Civil and Administrative Tribunal

New South Wales

Case Name:	Fathisharghbin v Radford
Medium Neutral Citation:	[2023] NSWCATCD 123
Hearing Date(s):	25 July 2023
Date of Orders:	13 September 2023 [amended 22 September 2023]
Decision Date:	13 September 2023
Jurisdiction:	Consumer and Commercial Division
Before:	P French, Senior Member
Decision:	Pursuant to section 63 of the Civil and Administrative Tribunal Act 2013, the orders made on 13 September 2023 is amended as follows: (1) The rent payable for the rented premises was excessive and must not exceed $336.00 per week for the period 17 February 2022 to 4 December 2022. (2) The rent payable for the rented premises was excessive and must not exceed $120.00 per week for the period 5 December 2022 to 11 February 2023. (3) Orders 1 and 2 are liquidated. (4) The landlord, Rhonda Radford, must pay the tenants, Seyedmaryam Fathisharghbin Morteza Kabiri, $9,513.28 immediately. Notation: orders (1) and (2) are made pursuant to s 44(1)(b) and orders (3) and (4) are made pursuant to s 188 of the Residential Tenancies Act 2010 (NSW).

(5) The landlord, Rhonda Radford, must pay the tenants, Seyedmaryam Fathisharghbin Morteza Kabiri, $5,253.57 immediately.

Notation: order (5) is made pursuant to ss 50, 63, 61, 187(1)(d) and 190 of the Residential Tenancies Act 2010 (NSW) and is in addition to order (4).

(6) The application is otherwise dismissed.

Catchwords:	LEASES AND TENANCIES – Residential Tenancies Act 2010 (NSW) – rights and obligations of landlords and tenants – right to quiet enjoyment – reduction or withdrawal of goods, services and facilities provided with the residential premises – access to premises - damages
Legislation Cited:	Residential Tenancies Act 2010 (NSW), ss 44, 50, 52, 61, 63, 187, 190 Residential Tenancies Regulation 2019 (NSW), s 40
Cases Cited:	Southwark London Borough Council v Tanner [2001] 1 AC 1 Worrall v Commissioner for Housing of ACT 92002) FCAFC 127
Texts Cited:	Nil
Category:	Principal judgment
Parties:	Seyedmaryam Fathisharghbin (First applicant) Morteza Kabiri (Second applicant) Rhonda Radford (Respondent)
Representation:	Seyedmaryam Fathisharghbin (Self-represented, for Applicants) Melinda Flanagan, Licensee, Hills Prestige Property

	Management (Respondent)
File Number(s):	RT 23/00290
Publication Restriction:	Nil

REASONS FOR DECISION

Introduction

1 This an application by Seyedmaryam Fathisharghbin and Morteza Kabiri (the tenants) for orders pursuant to s 44(1)(b) of the *Residential Tenancies Act* 2010 (NSW) (the Act) that the rent payable for rented premises was excessive due to the reduced use of the premises they experienced because of water ingress and mould and associated repairs. The tenants also apply for orders pursuant to ss 50, 63 and 61, 187(1)(d) and 190 of the Act that would require Rhonda Radford (the landlord) to pay them compensation for various heads of damage arising from the interruption of their quiet enjoyment of the premises caused by the water ingress, mould, and repairs, for damage they incurred due to the state of disrepair of the premises, and for damage to a table caused by contractors during the repairs. This application was made to the Tribunal on 4 January 2023 (the application).

2 For the reasons set out following I have determined that the rent was excessive by 30% during the period 17 February 2022 to 4 December 2022 (the first period) and by 75% during the period 5 December 2022 to 11 February 2023 (the second period). The tenants experienced a significant reduction in their use of the premises during the first period due to water ingress, damp, and mould. Their use of the premises was effectively withdrawn during the second period while extensive remedial works were carried out the interior. As all rent was paid during these periods I have liquified the excessive rent orders and required the landlord to repay the tenants rent not owed by operation of those orders in the amount of **$9,513.28**. I note for the purposes of the prescribed limit imposed by s 187(4)(a) of the Act and s 40 of the *Residential Tenancies Regulation* 2019 (the Regulation) that these orders are made pursuant to s 44(1)(b) and 188 of the Act.

