



Civil and Administrative Tribunal Act 2013, REVIEW

Prepared for Department of Justice

By Gurjit Singh

Summary

The purpose of the review is to find out how well it is working, and to look at reforms that could strengthen access to justice for people in NSW. My biggest mistake was that I believed that NCAT provides dispute resolution and upheld Australian laws. However I saw tribunal members lying, screaming, refusing me to read from notes, bullying, threatening, ignoring procedural fairness, biased, ignorant, incompetent and not willing to read the material in front of them before they decide. In some of the hearings they even lost my affidavits and written submissions.

And I hope no other person and family will ever be exposed to level of unfairness and cruelty. Upholding the law is the least NCAT care.

It is not possible to include all issues in one submission. My each submission will deal with limited number of issues for easier understanding of the person evaluating it.

Quality of the human resources is missing from reception desk of registry to higher leadership of NCAT.

It is my understanding the Parliament intended to achieve cheap and quick justice for parties in litigation. However this objective is often used to circumvent the fair process to ignore important issues and make it cheap and quick for tribunal members. In other words tribunal members often abuse their power and defy the objectives of act.

Submission Part 2

1. Part time members
2. No rules of evidence does not mean "No Evidence".
3. Same matter between same parties in two different division of NCAT

Part Time Members

Many of the tribunal members are part time members of the tribunal. Part time members mostly are lawyers and they are free to accept jobs and payment from any one in their private practice. How does the tribunal ensure part time members have no conflict of interest between the parties whose matter they are deciding. Its better to have 1 full time member than two part time member. At least this brings integrity to the organisation. How cheap you go ?

General Member

General Member [REDACTED] consider the matter first time during direction hearing in residential division of NCAT. She made directions to registry to list the residential matter along with retail lease matter as outcome of retail lease matter will decide the outcome of residential lease.

Senior Member [REDACTED] came along and over turn General Member [REDACTED] decision without any appeal process or inviting any submissions from tenant, merely on request from agent of landlord.

General Member [REDACTED] -Part time?

On 19 April General Member [REDACTED] in file RT 10018 goes on to decided landlord had an oral agreement that under residential tenancy act. Member [REDACTED] had no evidence in relation to this from landlord.

My application to adjournment was refuse because I was in hospital and could not answer Tribunal Calls.

The matter proceeded to appeal panel. They upheld the decision. Matter 10018 is in Supreme Court now.

As a result of this ruling I am paying \$300 per week in residential rent and \$6500 in retail lease division. A way more than i should have been paying.

Senior Member



Landlord filed another termination notice under 90 days termination notice. RT 18/47679

Again this time he filed no affidavit evidence to support his oral agreement claim.

But tribunal goes on to make specific direction to landlord to file affidavit evidence in relation to oral agreement.

He did not file any affidavit to support his claim of oral agreement.

Till date NCAT has no evidence from landlord that there is an oral agreement in relation to residential tenancy.

A person is walking up a set of blue stairs. They are wearing bright orange sneakers with white soles and black socks. The stairs have a blue metal railing. The background is a blurred view of a building with a grid pattern.

Recommendations

Next steps

In line with the review, I propose following recommendation

1. Matters should not proceed to hearing without evidence.
2. Matter should be listed for hearing once parties have complied to the directions.
3. Matter involving same parties on same subject matter should be heard together in one division of NCAT
4. Decisions made by NCAT should not be set aside without due process by senior members.



Time to Chat

I love to talk through the above with you if you require. Please email me or call me to book a time , and we'll arrange everything for the meet — including strong coffees

[REDACTED]

[REDACTED].

Annexure

Following annexure attached to the submissions

1. Decision of Senior Member [REDACTED]
2. Documentation filed in residential division in RT 18/10018 and in appealing decision of RT 18/10018 shows level of disregard of NCAT and abusing their power.



Civil and Administrative Tribunal New South Wales

Case Name: Fobupu Pty Ltd v Singh

Medium Neutral Citation: [2019] NSWCAT

Hearing Date(s): 15 May 2019

Date of Orders: 17 May 2019

Date of Decision: 17 May 2019

Jurisdiction: Consumer and Commercial Division

Before: [REDACTED], Senior Member

Decision: 1. The application is dismissed.

