAT 26  
Cure v Bridge Housing Ltd [2014] NSWCATAP 80  
Elhassen v Ayoub [2018] NSWCATAP 34  
Fitzpatrick v Wu NSWRT, 2001, (01/16425).

Hadley v Baxendale [1854] EWHC J70  
Lindsay v NSW Land and Housing Corporation [2016]  
NSWCATAP 128  
Marcourt v Clark [2012] NSWCA 367  
O'Brien v Twynam [2016] NSWCATAP 125  
Sunray Investments P/l v Cruwys [1992] NSWRT 95

Texts Cited: Nil

Category: Principal judgment

Parties: Zheng Wu (Applicant)  
Yifan Liu (Respondent)

Representation: Applicant (Self-represented)  
Respondent (Self-represented)

File Number(s): RT 21/48136

Publication Restriction: Nil

## REASONS FOR DECISION

### Introduction

- 1 This is an application by a landlord for an order pursuant ss 51, 187(1)(d) and 190 of the *Residential Tenancies Act* 2010 (RT Act) that would require the tenant to pay her a total of \$5,768.00 in compensation for damage and loss she contends she suffered due to the tenant's breach of his end of tenancy obligations to her. The landlord also applies for an order pursuant to s 175 of the RT Act that would direct Rental Bond Services to pay her the whole of the tenant's rental bond, which is \$2,320.00 in part satisfaction of her compensation claims. This application was made to the Tribunal on 24 November 2021 (the application).
- 2 For the reasons set out following, the Tribunal has determined that the landlord is entitled to be compensated a total of \$599.00 in relation to four elements of her claim. The balance of the claim has been dismissed. Rental Bond Services has been directed to pay the landlord this amount from the tenant's rental bond.

### **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 17 December 2021. The landlord appeared at that listing of the application but there was no appearance by the tenant. It appears from the Tribunal's file record that the Tribunal was not satisfied that the tenant had been served with notice of the application and hearing. Consequently, an order was made for substituted service on the tenant to an email address, and 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.
- 4 I also note that at the first listing of the application the Tribunal granted the applicant leave to amend her claim as it then stood to claim compensation from the tenant in excess of the Rental Bond (see order 8 "Issues at the Final Hearing"). Prior to that amendment the only order sought was in relation to the rental bond.

### **Evidence and hearing**

- 5 Both parties have complied with the Tribunal's directions for the filing and exchange of their documentary evidence, although there was some non-material delay in the tenant's case. The landlord relied upon a bundle of documents which was filed on 8 December 2021 (prior to the first listing) which was marked Exhibit A1. The tenant relied upon a bundle of documents filed on 10 January 2022, which was marked Exhibit R1.
- 6 The hearing was conducted over three Special Fixture Hearings held on 14 January 2022, 11 February 2022 and 13 April 2022. That resulted from two factors, the first being the extent of the landlord's claims, and the second being serious connection issues experienced in the conduct of each hearing because both parties are located overseas.
- 7 Ms Wu attended each of the Special Fixture Hearings and gave oral evidence under affirmation. Mr Liu also attended each of the Special Fixture Hearings 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**

- 8 The dispute arises from a residential tenancy agreement that was made between the parties on 28 July 2020 in respect of premises at Zetland. It was a fixed term agreement of 52 weeks' duration in respect of the period 3 August 2020 to 1 August 2021. The tenancy continued on a periodic basis after the end of the fixed term. On 8 November 2021 the landlord issued the tenant with a termination notice on the ground of breach of the residential tenancy agreement requiring him to give vacant possession on 23 November 2021. He did so on 22 November 2021. The particulars of the breach alleged were, in substance, the sub-letting of the premises without permission contrary to clause 35 of the agreement.
- 9 The premises is an apartment situated in a residential complex and strata plan at Zetland. It has one bedroom, one bathroom, kitchen, laundry, lounge area, balcony and car park. The residential tenancy agreement also incorporates into the residential premises a TV cabinet unit, built-in shelves, built-in study desk, and refrigerator. The rent payable under the agreement was \$1,160.00 per fortnight. At the start of the tenancy the tenant provided the landlord with a rental bond of \$2,320.00 which was deposited with Rental Bond Services. The Rental Bond is frozen pending the outcome of these proceedings.
- 10 On 31 July 2020 the landlord's agent prepared and signed a Condition Report for the premises, which was provided to the tenant on or about the date of the residential tenancy agreement. It is not clear on the evidence if he signed and returned a copy of that Condition Report to the landlord's agent. In any event the copy of that Condition Report in the evidence of both parties is a landlord unilateral report. It thus does not attract the s 30(1) presumption that it is a correct statement of the condition of the premises at the start of the tenancy. The unilateral report states that the premises was clean, undamaged and in working order in all respects at the start of the tenancy. There are 400 photographic views of the premises incorporated into the Condition Report. In

the copy that is in the landlord's bundle these are colour images less than 6sqcm in size. They are generally good quality images.