3 I have also determined as set out following that the tenants are entitled to be compensated for damage and loss they incurred because of the landlord's breaches of ss 50, 61 and 63 of the Act in the total amount of $5,253.57. I note for the purposes of the prescribed limit imposed by s 187(4)(a) of the Act and s 40 the Regulation that this order made pursuant to ss 187(1)(d) and 190 of the Act and is additional and separate to the amount awarded in order (4).

4 The balance of the application has been dismissed on the basis that the grounds for other compensation claimed by the tenants have not been established on the evidence.

Procedural history

5 The application was first listed before the Tribunal, differently constituted, for Conciliation and Hearing in person on 1 February 2023. Ms Fathisharghbin attended that listing of the application on behalf of the tenants. Ms Melinda Flanagan, Licensee of the landlord's Managing Agent, attended on behalf of the landlord. In accordance with the Tribunal's 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. Those efforts were not successful. Consequently, the application was adjourned to a Special Fixture Hearing and directions were given to the parties for the filing and exchange of the documentary evidence that they intended to rely on for the final hearing.

6 The application was listed for a Special Fixture Hearing before a Tribunal, differently constituted, on 28 April 2023. However, the hearing did not proceed on that occasion because the landlord's Agent was unavailable due to a medical emergency. The application was therefore adjourned to a further Special Fixture Hearing.

Evidence and hearing

7 The tenants filed a bundle of evidence on 22 February 2023. That bundle was not paginated. At the Special Fixture listing on 28 April 2023 the Tribunal directed the tenants to uplift and refile this bundle in paginated form. It was refiled on 26 May 2023. This bundle was marked Exhibit A1. The landlord filed a bundle of documents on 10 March 2023. This bundle was marked Exhibit R1.

8 The Special Fixture Hearing was conducted in person. Ms Fathisharghbin attended the hearing on behalf of the tenants and gave oral evidence under oath. Ms Flanagan attended the hearing on behalf of the landlord and gave oral evidence under oath. The parties had the opportunity to present their respective cases, to ask each other questions, and to make final submissions to the Tribunal.

The claim

9 The tenants apply for the following orders pursuant to s 44(1)(b):

(a) an order that rent was excessive by 50% per week from 17 February 2022 to 4 December 2022,

(b) an order that rent was excessive by 75% per week from 5 December 2022 to 11 February 2023,

(c) an order liquidating a and b to a money order payable to the tenants.

10 The tenants apply for the following orders pursuant to ss 50, 63, 187(1)(d) and 190:

(a) (d) an order that the landlord compensate them for the following loss,

- the cost of short-term accommodation for the period December 2022 to January 2023 when they were unable to live at the premises in the total amount of $3,828.57,
- the cost of short-term accommodation for relatives who were unable to stay at the premises whilst on holiday in December 2022 in the amount of $900.00,
- lost wages for Ms Fathisharghbin for 20 days at $100.00 per day in the total amount of $2,000.00 arising from her having to be at the premises to facilitate access of trades and other persons,
- damage to clothing, personal possessions and furniture caused by water and mould in the total amount of $1,078.34,
- the cost cleaning, mould removal and mould treatment in the total amount of $550.00.

11 The tenants apply for the following order pursuant to s 61 of the Act:

12 (e) an order that the landlord compensate them for damage to a dining table caused by contractors carrying out repairs to the premises on behalf of the Owners Corporation.

Background facts

13 The dispute arises from a residential tenancy agreement that was made between the parties on 14 December 2019. It was a fixed term agreement of 14 months duration which was expressed to commence from 20 December 2019 and end on 19 March 2021. The tenancy has continued as a periodic agreement after the lapse of the fixed term.

14 The rent payable under the agreement was originally $960.00 per fortnight. However, pursuant to a Rent Increase Notice that took effect from 4 May 2023 the rent is now $530.00 per week ($1,060.00 per fortnight).

15 The rented premises is a villa apartment located in a Strata Scheme. It has 2 bedrooms, 1 with an ensuite bathroom, main bathroom, separate kitchen, combined lounge/dining area, laundry, front porch, enclosed back yard, double garage, and storage area. The living area has an air-conditioning system, and a dishwasher is also provided with the premises. The common property of the Strata Scheme includes an in-ground swimming pool, which is available for the tenants' use. The bedrooms of the premises are carpeted. Other than in the bathrooms, the remainder of the premises has a floating timber floor.