Catchwords: Residential Tenancy – s 85 Notice of Termination – issue estoppel – fixed term agreement – termination notice invalid as term has not expired

Legislation Cited: Residential Tenancies Act 2010

Category: Principal judgment

Parties: [REDACTED]
Gurjit Singh (Respondent)

Representation: Solicitor:
[REDACTED]
Respondent (self-represented)

File Number(s): RT 18/47679

Publication Restriction: Nil

REASONS FOR DECISION

Application

- 1 This is an application pursuant to section 85 of the Residential Tenancies Act 2010 (the Act) for termination of a residential tenancy agreement after service of a notice to terminate a periodic agreement (90 day no grounds notice).
- 2 The matter was listed for directions on 26 March 2019 and the following orders were made.
 - (a) The applicant shall provide to the respondent and the Tribunal either in person or by post any statements either by way of statutory declaration or affidavit that they intend to rely on in relation to the following by 2 April 2019.
 - (i) How the agreement for a residential tenancy was formed.
 - (ii) How and when the termination notice was served.
 - (b) The respondent shall provide to the applicant and the Tribunal either in person or by post a copy of all documents, any further documents on which the respondent intends to rely on in response by 9 April 2019.
- 3 The directions were particularly pertinent as they informed the applicant that it bears the onus of proof and it must establish the terms of the residential tenancy agreement through evidence. As it transpired, the applicant filed no evidence establishing the terms of the residential tenancy agreement, and for the reasons that follow, the application must fail.
- 4 The applicant (hereinafter the landlord) relies on the following documents
 - (1) the affidavit of ██████████ sworn to April 2019 (Exhibit A);

- (2) submissions to the Tribunal concerning [REDACTED] filed on 24 January 2019 (Exhibit B);
- (3) submissions filed on 20 December 2018 (Exhibit C);
- (4) affidavit of [REDACTED] sworn 15 May 2019 (Exhibit D).

5 The tenant relies on

- (1) submissions and documents filed on 19 March 2019 (Exhibit 1);
- (2) affidavit and submissions filed on 9 April 2019 (Exhibit 2).

Background

6 There is a significant procedural history which is relevant to the application.

7 The landlord entered into a retail lease with [REDACTED] in respect of a restaurant located at [REDACTED] (the commercial premises).

8 [REDACTED] was and remains the principal director of the applicant company.

9 Mr Singh was the director of the lessee, [REDACTED] which has since been deregistered.

10 Mr Singh has been in possession of the retail lease premises since 1 November 2006 and the retail lease is subject to protracted litigation in this Tribunal and in the Supreme Court. There are two residential units located above the restaurant which are subject of these proceedings (the residential premises).

11 The question to be determined before me is

- (1) Whether the parties entered into an oral residential tenancy agreement; and if so what were the terms of the agreement;

- (2) Whether the notice of termination was valid;
- (3) Whether the notice of termination was retaliatory pursuant to s115 of the Act.

Did the parties enter into an oral residential tenancy agreement and if so what were the terms of the agreement?

- 12 The agreement that is the subject of this application has also been subject of protracted proceedings. Not all applications before this Tribunal need relevantly be mentioned here. However material findings of fact were made in related proceedings RT 18/10018. In that application the landlord sought termination pursuant to section 87 of the Act for a breach of the agreement, namely the tenant's failure to pay rent. The application was heard on 19 April 2018 and the Tribunal published written reasons for decision.
- 13 The relevant facts are contained at [18] and following of the reasons for decision. I have set out these facts in full:
 - (a) The parties made a retail lease agreement for a ground floor restaurant... At the same time, the parties made a collateral agreement for the respondent to occupy residential premises on the 1st floor in the same building (the premises).
 - (b) There was no separate written residential tenancy agreement for the premises which was made as an oral agreement and collateral to the retail lease.
 - (c) The amount payable by the respondent is in 2 parts, rent for the retail lease (not relevant here) and a separate amount of \$300 as rent for the premises. *The term of the occupation of the premises is for the duration of the retail lease on the ground floor (emphasis added).*

- (d) In December 2017 the parties agreed that the respondent had fully paid what the respondent conceded was “rent” up to 31 December 2017 and, and that he would continue to pay \$300 rent per week after that.
- (e) The respondent made some payment the last being on 16 January 2018 so that he is paid to and including 28 January 2018....

14 At [20] to [23] the Tribunal continues with its material findings of fact:

20 However, I am satisfied that the evidence shows an oral residential tenancy agreement for the premises albeit as a collateral agreement to the retail lease.

21 The essential terms are clear as the parties and premises are identified, the rent is stated and the terms of the agreement are stated. The parties have performed the essential terms for some years.

22 I find that the parties have accepted that the relationship of the parties is as landlord and tenant for the premises.

23 I further find that the respondent has accepted there is a tenancy agreement by his references to the weekly payment as “rent” and his submissions that the landlord is in breach of its obligations under the RTA, namely section 37 (no rent records) and section 63 (failure to provide and maintain the premises).