- 11 The tenant is a Chinese national. At the material time for this dispute he was an international student who was studying at a tertiary campus in the general locality of Zetland. It appears that sometime after entering into the residential tenancy agreement he returned to China on an intended temporary basis, but could not return to Australia in early 2021 due to COVID-19 pandemic related travel restrictions. It appears that he has not returned to Australia for this reason since that time (at least up to the date of the last hearing).
- 12 In May 2021 the landlord's agent conducted a routine inspection of the premises, and later communicated with the tenant concerning its outcome. It appears that it was at this point that the landlord's agent and landlord apprehended that the tenant was sub-letting the premises to another person. The tenant contends that he was not sub-letting the property at any point. He contends that he simply had an arrangement with a friend to take care of the property while he was away. At the hearings the landlord placed a great deal of emphasis on the tenant's alleged sub-letting of the premises on the basis that this led to 'overcrowding' of the premises leading to damage. However, it does not appear to be suggested by the landlord that there was more than one person 'living' at the premises while the tenant was in lock-down overseas.
- 13 After the tenant returned possession of the premises on 22 November 2021, the landlord's agent conducted a final inspection of the premises on 23 November 2021, completing an end-of-tenancy Condition Report at that time. The landlord's final inspection and end of tenancy Condition Report are unilateral. The Condition Report records various aspects of the premises as not clean and damaged. Incorporated into this report are 472 photographic images of the premises. Again, all of these images are less than 6sqcm. In the copy of this report that is incorporated into the landlord's bundle these are colour images of reasonable resolution. Following the completion of this Report, the tenant was notified by the landlord's agent that she did not consider the premises clean. This resulted in him arranging for his cleaning contractor to re-attend the property to carry out further cleaning work. The landlord's agent

completed another partial End-of-Tenancy Condition Report took a further 146 photographs of the premises after this additional cleaning was carried out on 25 November 2021 which are in evidence. The size and quality of these photographs is the same as those taken on 23 November 2021.

- 14 As evidence of her loss the landlord relies upon a cleaning contractor's invoice dated 1 December 2021, a maintenance contractor's quotation which is dated 26 November 2021, and in respect of the range hood filter, an appliance service invoice dated 6 December 2021.

### **The landlord's claims**

- 15 There are 17 items to the landlord's compensation claim, which are set out following. Each claim has been numbered to facilitate later references:

No	Description	Amount claimed
1	Replacement cost for charcoal range hood filter	\$149.00
2	End of tenancy cleaning	\$350.00
3	Patch and paint walls to repair marks, holes and other damage	\$550.00
4	Patch and paint skirting boards to repair damage	\$165.00 + GST
5	Patch and paint door frames to repair damage	\$275.00 + GST
6	Paint sliding door frame to repair damage	\$220.00 + GST
7	Paint A/C screen cover to repair scratch	\$165.00 + GST

8	Repair refrigerator kitchen cabinetry (integrated unit)	\$495.00 + GST
9	Repair other kitchen cabinetry	\$1,100.00 + GST
10	Repair of kitchen tap damage	\$165.00 + GST
11	Repair damaged laminate on desk and shelves	\$330.00 + GST
12	Repair damaged laminate on TV unit	\$880.00 + GST
13	Repair LED strip light on TV unit	\$440.00 + GST
14	Repair damage to bathroom cupboard	\$110.00 + GST
15	Repair laundry storage case and sink	\$143.00 + GST
16	Repair carpet burn/stain in bedroom	\$165.00 + GST
17	Install lost buffers on joinery	\$66.00 + GST
	<b>TOTAL</b>	<b>\$5,768.00</b>

### Jurisdiction

- 16 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 tenant breaches of the residential tenancy agreement contended for by the landlord

relate to the tenant's end of tenancy obligations to leave the premises reasonably clean, having regard to its state of cleanliness at the start of the tenancy (clause 18.3 of the agreement), and the tenant's obligation to return possession of the premises to the landlord in a condition as close as possible to the condition it was in at the start of the tenancy, fair wear and tear excepted (clause 18.2 of the agreement).