16 The residential tenancy agreement provides on page 2 that no more than 2 persons "may ordinarily live in the premises at any one time".

17 It is not in issue that the premises was subject to persistent water ingress in several locations. The tenants first reported to the landlord's agent water ingress in one location in February 2020 and did so repeatedly in relation to that and other locations up to October 2022. The source of the leaks were failures of the roof and water proofing in the common property of the Strata Scheme. The water ingress caused water trickles down a wall, through a window, and minor flooding of floor surfaces particularly during heavy rain which was frequent during this period.

18 It is also not in issue that the water tracked beneath the wooden floors and skirtings causing some detachment and extensive mould and fungal growth in the underfloor area which broke through the floor surface as black staining. The tenants have submitted, and Ms Fathisharghbin gave evidence, that the

mould and fungal growth was unsightly, malodorous, and caused the tenants skin and eye irritation and respiratory distress.

19 It is apparent from the evidence the landlord's agent has filed that she (Ms Flanagan) promptly referred each of the tenants' reports of water ingress to the Strata Manager of the Strata Scheme requesting action to address the problem. It emerges from the communications between Ms Flanagan and the Strata Manager that are in evidence that there was extensive water ingress throughout the Strata Scheme and that this was the subject of an insurance claim by the Owners Corporation.

20 There was apparent inaction or at least long delays in the water ingress being addressed by the Owners Corporation. Eventually remedial works were conducted over the whole of the Strata Scheme in September and October 2022. The rented premises appears to have been the last Lot in which the remedial works were carried out.

21 By October 2022 the wooden floors and skirtings of the rented premises and at least one wall were in very poor condition due to the prolonged exposure to water. They had warped and split and were damp and severely mould affected. The landlord's Agent had obtained quotations for the replacement of the floors, and the Strata Scheme's insurer had agreed to pay the cost of this work prior to the completion of the remedial works. However, this work could not be completed before the completion of the remedial works. The tenants were thus obliged to live in the rented premises with damp, damaged and mouldy floors throughout 2021 and 2022. I don't understand it to be in issue that the floors were in such a serious condition that they required replacement by early 2022.

22 The remedial work to the interior of the rented premises commenced on or about 5 December 2022. As at the date of the hearing some minor works were still to be completed. The demolition of the existing floors and skirtings and their replacement occurred between 5 December 2022 and 11 February 2023. This required the clearance of all furnishings from the floors. The tenants moved out of the property into temporary accommodation at this time.

23 Throughout the whole period referred to above the tenants paid rent at the rate of **$480.00** per week. No rent reduction or waiver was put in place. The tenants

remain tenants in possession of the rented premises as at the date of the hearing.

Consideration

Tenant's excessive rent claims

24 The Tribunal's power to order that rent is excessive due to the reduction or withdrawal by the landlord of goods, services and facilities provided with the residential premises is found in s 44 of the Act, which relevantly provides:

> **44 Tenant's remedies for excessive rent**
>
> (1) Excessive rent orders: The Tribunal may, on the application of a tenant, make any of the following orders –
>
> …
>
> (b) an order that rent payable under an existing or proposed residential tenancy agreement is excessive, having regard to the reduction or withdrawal by the landlord of any goods, services or facilities provided with the residential premises and that, from a specified day, the rent for the residential premises must not excessed a specified amount.
>
> …
>
> (3) Applications on withdrawal of goods or services: A tenant may, before the end of a tenancy, make an application that rent is excessive, having regard to the reduction or withdrawal of any goods, services or facilities provided with the residential premises, even if those goods, services or facilities were provided under a separate or a previous contract, agreement or arrangement.
>
> …
>
> (5) The Tribunal may have regard to the following in determining whether … rent is excessive –
>
> (a) the general market level of rents for comparable premises in the locality or a similar locality,
>
> (b) the landlord's outgoings under the residential tenancy agreement or proposed agreement,
>
> (c) any fittings, appliances or other goods, services or facilities provided with the residential premises,
>
> (d) the state of repair of the residential premises,
>
> (e) the accommodation and amenities provided in the residential premises,
>
> (f) any work done to the residential premises by or on behalf of the tenant,
>
> (g) when the last rent increase occurred,

(h) any other matter it considers relevant (other than the income of the tenant or the tenant's ability to afford the rent increase or rent).

