

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Zhou v Position Property Real Estate* [2020] QCAT 42

PARTIES: **XIAOBIN ZHOU**
(applicant)

v

POSITION PROPERTY REAL ESTATE
(respondent)

APPLICATION NO/S: MCDT104-19

MATTER TYPE: Other minor civil dispute matters

DELIVERED ON: 11 February 2020

HEARING DATE: 10 September 2019

HEARD AT: Brisbane

DECISION OF: Member Lumb

ORDERS: **The Residential Tenancies Authority pay the rental bond under rental bond number 700338412 in respect of the property at 2/132A Perth Street, South Toowoomba, Queensland as follows:**

(a) the amount of \$1,419.00 to the Respondent; and

(b) the balance to the Applicant.

CATHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – minor civil dispute – residential tenancy – rental bond – claim for compensation for damage to premises – whether fair wear and tear

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 11, s 12(1), s 12(4)(f), Schedule 3
Residential Tenancies and Rooming Accommodation Act 2008 (Qld), s 137, s 188(4)

Griffin v Gini [2011] QCATA 325
Stockdale & Leggo v Gordon [2017] QCATA 112

APPEARANCES &
REPRESENTATION:

Applicant: Self-represented

Respondent: N Petrie of Position Property Real Estate

REASONS FOR DECISION

Introduction

- [1] The Applicant filed an application for minor civil dispute – residential tenancy dispute on 16 January 2019 ('the application'), claiming, against the Respondent, that the full amount of the (disputed) bond, the subject of rental bond number 700338412 of \$2,240.00 be paid to him. A Minor civil dispute – counter-application was filed on 17 June 2019 ('the counter-application'), by which Ivan Costello ('the Lessor') by the Respondent makes a claim of \$1,540.00 for damage to timber flooring at the subject property 2/132 Perth Street, South Toowoomba in the State of Queensland ('the property'). The Lessor also claims application and preparation costs totalling \$1,960.50. I assume that the reference to the total amount of \$1,960.50 is inclusive of the claim amount, such that the additional amount claimed is \$429.50.
- [2] At the hearing, the Applicant was assisted by an interpreter, Mr Jiao Li.
- [3] The application does not identify the section pursuant to which the application is brought but the relevant provision is s 137 of the *Residential Tenancies and Rooming Accommodation Act 2008* (Qld) ('RTRA Act').
- [4] The first issue for determination is whether the Tribunal has jurisdiction to determine this dispute.

Jurisdiction

- [5] I am satisfied that the Tribunal has jurisdiction to hear this matter.¹

The Respondent's claim for damage to the flooring

- [6] Clause 37 of Part 2 of the tenancy agreement between the lessor and the Applicant (and two other persons) provides:

At the end of the tenancy, the tenant must leave the premises, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.

Examples of what may be fair wear and tear –

- wear that happens during normal use
- changes that happen with ageing

- [7] This clause is consistent with s 188(4) of the RTRA Act which provides:

At the end of the tenancy, the tenant must leave the premises and inclusions, as far as possible, in the same condition they were in at the start of the tenancy, fair wear and tear excepted.

¹ See ss 11, 12(1), 12(4)(f) of, and the definitions of 'minor civil dispute' and 'tenancy matter' in Schedule 3 to, the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) ('the QCAT Act') and s 137 of the RTRA Act.

Note— See section 217 for the tenant’s obligations to notify the lessor about damage to premises and the need for repairs.

- [8] The Respondent’s case was primarily based on an “Entry Condition Report” dated 12 September 2016 (‘the entry report’), an “Exit Condition Report” dated 22 November 2018 (‘the exit report’) and a number of colour photographs of the alleged damage to the timber floor taken on 22 November 2018. The areas of claimed damage were in the entrance, the kitchen/living area and the guest toilet.
- [9] Mr Petrie, for the Respondent, stated that the property was new at the start of the tenancy and this was not disputed by the Applicant.
- [10] The Applicant said that the length of the tenancy was about two years and three months and this is broadly consistent with the period between the entry report and the exit report.
- [11] The Applicant argued the following matters in response to the Respondent’s claim:
- (a) he accepted that there was some damage to the kitchen/living area (by way of staining) which he said was caused by a cleaning company;
 - (b) the floor, or at least parts of the floor, (see photographs at pages 7 to 10 inclusive) showed bare timber floor without coating;
 - (c) the Applicant (and the other tenants) took care with the furniture and purchased pads from IKEA to be placed underneath the furniture;
 - (d) it was unnecessary to sand and polish the whole of the timber flooring, as the Respondent claimed, given that there were only isolated areas of damage for which the Applicant accepted responsibility;
 - (e) much of the damage in respect of which the Respondent complains is due to fair wear and tear, particularly having regard to the period of the tenancy (in excess of two years); and
 - (f) the Applicant does not know whether the money claimed was actually spent on the flooring.
- [12] With respect to the entry report:
- (a) the reference to the floor in the ‘Entry’ contained the comment of the lessor/agent as ‘Polished timber flooring in very good condition’ and the comment of the tenants as ‘cracks on the floor’ (there was no evidence in relation to this comment);
 - (b) the reference to the floor in the ‘Lounge room’ contained the comment of the lessor/agent as ‘Polished timber flooring in very good condition’ and there was no comment by the tenants against this item;
 - (c) the reference to the floor in the ‘Kitchen’ contained the comment of the lessor/agent as ‘Polished timber flooring in very good condition’ and there was no comment by the tenants against this item;