- 17 The tenancy terminated on 22 November 2021 and, as noted above, this application was made to the Tribunal on 24 November 2021. Insofar as the landlord pursues compensation in excess of the rental bond, the application has thus been made within the three month period permitted by s 190(1) of the RT Act and Regulation 39(9) of the *Residential Tenancies Regulation 2019* (RT Regulation). Insofar as the application seeks an order in relation to the rental bond, it has been made within the 6 month period permitted by s 175(3) of the RT Act and Regulation 39(8) of the RT Regulation.

### **Applicable law**

- 18 In order to succeed in each of her claims the landlord bears the onus of proving, first, that there was the relevant breach by the tenant of his end of tenancy obligations, and if that is proved, second, that she has suffered reasonably foreseeable damage and loss as a consequence of that breach for which she is entitled to be compensated: *Hadley v Baxendale* [1854] EWHC J70. The landlord bears the onus of proving the elements of each of her claims to the civil standard of proof; that is, to the comfortable satisfaction of the Tribunal on the balance of probabilities: *Briginshaw v Briginshaw* (1938) 60 CLR 336
- 19 An award of damages arising from a breach of a residential tenancy agreement is compensatory, just as it is with other types of contracts. Its objective is to put the injured party in the position they would have been in had there been no breach, so far as money is capable of doing so. The injured party is not entitled to any amount of compensation that would result in them being put in a better position than they would have been if there had been no breach: *Marcourt v Clark* [2012] NSWCA 367 at [98-99]; *O'Brien v Twynam* [2016] NSWCATAP 125 at [80 to 85]. With respect to those of the landlord's claims



that relate to alleged damage to rental assets this requires the Tribunal to take into account the start of tenancy condition, age and expected period of use of the asset in question.

- 20 The obligation to leave premises clean at the end of the tenancy is qualified by two factors. Firstly, the state of cleanliness in which it was at the start of the tenancy, and second, by a reasonableness standard. This is an objective standard. It is not the standard of a fastidious and obsessive landlord: *Fitzpatrick v Wu* NSWRT, 2001, (01/16425).
- 21 The obligation at the end of a tenancy to leave premises in a condition as close as possible to the condition it was in at the start of the tenancy is qualified by the tenants right to reasonable use of the premises, and by the reasonably expected period of use of the rental asset. A tenant is not strictly liable for any change in the condition of premises during a tenancy. Any wear and tear that is associated with reasonable use, or which arises as a result of natural forces (such as the ageing of an asset) is 'fair' and cannot constitute a breach of the tenant's obligation: *Elhassen v Ayoub* [2018] NSWCATAP 34 at [6].
- 22 In *Bell & Bell v Boccola, Campbell & Lawrence (Residential Tenancies)* [2009] ACAT 26, the ACT Civil and Administrative Tribunal concluded, having reviewed the relevant authorities, that fair wear and tear "generally relates to damage or deterioration that happens through the ordinary day to day use" of premises by a tenant [at 24]. It identified [at 25] six factors to be considered in determining whether particular deterioration is fair wear and tear or negligent damage: (a) the age, quality and condition of any item at the beginning of the tenancy; (b) the average useful lifespan of the item; (c) the reasonable expected use of such an item; (d) any special terms of the tenancy agreement related to that item; (e) the number and type of tenants; and, (f) the length of the tenant's occupancy. Fair wear and tear does not include deterioration in the premises that could be prevented by reasonable conduct on the tenant's part: *Alamdo Holdings Pty Ltd v Australian Window Furnishings (NSW) P/L* [2006] NSWCA 224.
- 23 What is 'fair' wear and tear is assessed objectively according to contemporary standards: *Adoncello v Sazdanoff (Tenancy)* [2006] NSWCTTT 577 at [78]. It is

not assessed according to the standard of a fastidious and obsessive landlord: *Fitzpatrick v Wu* NSWRT, 2001, (01/16425).

- 24 The onus of establishing fair wear and tear rests on the tenant: *Westpac General Insurance v Cooper* [2006] ACTSC 91 [at 14].
- 25 Several of the landlords' claims rest on the contention that the tenant caused or permitted "intentional" or "negligent" damage to the residential premises in the course of the tenancy. In the context of the RT Act, for conduct to be "intentional" it must be "pre-meditated": *Lindsay v NSW Land and Housing Corporation* [2016] NSWCATAP 128 at [45]. This requires proof that the tenant had "determine[d] on [a particular] result or such result must be that person's aim or purpose." Intention will not be present if the result was unforeseen": *Cure v Bridge Housing Ltd* [2014] NSWCATAP 80 at [43]. For conduct to be negligent there must be evidence of a lack of reasonable care and attention, or of a non-performance of a duty, or of neglect-full-ness of, thoughtlessness in relation to, or inattentiveness to, an obligation or duty by the tenant: cf *Sunray Investments P/l v Cruwys* [1992] NSWRT 95. This is an objective test.
- 26 The onus of proving negligent or intentional damage rests with the landlord: *Westpac General Insurance v Cooper* [2006] ACTSC 91 [at 14]. If a landlord seeks to prove that a tenant has caused or permitted intentional or negligent damage, they must establish a credible hypothesis as to how this damage was caused: (*Fitzpatrick v Wu* unreported, NSWRT, 2001, 01/16425).