(6) Effect of excessive rent order: An order by the Tribunal specifying a maximum amount of rent –

(a) has effect for the period (of not more than 12 months) specified by the Tribunal, and

(b) binds only the landlord and tenant under the residential tenancy agreement or proposed residential tenancy agreement under which the rent is payable.

25 The landlord's defence to the tenants' application for excessive rent orders is threefold. First, it is contended that it was not the landlord that was responsible for the state of disrepair of the roof and waterproofing of the Strata Scheme, it was the Owners Corporation. That is, any reduction or withdrawal of use of the premises was not 'by the landlord', but rather by the Owners Corporation, for the purposes of s 44(1)(b). Second, it is contended that the landlord did not increase the rent from the start of the tenancy on 14 December 2019 until 4 May 2023 due to the water ingress and condition of the premises. That is, it is contended that the tenants had the benefit of an under-market value rent during this period. Third, it is contended that the tenants claim about their loss of use of the premises is exaggerated.

26 With respect to the landlord's first contention, the rented premises is provided to the tenants by the landlord under the residential tenancy agreement. The landlord has a contractual obligation to the tenants to provide and maintain the premises in a reasonable state of repair and fit for habitation (ss 52 and 63 of the Act). Any failure to do so may constitute a reduction or withdrawal of use of the premises for the purposes of s 44(1)(b). That is no less the case because the landlord has no direct ability to carry out repairs to common property in the Strata Scheme.

27 The landlord also has remedies against the Owners Corporation in relation to any state of disrepair of the common property that affects her lot. Apart from her Managing Agent's complaint to the Strata Manager there is no evidence that she acted against the Owners Corporation in relation that state of disrepair. Her inaction or insufficient action in this respect is also a vector by

with the tenants' use of the rented premises was reduced for the purposes of s 44(1)(b).

28 With respect to the landlord's second contention, there is no issue that the original rent specified under the residential tenancy agreement ($960.00 per fortnight) was a market rent. It was increased to $1,060.00 with effect from 4 May 2023. It was not put to me on behalf of the landlord that this increase was other than the current rent market value of the premises. The difference between the rent payable during the periods the tenants seek excessive rent orders, and the current rent market value of the premises, is $50.00 per week. While not insignificant, that is not a great difference. 2022 was a COVID-19 Pandemic recovery period. The market value of rents generally had declined considerably during the period of the Pandemic. In this case the landlord retained the pre-COVID-19 Pandemic rent market value of the property throughout the period of the Pandemic.

29 The landlord has filed no evidence of the rent market value of similar properties in the locality which demonstrates that the market value of the rented premises exceeded $460.00 per week during the period February 2022 to February 2023.

30 I am thus not satisfied that the tenants had the benefit of an under market value rent during this period. Even if I am wrong in this conclusion, any under market value was minor, not significant. I am thus satisfied that any reduction or loss of use of the premises is a factor of the rent that was payable for the premises, rather than any under market value the tenants already had the benefit of.

31 The tenants contend that their use of the whole of the premises was affected by the water ingress because it resulted in malodorous damp and mould, the smell of which permeated the premises. They illustrate this condition with photographs. These photographs depict extensive swelling, warping and discolouration of the timber floors caused by water and mould. There are several photographs of fungus sprouting through and under skirting boards. This evidence is compelling.

32 I accept the tenants' evidence that the mould resulted in disease. There is a medical certificate issued in respect of Ms Fathisharghbin by her General Practitioner dated 23 February 2023 that expresses the opinion that she has been experiencing allergic reactions and joint pain which are aggravated by the condition of the premises. It is also a matter of common knowledge that mould is a hazard to human health.

33 The timber floors and skirtings are in the living/dining room, kitchen, stairs, and hallway. The bedrooms are carpeted, and the bathrooms are tiled. The amenity of these rooms may have been affected to some extent by odour, but not otherwise. Up to December 2022 the tenants were not deprived of the use of the rooms with the wooden floors because of the water ingress. That is, they could cook, dine, and recreate in them to a basic level. However, it must be accepted that the use the tenants did have was severely impacted in its quality by the recurring water ingress into those rooms and by malodorous damp and mould.

34 From 4 December 2022 the tenants could not reasonably live in the premises at all while the floors, a wall and the skirtings were demolished and replaced. The villa was a construction zone during that period up to 11 February 2023. The tenants were able to leave furniture in place in the bedrooms, but other furniture had to be removed to allow the demolition and construction works to continue.