- (d) there is a reference to the 'Toilet' but there does not appear to be any provision for comments on the flooring in the toilet. There does not appear to be any dispute that the guest toilet also contained timber flooring.
- [13] In *Griffin v Gini*,² Judge Kingham, Deputy President, summarised fair wear and tear, in the context of a residential tenancy, as referring to damage or disrepair caused by or resulting from ordinary use.
- [14] The Applicant made the submissions set out in paragraph [11] above but did not, as I understood him, dispute that the photographs relied upon by the Respondent accurately reflected the state of the floor at the time the photographs were taken.
- [15] With respect to the entry, there is a photograph at page 4 which shows, in my view, what can be described as gouges in the timber flooring, two smallish ones and one longer one. I consider that the depth of the gouges is such that they cannot be described as resulting from fair wear and tear, that is, they cannot reasonably be said to arise from ordinary use.
- [16] There are a number of photographs showing damage to the flooring in the kitchen comprising both scratches to the flooring (see pages 7, 8, 9, 10 and 12) and also staining (page 11). There are also a number of photographs showing damage to the adjacent living room also comprising both scratches to the flooring (pages 16, 17, 18, 19, 20 and 21) and staining (pages 14, 15, 23, 25 and 26). As noted above, the Applicant accepted the need to repair some damage being the staining and the Applicant referred to the staining shown in the photograph at page 25.
- [17] With respect to the staining, I consider that this constitutes damage to the floor which exceeds what can be described as fair wear and tear. No ordinary use of the property should result in such staining to the floor. With respect to the scratches, I consider that the number and extent of such scratches, some of which appear to be affected by discolouration, exceed any fair wear and tear. This is particularly so, having regard to the very good condition of the timber flooring at the commencement of the tenancy. Whilst I take into account the length of the tenancy, being in excess of two years, I do not think that such period is sufficiently long, given the initial condition of the flooring, to warrant any finding other than that the damage exceeded any fair wear and tear.
- [18] With respect to the guest toilet, staining to the flooring is evident on the photographs at pages 5 and 6. Again, I do not consider that this is attributable to fair wear and tear.
- [19] In my view, in so far as the flooring is concerned, the property was not left in the same condition as it was in at the start of the tenancy, fair wear and tear excepted.
- [20] With respect to the repairs necessary to return it to such condition, I accept the case of the Respondent and the lessor that it is necessary to sand and polish the flooring.
- [21] Whilst the Applicant argued that it was only necessary to repair the particular areas of any damage found to require repair, I accept the Respondent's contention that it is not feasible to sand and polish separate areas of the timber flooring. In my view, it is

² [2011] QCATA 325, [12].

necessary for the entire surface to be sanded and polished in order to achieve a finish approximating that which was in existence at the commencement of the tenancy.

- [22] In my view, there is no obstacle to a claim for damages for breach of the obligation to return the premises in the same condition, fair wear and tear excepted, that the repairs have not been carried out (and the money claimed has not been paid by the lessor). If damage has been suffered by reason of the breach of such an obligation, the lessor is entitled to claim an amount that reflects the appropriate compensation for the damage suffered.³
- [23] With respect to the quantum of the claim, the Respondent obtained three quotes, the cheapest of which was in the amount of \$1,540.00 (GST inclusive) from Speedy Floor Sanding. One of the quotes, from Queensland Timber Flooring (which appears to have been the company responsible for the original installation of the flooring) identified an area of 43 m² of timber flooring.
- [24] The Applicant obtained a quote which he said was based on photographs and square meterage provided by his wife to the floor sanding company (JP Flooring). The quote for sanding, polishing and finishing of a solid timber flooring with three coats of polyurethane was \$30.00 per m² plus GST (that is, \$33.00 per m² GST inclusive)⁴ with a minimum labour cost of \$800.00 plus GST. Applying the GST inclusive square meterage rate to 43 m² results in an amount of \$1,419.00.
- [25] I am satisfied that it is fair and reasonable to allow only the amount of the JP Flooring quote which is \$121.00 less than the Respondent's lowest obtained quote.
- [26] I do not consider that the amount of \$1,419.00 should be reduced for any "betterment"⁵ (or that there should be some apportionment of that amount because of a need to sand and polish the flooring in the future) given the condition of the timber flooring when the Applicant (and the other tenants) commenced their tenancy of the property, the period of occupation, and the nature and extent of the damage to the flooring (and in the absence of evidence as to when, in the future, it would have been necessary for the Lessor to sand and polish the flooring had the damage not occurred).
- [27] I allow the sum of \$1,419.00 as compensation for the damaged timber flooring.

Conclusion

- [28] For the reasons stated above, I find that the counter-application succeeds to the extent of \$1,419.00.
- [29] Given that the Applicant and the Respondent were justified in filing the application and counter-application respectively (the Respondent has established an entitlement to the majority but not the entirety of the amount claimed), I do not propose to allow the respective filing costs.

³ See *Stockdale & Leggo v Gordon* [2017] QCATA 112, [13] (Member Gordon).

⁴ The Applicant's reliance on the figure of \$30.00 per m² did not allow for the addition of GST.

⁵ See *Stockdale & Leggo v Gordon* [2017] QCATA 112, [18] (Member Gordon).

Orders

[30] Pursuant to s 137 of the *Residential Tenancies and Rooming Accommodation Act* 2008 (Qld) it is ordered that the Residential Tenancies Authority pay the rental bond under rental bond number 700338412 in respect of the property at 2/132A Perth Street, South Toowoomba, Queensland as follows:

- (a) the amount of \$1,419.00 to the Respondent; and
- (b) the balance to the Applicant.