## **Consideration**

### *Item 1: Range hood filter*

- 27 The landlord alleges that the tenant breached his obligation not to cause or permit negligent damage to the range hood filter by failing to clean it over the course of the tenancy, with the result that it was so embedded with grease at the end of the tenancy that it could not be cleaned and required replacement.
- 28 The Start-of-Tenancy Condition report records that the range hood and exhaust fan were in clean and undamaged condition at that time, and that condition is elaborated by an annotation "all clean and intact, no damage or grease". The End-of-Tenancy Condition report states that the range hood and

exhaust fan were not clean and refers to images 271 to 283 of that Report. Those images do not depict the filter. However, images 101 to 103 of the photographs taken by the landlord's agent on 25 November 2021 do depict the filter, and they show it to have a serious accretion of grease.

- 29 The tenant denies that the exhaust fan was not left reasonably clean. In support of that contention he relies generally on the invoice of a cleaning contractor he engaged to clean the premises at the end of his tenancy. The difficulty for him is that the landlord's photographs were taken after his cleaning contractors had attended the property twice to carry out cleaning.
- 30 I am thus satisfied that the tenant returned the range hood filter to the landlord with a serious accretion of grease. There is no objective evidence that establishes that this resulted in irreversible damage to the filter but as a matter of common sense it is clear that the filter would have required scrubbing to clean, and I am prepared to accept the landlord's contention that there is the likelihood that this would have been destructive of the filter. I am thus satisfied that the landlord has established breach
- 31 The landlord has provided satisfactory evidence of the cost she will incur in replacing the range hood filter. However, in assessing her actual loss, I must take account of the age and expected period of use of the filter about which there is no evidence. I consider a range hood filter to be a consumable asset, not a capital item with expected great longevity. I will therefore allow the landlord half the amount she claims (\$74.50) on a nominal basis.

### *Item 2: Cleaning*

- 32 The Start-of-Tenancy Condition Report records as a general comment at page 6 that the premises had been professionally cleaned and the carpet steamed cleaned at that time. Each item of the premises is also recorded as being clean in the detail of the Condition Report. The End-of-Tenancy Condition Report records as a general comment at page 4 that the "property is dirty" "cleaning is not up to standard". Every item of the premises is also recorded as being unclean in the detail of the Condition Report with various references to "dusty", "dirty", "stained" and "greasy" surfaces. This presents as a credibility issue for

the landlord, as the 472 images associated with that Report certainly do not depict extensive uncleanness.

- 33 In any event, as noted above, the End-of-Tenancy Condition Report dated 23 November 2021 is before the tenant's cleaning contractors returned to the property to carry out further cleaning. It is thus not of assistance in determining the state of cleanliness in which the premises was finally returned. In this respect the landlord must rely upon the photographs taken by her agent on 25 November 2021. Additionally, there is in evidence an email exchange between the agent, the tenant's cleaning contractor and the tenant dated 24 November 2021 which sheds light on this issue. In that email the cleaning contractor states that they did not remove sticky tape from any surface because of the possibility this would strip paint, that they attempted spot cleaning of the walls and that any further cleaning would be at an additional cost, and that a complimentary sweep and mop of the balcony was completed but any deeper clean would be an additional service.
- 34 The tenant denies that he failed to leave the premises reasonably clean. He again relies generally on the invoice of a cleaning contractor he engaged to clean the premises at the end of his tenancy, and the fact that the contractor returned to the premises a second time to carry out further cleaning as a result of the landlord's agent's dissatisfaction with the initial cleaning out. The difficulty for him is that the landlord's photographs were taken after his cleaning contractors had attended the property twice to carry out cleaning.
- 35 The tenant also contends that his cleaning contractor could have returned again to attend to any further cleaning issues. There are two difficulties for the tenant in relation to this contention. First, his obligation to return the premises reasonably clean crystallised when he returned possession. After that time the landlord had no obligation to allow for specific performance. Second, it is clear from the cleaning contractor's email to the agent that at least some of the further cleaning the agent wanted attended to was outside the scope of work for which they considered themselves responsible.
- 36 The commentary and photographs incorporated into the 25 November End-of-Tenancy Condition Report establish the following to my satisfaction: a ground-