35 Having regard to these considerations I am satisfied that the rent payable for the premises was excessive by 30% for the period 17 February 2022 to 4 December 2022 due to the qualitative reduction in the tenants' reasonable use of the premises arising from recurring water ingress, damp, and mould. I will therefore order that the rent must not exceed **$336.00** per week during this period. As all rent has been paid in respect of this period the landlord must now repay the tenants **$5,965.30** in rent that is now not owing in respect of that period by operation of this order. The tenants claim for a 50% reduction in rent during this period is excessive having regard to the use of the premises they retained. In this respect, they continued to occupy the premises during this whole period, even if under a degree of sufferance.

36 Apart from being able to leave some furniture undisturbed in the bedroom, the tenants lost effective use of the premises between 4 December 2022 and 11 February 2023. I therefore have no difficulty in accepting their contention that rent was excessive by 75% or **$360.00** per week during this period. As all rent has been paid in respect of this period the landlord must now replay the tenants **$3548.98** in rent that is now not owing in respect of that period by operation of this order.

Compensation claims

37 Section 50 of the Act codifies a tenant's right to quiet enjoyment. It relevantly provides:

> **50 Tenant's right to quiet enjoyment**
>
> (1) A tenant is entitled to quiet enjoyment of the residential premises without interruption by the landlord or any person claiming by, through or under the landlord or having superior title (such as a head landlord) to that of the landlord.
>
> (2) A landlord or landlord's agent must not interfere with, or cause or permit any interference with, the reasonable peace, comfort or privacy or the tenant using the residential premises.
>
> …
>
> (4) This section is a term of every residential tenancy agreement.

The obligation not to interfere with a tenant's right to quiet enjoyment is strict ("must"). Its only qualification is found in the word "reasonable" in s 50(2) which makes it clear that the tenant's right to peace, comfort and privacy operates subject to a reasonableness rather than any absolute standard. Mere inconvenience is insufficient to constitute a breach of quiet enjoyment. There must be a substantial interference to constitute a breach: *Southwark London Borough Council v Tanner* [2001] 1 AC 1. A breach of quiet enjoyment may occur even where the landlord is engaged in a proper purpose, such as carrying out repairs in a reasonable manner: *Worrall v Commissioner for Housing of ACT* 92002) FCAFC 127.

38 There can be no issue that the remedial works required to remove and replace the floors, skirtings and repair a wall that took place during the period 5 December 2022 to 11 February 2023 constituted a substantial interference with the tenants' quiet enjoyment by the landlord. It was so disruptive that the

tenants had to vacate the property while this work occurred. It was reasonable for them to do so. The fact that this remedial work was being carried out by licensed tradespersons and was necessary to repair damage in the premises does not make the remedial work any less a breach of the tenants' quiet enjoyment.

39 The tenants claim $3,828.57 in accommodation costs they incurred while this work was carried out. This is 'rent' at the rate of $400.00 per week to live in alternative accommodation provided by persons that they knew (friends or friends of friends). These costs are evidenced by Tax Invoices that itemise 9 weeks and 3 days accommodation. There is no ABN on these tax invoices. Nevertheless, I am satisfied based on Ms Fathisharghbin's oral evidence that the tenants were obliged to pay for somewhere else to live during this period. The weekly rent they paid for this alternative accommodation was less than that payable for the rented premises, and modest by comparison with what a hotel or serviced apartment accommodation would have cost. I will therefore allow this claim in full.

40 The tenants also claim $900.00 for alternative accommodation costs for relatives who had planned to stay with them over the Christmas period but could not because the premises could not reasonably be inhabited while the remedial works were being completed. Other than what Ms Fathisharghbin said about this orally, there is no supporting evidence of this element of the claim. That is, there is no statement from any intended house guest, no evidence of travel, and no invoice or receipt for the accommodation cost made out in either tenants' name (as distinct from the house guest) or at all.

41 On behalf of the landlord, Ms Flanagan submitted that this claim could not be permitted because the residential tenancy agreement did not allow more than 2 people to occupy the property and that the tenants would have been in breach of this occupancy obligation if they had guests stay with them. I disagree. That obligation refers to the number of persons that may 'ordinarily' live at the premises. It does not prevent the tenants having short term guests.

