



Department of Justice
RESIDENTIAL TENANCY COMMISSIONER

PO Box 56 Rosny Park TAS 7018
Phone 1300 654 499
Fax 03) 6173 0205
Email RTC@justice.tas.gov.au
Web www.mybond.tas.gov.au

Bond Number: 1000345897349
Property: 1/111 Montagu St, New Town

Determination of the Residential Tenancy Commissioner

Todd Dot [Tenant] and MK Jooker [Owner]

This is a formal notice of a determination made by the Residential Tenancy Commissioner (the Commissioner) under section 29G of the *Residential Tenancy Act 1997* (the Act). The determination cannot exceed the security deposit amount.

Security Deposit

The amount of the security deposit is \$800.00, contributed in full by the Tenant.

The residential tenancy agreement [the lease agreement]

In this matter the tenancy extended from 20/09/2016 until 20/09/2017. The Tenant vacated the property on 6/09/2017.

The lease agreement signed between the parties set out the obligations of the parties specific to the tenancy. Any provisions of the lease agreement inconsistent with the Act have no effect.

The claim against the Bond

The Owner has lodged a claim under section 29C of the Act.

The amount of the claim is **\$800.00** relating to:

- Rental arrears;
- Carpet cleaning
- Repairing and repainting a window frame;
- Replacement of a cracked shower screen; and
- Removal of rubbish.

The Tenant has lodged a claim under section 29B of the Act.

The amount of the claim is **\$800.00**.

The evidence in support of claim

The Owner has provided the following in support of their claim and as evidence of loss:

- Rental ledger;
- Copy of the lease agreement;
- Ingoing and outgoing photos;
- Ingoing and outgoing condition reports; and
- Tax invoices.

The Tenant has provided the following evidence:

- A copy of a lease for another property;

- Emails;
- Ingoing condition report;
- Photos;
- Tax invoices.

The assessment of the claim

I will now assess the parties' claims in accordance with the obligations imposed on them under the Act.

Rental Arrears

The Owner has claimed \$400.00 for rental arrears.

The Owner states that the Tenant ceased paying rent on 6 September 2017, two weeks before the lease ended. This is supported by a rental ledger, and the copy of the lease agreement which shows the end date of the tenancy. No Notice to Terminate has been supplied by the Tenant.

The Tenant states that he was not responsible for paying the rent because he was provided with a Notice to Vacate and that he could not afford to pay two lots of rent at once.

I note that Section 47B of the Act provides that a tenant must continue to pay rent until the premises is re-tenanted or the lease expires, unless the tenancy has already been terminated by another means. In this case, the tenancy had not been terminated by another means. The Notice to Vacate only acted to put the Tenant on notice that they must leave on the expiry date. It does not allow the Tenant to vacate the premises before the expiry date without penalty.

The Owner's claim for \$400.00 is supported.

Carpet Cleaning

The Owner has claimed \$100.00 for carpet cleaning.

I have assessed the evidence provided by the parties.

The Owner has supplied a number of date stamped photos of the carpet from the beginning of the lease. These show that the carpet was new, or close to new, when the tenancy began. There are no obvious stains, burn marks or other blemishes. This is corroborated by the ingoing condition report, provided and signed by both parties, which states that the carpets throughout the premises are in "good" condition.

The Owner has also supplied 10 photos of the carpet taken after the lease had ended. These show three large, brown stains on the carpet. The Tenant has not supplied outgoing photos of his own.

The Tenant has supplied a copy of a receipt for Jimmy's Carpet Service. An ABN has been provided and has been confirmed as valid.

The Tenant does not allege that he was not the cause of the stains.

In assessing this claim, I note that Section 53 of the Act requires the Tenant to leave the premises in a close as possible condition to what it was when he moved in, apart from

reasonable wear and tear. I do not doubt that the Tenant paid for a carpet cleaner, and that carpet cleaner attended the premises. But the premises were not left in a reasonable condition, relative to when the tenancy began. Enlisting the services of a professional does not automatically satisfy that obligation. Nor can it be said that the stains are a result of “reasonable wear and tear” on the evidence provided. While they may be the result of an accidental spillage, that is not enough. In saying this I am guided by the *Guide to the Residential Tenancy Commissioner v2.4*, which provides:

Ultimately, ‘reasonable wear and tear’ infers the reasonable use of the property by the tenant and the wear and tear imposed due to the operation of natural forces.

