

# QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Willis & Anor v Ray White Maryborough* [2019] QCATA  
22

PARTIES: **ASHLEIGH WILLIS**  
**ESTHER WILLIS**  
(applicant/appellant)  
v  
**RAY WHITE MARYBOROUGH**  
(respondent)

APPLICATION NO/S: APL040-18

ORIGINATING APPLICATION NO/S: MCD T89/17

MATTER TYPE: Appeals

DELIVERED ON: 29 January 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Justice Carmody

ORDERS:

- 1. Leave to appeal is granted and the appeal is allowed in part.**
- 2. The tribunal order dated 22 January 2018 is amended by substituting \$359.79 for \$859.79 and adding “the balance of the security bond of \$680.21 be returned to the applicants or, alternatively, the respondent refund \$500 to the applicants”.**

CATCHWORDS: APPEAL – MINOR CIVIL DISPUTE – TENANCY – where the applicants dispute a compensation order made against them for damage to the property and curtain cleaning – where the applicants complain they were denied procedural fairness and that the tribunal did not decide the case on its merits – where the finding that the applicants were liable to pay for curtains to be professionally cleaned was not supported by sufficient evidence – where leave to appeal is granted and the appeal is allowed.

*Queensland Civil and Administrative Tribunal Act 2009*  
(Qld) s 32

**APPEARANCES:**

This matter was heard and determined on the papers pursuant to s 32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

**REASONS FOR DECISION**

- [1] This is an application for leave to appeal a tribunal order in a tenancy matter. The tribunal ordered that the RTA release \$859.79 of the \$1040.00 security bond to the property agent with the balance (\$180.21) returned to the applicant.
- [2] The respondent has not complied with any appeal tribunal directions, including to file a response to the applicants' leave to appeal submissions, and, therefore, has not taken the advantage of its opportunity to be heard.

**The context**

- [3] The general tenancy agreement (GTA) on file was current from 26 October 2016 to 25 October 2017. A page is missing but from the bond and evidence given at the MCD hearing the rent was \$260.00 per week.
- [4] The applicants gave notice of intention to vacate on 17 October 2017 with hand over by midnight on 1 November 2017. According to the property agent's records the keys were handed back on 8 November 2017.
- [5] The tribunal allowed the claim for rent (\$316.00), replacement towel rails (\$43.79) and professional curtain cleaning (\$500.00) but refused the cost of a new flyscreen (\$96.00).

**Proposed grounds of appeal**

- [6] The applicants' Form 39 raises procedural fairness issues. According to them the tribunal failed to listen or provide a reasonable opportunity to argue the merits of their case.
- [7] The applicants also claim that the tribunal did not give enough credit for fair wear and tear considering the age, condition of the property generally on entry and the length of the tenancy (6.5 years).
- [8] The applicants tried to tender photographs of the premise at the MCD hearing to support their claim. Also, they assert that their hearing difficulties were allegedly not accommodated<sup>1</sup> and the respondent's familiarity with court staff was intimidating.
- [9] Additional evidence filed with their leave application the applicants want the appeal tribunal to consider -
- a routine inspection report dated 6 May 2017 with a number of items ticked to indicate maintenance is required;

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<sup>1</sup> At 1-10:10-20 of the transcript of proceedings, 22 January 2018, the applicant raises that she cannot hear the respondent.

- a letter dated 24 March 2017 to the agent stating that the applicant disputes breaking the lease. They claim to have notified the agent of many necessary repairs and requested completion within two (2) weeks;
- photographs of the general condition of the property and the quality of its amenity showing substantial cracks in the walls and ceiling, significant white ant damage and a broken shower recess rejected as irrelevant at the hearing.<sup>2</sup>

[10] Appeals on a question of law are generally decided without hearing additional evidence as on a rehearing in facts or mixed appeals. This is because historically the error must be *ex facie* (apparent on the face of the record).

[11] While it is true that the tribunal is obliged to consider all relevant information (whether admissible in a civil court proceeding or not) so as to decide the merits of the claim with all the facts. However, in the circumstances of this case the rejected documents and photographs are redundant because the curtain cleaning order is unsupportable for other reasons and they would not have made any material difference to the outcome.

[12] Wrongly refusing to receive evidence in hearing a tenancy dispute that might have materially affected the outcome is an error of law and a valid failure to consider ground.

[13] For the reasons that follow leave to appeal is granted and the merits of the grounds considered on the papers.

### **The curtain claim**

[14] The applicants claim to have washed the curtains in their washing machine and pressed the curtains before moving out.<sup>3</sup> The respondent alleges that the curtains and pelmets were not attended to at all in seven years of residence<sup>4</sup> and denies washing the “drapery” in a washing machine was adequate because they are rubber backed and must be cleaned professionally.<sup>5</sup>

[15] There is nothing in the GTA – despite multiple pages of special conditions – requiring the applicant to have the curtains professionally cleaned during the tenancy or on exit.

[16] Nor are there any photographs of the state of the curtains at the start or end dates. The actual or reasonable cost of cleaning is not proved by quote or invoice. At T1-3:5-20 the agent says she has a “guesstimate” of the price for curtain cleaning but does not have any paperwork to support it. The agent requested a person called “Noel” to quote for cleaning the curtains and pelmets in every bedroom but there is no evidence apart from the agent’s unsworn testimony to support the curtain cleaning claim of \$700.00 or the \$500 ordered.

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<sup>2</sup> At T1-8:25 and T1-12:35-40.

<sup>3</sup> At T1-3:45.

<sup>4</sup> At T1-4:40-45.

<sup>5</sup> At T1-5: 3-35.

- [17] The tribunal, therefore, could not be reasonably satisfied that the tenant breached the tenancy or that even if they did the mitigated loss was \$500. This is an error of law. The only way of correcting it on appeal is to vary the order by reducing it by \$500.

### **The unpaid rent claim**

- [18] The tribunal allowed nine (9) days of rent from when the rent was paid up to (30 October 2018, according to the ledger) to when the keys were handed back (8 November 2018) minus a rent credit of \$17.01. Special term SC20(1)(i) of the GTA states that rent is payable until all keys are returned by the tenant to the lessor or agent. On the evidence accepted by the tribunal without any demonstrated error the applicants are, prima facie, liable for this amount.

### **The other towel rack**

- [19] The tribunal awarded \$43.79 for one towel rack accepting that one was already taped together when the applicants began their tenancy. There is not a sufficient basis to disturb this finding.
- [20] Accordingly, the application for the material to be considered for the first time on appeal is refused.
- [21] The appeal is, therefore, allowed in part by substituting \$359.79 for \$859.79 in the order and adding “the balance of the security bond of \$680.21 be returned to the applicants or, alternatively, the respondent refund \$500 to the applicants”.