42 However, this element of the claim must fail because there is insufficient evidence to prove the loss contended for.

43 The tenants claim $2,000.00 in compensation for economic loss they contend they incurred because Ms Fathisharghbin was obliged to stay home from work to provide access to the premises for tradespersons and the like while the water ingress was subject to inspection and investigation and while the remedial works were completed to the interior. In oral evidence Ms Fathisharghbin explained that this claim was based on a postulated 20 such events (although she claimed there were many more) and an average of $100.00 in lost wages for each event.

44 On behalf of the landlord, Ms Flanagan submitted that it was unnecessary for the tenants to be present at the property to provide access to tradespersons because the trades could have obtained duplicate keys from her office for access. She also submitted that there was no supporting evidence of loss for this element of the claim.

45 I accept to a point the landlord's submission that trades could have obtained duplicate keys to obtain access and that in this respect the tenants' incurred the loss they contend for unnecessarily. However, in the circumstances of this case I accept that there were several occasions where Ms Fathisharghbin was obliged to be present at the property to inform trades and other persons where the water ingress was occurring. I am satisfied that the number and frequency of these events did constitute a substantial interference with the tenants' quiet enjoyment.

46 However, the ultimate issue is that the tenants have failed to prove the loss they contend for. There is no supporting evidence of Ms Fathisharghbin's wages that reveals any amount deducted or not paid due to non-attendance at work on the days the tenants nominate.

47 As I listened to Ms Fathisharghbin's evidence and submissions in relation to this part of the claim it appeared to me to resonate in substance as a claim for non-economic loss for disruption, distress, and disappointment. That is because the gravamen of the argument was that the tenants were repeatedly required to prepare the premises for trades visits by securing valuable possessions, moving furniture, and being at home to provide access. Had the claim been framed in this way, compensation may have been recoverable.

However, it was not. While the Tribunal has an obligation to consider the substantial merit of a claim without regard to legal technicalities and forms it must be procedurally fair to the other party to do so. I did not consider that it would be procedurally fair to the landlord to consider this element of the claim on a different basis to that which it had been pursued up to and including the final hearing.

48 Section 63 of the Act codifies a landlord's obligations in relation to the maintenance of premises in a reasonable state of repair. It provides, relevantly:

> **63 Landlord's general obligation**
>
> (1) 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.
>
> …

49 In this case there can be no issue that the water ingress, damp, and mould in the premises at the material time for this dispute constituted a state of disrepair. Although the water ingress related to a state of disrepair in the common property of the Strata Scheme for which the Owners Corporation was responsible, on a contractual basis, it is the landlord who is responsible for that state of disrepair as between her and the tenants.

50 In any event, the damage to lot property caused by the water ingress is a state of disrepair for which the landlord is responsible, even if she may have a right of action against the Owners Corporation in relation to that state of disrepair. There can be no issue in this case that the landlord was on notice as to the state of disrepair and no effective repair (or any repair) was carried out over a prolonged period. I am thus satisfied that there was a breach by the landlord of her obligation to maintain the premises in a reasonable state of repair.

51 The tenants claim compensation in the total amount of $1,078.34 for economic loss incurred because of mould damage to clothing, furniture, and other personal possessions. This element of the claim is supported by photographs and some evidence of cost of some items.

52 $600.00 in compensation is claimed in relation to a carpet. A receipt dated 7 February 2022 for the purchase of the carpet at a cost of $1,148.00 is in

evidence. The tenants contend that the carpet got wet during the repeated flooding events. Even at the close of submissions I remained unclear what the basis for the $600.00 claim was. It is not a replacement cost for the carpet. Nor is it a cleaning or repair cost (or if it is, there is no evidence of such a cost). The photographic evidence the tenants have submitted does depict the carpet as wet on more than one occasion. However, it does not depict the carpet as water or mould damaged. On the state of the tenants' case in relation to this item their claim for compensation cannot succeed. I would have allowed compensation for the costs of carpet drying and cleaning in relation to this item but there is no evidence that a loss of this nature was incurred.

53 $478.34 in compensation is claimed in relation to mould damaged clothing. This element of the claim is supported by photographic evidence which depicts mould damage to various items of clothing. Despite the precise monetary amount claimed, I cannot find any supporting evidence in the form of receipts or quotations (or the like) that establishes this was the loss incurred. There is no evidence of the age or pre-damaged condition of the clothing. Nevertheless, I am satisfied that the tenants did loose various items of clothing to mould and that this constituted a substantial loss. Doing the best that I can on the evidence before me I will allow the tenants $475.00 in relation to this element of the claim. This is a relatively modest amount having regard to the number of items lost.