in substance in the bedroom carpet about the size of a 10 cent coin (image 20), discoloured grout in the tiled shower recess (images 32 to 36), tiled laundry floor (images 129 and 130) and entrance tiled floor (images 131 to 146), dust in the bathroom exhaust fan (images 37 and 38), and some cooking residue on the oven racks and oven base (images 87 to 100). I am also prepared to accept based on the email exchange I have referred to above that there may have been tape adhering to some surfaces, and some marks to walls that are not effectively illustrated in the landlord's photographs. To this extent I am satisfied that the premises was not left reasonably clean having regard to its condition at the start of the tenancy, but I am also satisfied the state of uncleanliness was far from the most serious case.

- 37 Various other aspects of uncleanliness are contended for by the landlord, but I am not persuaded as to their existence. It is clear that the landlord expected the premises to be left in a very high standard of cleanliness, perhaps perfect cleanliness. But that exceeds the tenant's obligation, which was to leave the premises reasonably clean. In this respect, the landlord and her agent strike me as unreasonably fastidious in their appraisal of the state of cleanliness in which the premises was left.
- 38 The cleaning contractor invoice that the landlord relies upon to prove her loss is not itemised in terms of specific work carried out, or by hours of work and hourly rate. It therefore does not provide much assistance in assessing cost of cleaning those aspects of the premises I have found were not left reasonably clean. I will therefore allow the landlord a nominal sum of \$200.00 in compensation in relation to this element of the claim. Any greater amount would be manifestly excessive having regard to the uncleanliness that has been proved, and its relatively minor nature.

*Items 3, 4, 5: Wall, skirting board, and door frame repairs and repainting*

- 39 The Start-of-Tenancy Condition Report records the walls, skirting boards and door frames to be in undamaged condition at that time. However, in the commentary there are references to the walls having some scuffs and to being in good "overall condition" which indicates at least they were not in new or pristine condition. The End-of-Tenancy Condition Report refers to chips and

scuffs to the paint work on walls, doors and skirtings, and to some hook and screw damage to walls.

- 40 The tenant contends that any change in the condition of the walls, doors and skirtings over the course of the tenancy was no more than fair wear and tear to which he was entitled. He denies causing any negligent or intentional damage to them.
- 41 The landlord's photographic evidence of 23 and 25 November 2021 does not establish the damage to the walls, doors and skirtings she contends for to my satisfaction, either to the level contended for by the landlord, or at all. Some photographs may show some very minor paint chips and scuffs. But even if this is the case, I am not satisfied that this is more than fair wear and tear to which the tenant was entitled. I am not satisfied on the evidence that breach is established with respect to these items. These elements of the claim must therefore be dismissed.

*Item 6: Balcony sliding door frame painting*

- 42 In relation to this element of the landlord's claim it is sufficient to set out that the tenant has submitted a juxtaposition of the landlord's Start-of-Tenancy photograph of the sliding door taken on 29 July 2020 with her End-of-Tenancy photographs of the door taken on 23 November 2021. Despite the description of the door being "undamaged" in the Start-of-Tenancy Condition Report and as being damaged ("chipped") in the End-of-Tenancy Condition Report I am satisfied that there was little, if any, change to the condition of the door. That is, there was some superficial paint wear to the base castor on which the door slides and door frame at the start and end of the tenancy. Even if that were not the case, I am satisfied the degree of paint wear on the castor and frame the landlord complains about at the end of the tenancy is the result of ordinary use of the door (sliding it open and closed) and thus fair wear and tear to which the tenant was entitled. On this basis I am not satisfied that breach has been established. This element of the claim must therefore be dismissed.

*Item 7: Air conditioning unit painting*

- 43 In relation to this element of the landlord's claim it is sufficient to set out that the Start of Tenancy Condition Report refers in the commentary to the cover of

the air conditioner being “scratched”. It is that scratched condition that the landlord complains about at the end of the tenancy. The tenant has submitted a juxtaposition of the landlord’s Start-of-Tenancy photograph of the air conditioning unit taken on 29 July 2020 with her End-of-Tenancy photographs of the air conditioning unit taken on 23 November 2021. I am satisfied that these photographs demonstrate no material change in the condition of the air conditioning unit. On this basis I am not satisfied that breach has been established. This element of the claim must therefore be dismissed.