By contrast, if the deterioration is caused by an act of the tenant within their control and outside the normal functioning of a household, the damage will be considered to be unreasonable. For example, cracks in glass caused by the tenant, significant carpet stains, sticker marks/hooks on doors/walls, and severe or excessive scuff marks or chips to walls, all exceed reasonable wear tear in most cases. However, the Commissioner will consider several factors when a claim for damages beyond reasonable wear and tear has been made, including but not limited to:

- the condition of the item at the beginning of the tenancy;
- the quality of the item at the beginning of the tenancy;
- the overall state of the property at the commencement of the tenancy;
- the length of the tenancy;
- the size/extent and noticeability of the damage;
- the cause of the damage;
- the impact of the damage on future tenancies.

In this matter, the carpet was new or near new at the beginning of the lease, the tenancy was for one year, and it cannot be said, in the absence of further evidence, that the stains were caused by “reasonable use of the property”.

The Owner’s claim for \$100.00 is supported.

Window Frame

The Owner has claimed \$200.00 for the repair and repainting of a window frame.

The Owner has supplied ingoing and outgoing photos of the window, which show during the course of the tenancy that the frame began rotting, and was covered in black mould.

The Owner has also supplied a receipt from Richard’s Windows. An ABN has been provided and has been confirmed as valid.

The Tenant has provided copies of an email chain between him and the Owner. The first email was sent on 7/01/17, and states:

“Hi,

In the rains over the past couple of days water has come through the bedroom window frame. It’s started to get mouldy, despite being summer.

Thanks,

Todd”

The email had a photo attached, clearly showing water coming through the frame and mould forming. The Owner subsequently sends a response, stating that they'll look into it. The Tenant replies again on 02/02/17, asking what is going on as nothing has been done, and the wood is starting to rot.

In assessing this claim I am guided by Section 32 of the Act, which provides that the Owner is to maintain the premises as nearly as possible in the condition that existed on the day on which the tenancy began, and is to carry out any repairs that do not arise from any fault of the Tenant. It is clear that the Tenant complied with his duty to inform the Owner of the need for the repairs within seven days. There is no evidence that the Tenant caused the issue. Accordingly, the Owner had a duty to carry out the repairs as soon as possible (as the leak resulted in further damage), and failed to carry out that duty.

The Owner's claim fails.

Shower Screen

The Owner has claimed \$50.00 for the replacement of a cracked shower screen.

Both parties have supplied identical ingoing condition reports, signed by both parties. This condition report states, in the "bathroom" section, that the shower screen is "cracked".

The Owner has supplied outgoing photos of the shower screen showing a large crack down its centre. Neither party has supplied ingoing photos of the screen.

The Owner has supplied a receipt from Dunnings for a new shower screen. An ABN has been provided and has been confirmed as valid.

In assessing this claim, I note that both parties, by way of Sections 32 and 53 of the Act, must maintain the premises in the condition that it was when the lease began. This means that neither party is responsible for repairing things that are in need of repair when the lease began (unless the Owner is breach of the minimum standards, or the need for repair is not obvious and not noted on the condition report). In this matter both parties acknowledge, through the signed condition report, that the shower screen was cracked at the beginning of the tenant. No additional evidence has been provided to show that the crack has worsened as a result of any action by the Tenant.

The Owner's claim fails.

Couch

The Owner has claimed \$50.00 for the removal of a couch left on the premises.

The Owner has supplied a receipt from Glenorchy Waste Management. An ABN has been provided and has been confirmed as valid.

The Tenant has provided a photo of the couch, which is a large, L-shaped couch. He has also provided an explanation, arguing that "I couldn't fit it in my car or organise a mate to move it before I left, so there wasn't much I could do".

There is no dispute between the parties that the couch belonged to the Tenant, and was left at the premises after the lease was terminated.

Again, I am guided by Section 53 of the Act. The Tenant must return the premises to its original condition, save for reasonable wear and tear. This includes the presence, or lack thereof, of furniture and other chattels. The excuse the Tenant has provided does not avail him of this obligation.

The Owner's claim for \$50.00 is supported.

Determination

\$550.00 to be paid to the Owner.

\$250.00 to be paid to the Tenant.

Unless an appeal is lodged with the Magistrates Court of Tasmania, the bond will be paid out on **1 November 2017**

Please note: it could take up to five days for the recipient bank to process the funds and that funds cannot be processed to you unless you have advised the Rental Deposit Authority of your current bank account details.

Signed

Daniel DeVito
Residential Tenancy Commissioner

Date: 20 October 2017