54 The tenants also claim $550.00 in compensation for mould treatment and cleaning. This element of the claim is supported by some photographic evidence the cost of moisture removal and mould cleaning products, but there are no receipts. The amount claimed appears to be an estimate of the cleaning costs incurred. In the absence of any better evidence. I will allow the tenants $250.00 in relation to this element of their claim.

55 Section 61(2) of the Act contains a tenant's remedy in relation to access to premises:

> **61 Tenant's remedies relating to access to premises.**
>
> …

> (2) The Tribunal may, on application by a tenant, order the landlord or the landlord's agent to pay compensation to the tenant for damage to or loss of the tenant's goods caused by any person in the exercise of a power of the landlord or the landlord's agent to enter residential premises under this Act or the residential tenancy agreement.

56 The tenants claim compensation for loss they contend they have incurred in relation to the natural stone top of a dining table they contend was damaged by tradespersons during the interior remedial works carried out to the floors of the premises on behalf of the landlord between December 2022 and February 2023. In this respect, it is contended that the tradespersons relocated the table from the interior to the exterior (back porch) of the property. Although this area was covered it was exposed to the elements on two sides. The tenants contend that the surface of the table suffered a significant abrasion whilst outside or while being moved. It is not clear what the precise mechanism of the damage was.

57 The tenants have submitted photographic evidence of the condition of the dining table in situ in the dining room immediately prior to the remedial works. Its' surface is in undamaged condition at that time. They have also submitted photographic evidence which depicts the position of the dining table after it was moved. It is in a semi exposed position on the back porch and is not covered by any protective layer. The tenants rely on photographic evidence of the table taken when it was relocated back into the premises upon completion of the remedial works. It has a large surface abrasion. I am satisfied based on this evidence that the landlord's contractors damaged the table surface.

58 What is less clear is the loss the tenants contend for. At page 4a of Exhibit A1 the loss appears to be incorporated into a $600.00 claim that also includes damage to the carpet. At page 25 of that Exhibit is an on-line advertisement for a similar dining suite with 6 chairs at a cost of $2,999.00. At page 232 of that Exhibit there is a photograph of cleaning, sealing and polishing products the tenants contend they purchased to try and remove the abrasion. There is no evidence of the cost of these products. On page 377 of that Exhibit there is a quotation from a business trading as That Stone Guy dated 15 February 2023 which itemises the repolishing of the table surface at a cost of $700.00.

59 Having regard to the evidence before me I am satisfied that the loss that should be recognised is the repair cost of $700.00. If the table can be repaired the new replacement cost of a similar table would result in the tenants' betterment. In any event, the advertised cost of a new table includes 6 chairs and there is no evidence that the chairs require replacement. The tenants may have incurred costs in relation to cleaning and polishing products which were unsuccessful, but they have failed to prove what those costs were.

Orders

60 For the foregoing reasons, I make the following order:

(1) The rent payable for the rented premises was excessive and must not exceed **$336.00** per week for the period 17 February 2022 to 4 December 2022.

(2) The rent payable for the rented premises was excessive and must not exceed **$120.00** per week for the period 5 December 2022 to 11 February 2023.

(3) Orders 1 and 2 are liquidated.

(4) The landlord, Rhonda Radford, must pay the tenants, Seyedmaryam Fathisharghbin Morteza Kabiri, **$9,513.28** immediately.

Notation: orders (1) and (2) are made pursuant to s 44(1)(b) and orders (3) and (4) are made pursuant to s 188 of the *Residential Tenancies Act 2010* (NSW).

(5) The landlord, Rhonda Radford, must pay the tenants, Seyedmaryam Fathisharghbin Morteza Kabiri, $5,253.57 immediately.

Notation: order (5) is made pursuant to ss 50, 63, 61, 187(1)(d) and 190 of the *Residential Tenancies Act 2010* (NSW) and is in addition to order (4).

(6) The application is otherwise dismissed.

****

22 September 2023: Correction of calculation errors; original paragraph 60 deleted as no longer applicable after correction of calculation errors.

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