*Items 8 and 9: Refrigerator and other kitchen cabinetry repairs*

- 44 The Start-of-Tenancy Condition report records that the kitchen cupboards, which apparently includes the refrigerator cabinet, are in undamaged condition. That condition is supported by the photographs incorporated into that report. The End-of-Tenancy Condition reports states that the cupboards are damaged, being “scratched”, “stained”, and that the refrigerator cupboard door “cannot be closed”. To establish this damage the landlord relies upon images 82 to 129 (the cabinetry other than the refrigerator cabinetry) and 160 to 184 (the refrigerator cabinetry) of the Report dated 23 November 2021.
- 45 With respect to the kitchen cabinetry, no damage can be seen in photographs 82 to 87. The landlord contended that a chip is evident on a drawer front in image 88 but I cannot see it. No damage is depicted in images 89 to 102. The landlord contends that image 103 depicts some form of damage to a cupboard door. Some discolouration along one edge may be evident, but the door is otherwise apparently intact. The photograph is not of sufficient quality to depict anything more definite than this. Image 104 does depict a stain on a cupboard door. It is not possible to know if the stain is capable of being cleaned away. Images 105 to 107 do not depict any damage. The landlord contends that image 108 depicts a damaged cabinet edge. I make the same comment about that image as I do image 103. Images 109 to 129 do not depict any damage to the cupboards.
- 46 With respect to the refrigerator cabinetry no damage can be seen in images 160 to 184.

47 I have also looked at the photographs of the kitchen cabinetry contained in the End-of-Tenancy Condition Report that was completed on 25 November 2021 (images 39 to 80). No damage is depicted in images 39 to 54. Images 56 and 60 appear to depict some uncleanliness to a drawer top. But otherwise no damage is depicted in images 55 to 80.

48 The contractor's quotation relied upon by the landlord is also potentially relevant evidence on the issue of breach. In relation to the cabinetry it states:

...

Repair tenant's malicious damaged fridge (need to repair integrated fridge kit and cupboard)

Repair kitchen cupboards where damage occurred (5 cupboards were damaged)

...

49 However, it actually sheds little light on the nature and causation of the damage. I am also concerned by its reference to "tenant's malicious damage". This appears to be regurgitation of a self-serving instruction given by the landlord to the contractor. I therefore decline to give that statement other than little weight.

50 The tenant denies causing or permitting any negligent or intentional damage to the kitchen cabinetry. He contends that any change in condition of the cabinetry over the course of the tenancy was the result of ordinary use to which he was entitled as fair wear and tear.

51 The landlord bears the onus of establishing that the tenant caused or permitted negligent or intentional damage to the cabinetry. Her evidence falls very far short of establishing that to the civil standard of proof. No breach with the respect to the condition of the kitchen and refrigerator cabinetry has been proved. These elements of the claim must therefore be dismissed.

#### *Item 10: Tap damage*

52 The Start-of-Tenancy Condition Report records that the kitchen sink mixer tap was in undamaged condition at that time. It is noted to be "not damage" and "all intact". In the End-of-Tenancy Condition Report the sink and tap are recorded as being in damaged condition with an associated comment "scratch marks". That condition references images 221 to 224. Only image 223 depicts the



mixer tap. It has a diagonal surface scratch. The landlord's contractor quotation refers to the "repair" of the tap, but in oral evidence the landlord made clear that the quoted cost was for the replacement of the tap.

- 53 The tenant denies causing any negligent or intentional damage to the tap. He contends that the scratch is no more than fair wear and tear to which he was entitled.
- 54 The landlord's evidence is only sufficient to prove that the tap has a light surface scratch that does not affect the function of the tap and which could not reasonably be characterised as having other than a very minor impact on its aesthetic. I am not satisfied that this is capable of constituting a breach of the tenant's obligations. I am satisfied that it is no more than fair wear and tear to which the tenant was entitled. This element of the claim must therefore be dismissed.

*Item 11: Study nook desk and shelves*

- 55 The Start-of-Tenancy Condition Reports that the study nook was in clean and undamaged condition at that time, with the exception that there was "one red mark in one drawer", and "one hook". The End-of-Tenancy Condition Report records the study nook as being in unclean and damaged condition. It is annotated as follows: "damaged scratch mark and chip; scratch mark; mark due to hook, damage due to screw; chipped wall; scuff marks on walls, red scratch mark on wall". Attention is directed to images 297 to 319 of that Report. Images 297 to 302 are of the floor and have no apparent relevance to the damage issue. Images 303 to 309 are photographs of walls and depict no damage. Images 310 to 312 depict part of the desk laminate. The landlord contends that they show a small chip to one corner of the laminate, but any such chip cannot be seen in fact, and if it exists, it must be very minor. Images 313 to 317 depict no damage. Images 318 and 319 depict a small hole in one part of the cabinetry of desk. The photographs in the End-of-Tenancy Condition Report dated 25 November 2021 add nothing to this aspect of the claim.
- 56 The tenant denies causing or permitting any damage to the study nook. He contends that any change in its condition was the result of fair wear and tear.

57 I am not satisfied on the evidence before me that any breach of the tenant's obligations has been proved. I cannot be satisfied that the hole in the cabinetry that has been proved was not present at the start of the tenancy in the form of the hook that was recorded there. There is no evidence of any other hook at the end of the tenancy. The chip to the laminate to the corner of the desk, if it exists, is very minor and could not constitute more than fair wear and tear. No other damage to the study nook has been proven. For these reasons this element of the claim must be dismissed.

*Item 12: TV Unit laminate and LED Light*

58 The Start-of-Tenancy Condition Report records that the TV Cabinet was in clean and undamaged condition at that time. There is also an annotation: "clean and intact, no damage, light is working".

59 The End-of-Tenancy Condition Report completed on 23 November 2022 records the TV Unit as not clean and damaged. It is annotated "dirty, scratch marks" and further on "dirty, scratch marks LED lights behind TV cabinet is not working". Attention is directed to images 282 to 296 and 320 to 344. Image 282 depicts two short scrapes to a shelf surface edge. This is also seen in image 287. No damage is depicted in images 283 to 286, 288 to 296 and 320. A single small chip or flake to the interior veneer of the TV cabinet is depicted in image 321. This same blemish is depicted in images 322, 324, 325 and 330. No damage is depicted in images 323, 326 to 331. Image 332 depicts a small blemish (a light spot) to another surface of the TV cabinet. Images 333 to 336 do not depict any damage, Images 337 to 339 depict some spot blemishes on 3 different surfaces. Images 340 to 344 do not depict any damage.

60 The End-of-Tenancy Condition Report completed on 25 November 2021 contains further images of the TV cabinet (images 104 to 124). Image 112 depicts some very minor blemish to one cabinet surface not shown in the 23 November 2021 sequence. Otherwise these images do not add to what can be seen in the 23 November 2021 sequence of images.

61 I can find nothing in either of the landlord's End-of-Tenancy Condition reports that has any relevance to the LED lights she contends were damaged.

- 62 The tenant denies causing intentional or negligent damage to the TV cabinet. He contends that any change in its condition over the course of the tenancy is fair wear and tear to which he is entitled.
- 63 I am not satisfied on the landlord's evidence that a breach of the tenant's obligations has been established. All that has been proved is some very minor blemishes on the cabinetry and two slightly more prominent, but still minor, scapes on the edge of one cabinet surface. This change in the condition of the TV cabinet from the start to the end of the tenancy is not sufficiently serious to constitute a breach. I am satisfied that it results from ordinary use, and is fair wear and tear to which the tenant was entitled. This element of the landlord's claim must therefore be dismissed.

*Item 11: Bathroom mirror cabinet*

- 64 The Start-of-Tenancy Condition Report records that the bathroom mirror cabinet was in clean and undamaged condition at that time. It is stated that it is "all clean and intact, no damage or scratch, clean condition". The End-of-Tenancy Condition Report dated to 23 November 2021 states that the mirror cabinet is unclean and damaged. It is annotated "1 x minor hole underneath mirror", and refers to images 46 to 50. Images 46 and 50 depict what appears to be a chip to the laminate surface of the cabinet. Images 48 and 49 appear to depict an area of delamination consistent with water damage. The End-of-Tenancy Condition Report completed on 25 November 2021 sheds no further light on this element of the claim.
- 65 The tenant denies causing or permitting any negligent or intentional damage to the mirror cabinet.
- 66 The difficulty for the landlord with respect to this element of the claim is that her Start-of-Tenancy photographs do not depict the surfaces of the cabinet that she contends were damaged at the end of the tenancy. It is thus not possible for the Tribunal to determine on an objective basis if there has been any change in the condition of those surfaces from the start to the end of the tenancy. While some weight can be given to the statement recorded by the landlord's agent in the Start-of-Tenancy Condition Report, it must be recalled that this Report is unilateral. That is not enough to prove any significant change

in the condition of the cabinet particularly in a context where it is clear that many of the landlord's other claims about 'damage' are fanciful and exaggerated. For this reason, this element of the claim must be dismissed.

*Item 12: Laundry cupboard and sink*

- 67 The Start-of-Tenancy Condition Report records that the laundry sink and mixer tap were in clean and undamaged condition at that time. That Report does not refer to the condition of the sink cabinet. However, it is shown in images 352 to 356 of that Report and it appears to be in good overall condition. In the End-of-Tenancy Condition Report it is stated that the cupboard and sink are unclean and damaged. This is associated with a comment "tapes to be removed, scuff marks", and attention is drawn to images 412 to 417. Images 412 and 413 depict what appears to be masking tape residue on the cabinet and sink around the washing machine waste outlet. It appears that the waste pipe may have been fixed in place by this means. Images 415 and 414 also appear to depict masking tape residue in another area surrounding the sink. Images 416 and 417 do not depict any damage.
- 68 The tenant denies causing or permitting any damage to the laundry cupboard or sink. He contends that any change in the condition of the laundry sink and cabinet over the course of the tenancy is fair wear and tear to which he was entitled.
- 69 On the evidence before me I am satisfied that the tenant has caused or permitted masking tape to be applied to the surface of the laundry sink and its surround and to the laundry cupboard. I am satisfied that there is a likelihood that this was to affix the washing machine waste pipe to waste outlet on top of the sink. Not all of the masking tape was removed and cleaned when the washing machine was removed, leaving residue in several places which negatively affects the appearance of the cabinet and is likely to result in paint tears or dilapidation when it is removed. I am satisfied that this constitutes a breach of the tenant's obligation not to cause or permit negligent or intentional damage to this rental asset. Such damage could have been avoided with reasonable care. I am not satisfied that there is any other damage to the sink or cabinet in the form of scuffs. None are evident in any of photographs.

- 70 The contractor's quotation relied upon by the landlord itemises the repair of the "damaged storage case and sink" at a cost of \$130.00 plus GST. Apart from the masking tape to be removed I have not found that there is any other damage. Nevertheless, the removal of the masking tape may cause damage to the paint work on the cabinet requiring at least its partial repainting. I will therefore allow the compensation claimed (\$143.00).

*Item 16: Carpet burn*

- 71 The Start-of-Tenancy Condition Report records that the bedroom carpet was in clean and undamaged condition at that time. That section of the report is annotated with the further comment "all clean and intact, professionally cleaned carpet, no damage or burn mark". The End-of-Tenancy Condition Report records the bedroom carpet as being unclean and damaged, with the comment "one red stain" and a reference to images 24 and 25. Those images depict an area of carpet with a light pinkish brown discolouration. The landlord contends that some red fluid has been spilt onto the carpet, staining it
- 72 The tenant denies causing any negligent or intentional damage to the carpet, but he was unable to otherwise satisfactorily account for how the carpet came to have a pink brown stain.
- 73 I am satisfied on the evidence that the carpet has been the subject of some form of negligent misuse in the course of the tenancy, most likely the accidental (negligent) spillage of a red liquid (such as wine or cordial). In this respect, breach of the tenant's obligation not to cause or permit such damage is established. The damage and loss claimed by the landlord is the cost of repair (patching) the carpet. I am satisfied that this is a proportionate remedy and will allow her compensation in the amount referred to her contractor's quotation which is \$165.00 plus GST (\$181.50).

*Item 17: Joinery buffers*

- 74 Neither the Start-of-Tenancy nor End-of-Tenancy Condition reports specifically refer to the condition of the joinery buffers. The landlord's contention is that they were all present at the start of the tenancy because all the cabinetry is recorded as being in undamaged condition and that various buffers were missing at the end of the tenancy. There are three photographs in the End-of-

Tenancy Condition Report dated 25 November 2021 which appear to incidentally depict buffers, or at least the position where the buffers were situated (images 70, 75 and 77). However, it is not clear from those images if the buffers are present or absent.

- 75 In any event, I am satisfied that buffers such as these are consumables which should reasonably be expected to detach with ordinary use. To any extent that they are absent at the end of the tenancy, I am not satisfied that this is the result of any negligent or intentional misuse of them by the tenant. No breach has been established with respect to the joinery buffers. This element of the claim must be dismissed.

### Orders

- 76 For the foregoing reasons I make the following orders:

- (1) The tenant, Yifan Liu, must pay the landlord, Zheny Wu, \$599.00 immediately.
- (2) Rental Bond Services is directed to pay the landlord, Zheng Wu, \$599.00 from Rental Bond No. S786344-4. Any amount received is to be credited against the money order (order 1). Any balance of the bond is to be paid to the tenant, Yifan Liu.
- (3) The application is otherwise dismissed.

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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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