15 The question I must determine is whether I am bound by the material facts as found by the Tribunal on 19 April 2018 or whether terms of the said agreement should be re-determined or re-litigated. The landlord’s solicitor, ■■■■■■■■■■, submits that I am bound by the material findings of fact and ■■■■■■■■■■ submits that I should rehear the issues, and make new or fresh material findings of fact.

The Appeal

16 The tenant appealed the decision RT 18/10018. The appeal was on a number of grounds but importantly the tenant did not appeal the findings of fact as set out above in [13] and [14].

17 The appeal proceedings (AP 18/22042) were heard by the Appeal Panel on 11 July 2018. The grounds of appeal are set out at paragraph of the Appeal Panel decision. The tenant relied on 6 errors of law which were summarised. In the notice of appeal the tenant did not cavil with the findings of fact that:

- (1) an oral agreement was entered into collateral to the retail lease.
- (2) he had to pay \$300 per week to preserve the residential tenancy.
- (3) the term of the occupation of the premises is for the duration of the retail lease on the ground floor.

18 Accordingly, the Appeal Panel did not overturn the relevant findings of fact as to the existence of the residential tenancy agreement nor did the Appeal Panel make findings, orders or decisions which overturn or set aside the material findings of fact that the parties entered into a landlord and tenant relationship for a fixed term, being “for the duration of the retail lease on the ground floor”.

19 The tenant sought to argue on appeal was that there is one retail lease agreement between the parties and that therefore the premises are premises to which the Act does not apply because the predominant use of the premises is for the purposes of a trade, profession, business or agriculture (see s7(h) of the Act). The Appeal Panel rejected that argument:

[53] in our view, the tenant’s submission is misconceived. Although they may be, on the tenant’s contention, one agreement for both the shop and the residential unit as to which we make no finding, the relevant question to be addressed so far as section 7 (h) is concerned, is whether the agreement concerns to premises (i.e. the shop and the unit) or single premises. If it is the latter the question then is can it be said whether the premises, although used for residential purposes have the predominant use of being for the purpose of a trade, profession, business or agriculture.

[54] In the decision the Tribunal was satisfied that the evidence showed the existence of an oral residential tenancy agreement “albeit as a collateral agreement to the retail lease the Tribunal found that the parties had made a retail lease agreement for a ground floor restaurant and, at the same time, the parties had made a collateral agreement for the tenant to occupy residential premises on the first floor or the same building.

[55] in our view, the critical issue is whether the premises referred to in the residential tenancy agreement are one and the same premises as the premises the subject of the retail lease. The tenants own evidence describes the two premises as shop 1 and unit 2. Neither the landlord nor the tenant took issue with the finding of fact contained in the decision that the restaurant is on the ground floor and the residential unit is on the first floor. Nor did the tenant seek to argue that the residential unit was in fact part of the same premises the subject of the retail lease. In our view, the provisions of section 7 (h) are not engaged in the circumstances of this matter Ground 3 is rejected.

20 The findings of fact of the Tribunal at first instance were confirmed by the Appeal Panel and I am satisfied that the material findings of fact give rise to an issue estoppel.

21 [REDACTED] [1950] HCA 22; (1950) 81 CLR 446, [REDACTED] said at 466-8:

The rule as to issue estoppel is generally stated in the words of Lord Ellenborough in *Outram v Morewood* (1803) 3 Beas 346 at 355; 102 ER 630 at 633. His Lordship said that the parties and privies are “precluded from contending to the contrary of that point, or matter of fact, which having been once distinctly put in issue by them ... has been, on such issue joined, solemnly found against them”. ... The same rule was concisely stated by Dixon J in *Blair v Curran* (1939) 69 CLR and 531 where his Honour said “A judicial determination directly involving an issue of fact or of law disposes once for all of the issue, so that it cannot afterwards be raised between the same parties or their privies.”

...

The question will be whether an issue of fact or law which is raised in the later proceedings was an issue of fact or law which was also raised in the earlier proceedings and therefore determined.

In the second place, it follows from the very nature of the difference between the plea of *res judicata* and the plea of issue estoppel that different materials are relevant in each case. Where the pleas of *res judicata*, only the actual record is relevant. Where the plea is of issue estoppel, any material may be looked at which will show that issues were raised and decided. ...

It should perhaps be added that, as [REDACTED] [1939] 62 CLR at 532, the estoppel, so far as it applies to the facts, is confined to ultimate facts. It does not extend to mere evidentiary facts.

22 The issues which were raised in the application for termination on the basis of rent arrears are identical to those raised by this application and are thus “ultimate facts” and not mere evidentiary facts. In order to proceed the Tribunal needed to satisfy itself of jurisdictional threshold questions as to the

existence of a residential tenancy agreement, and in particular it decided the term of the agreement, being the duration of the retail lease on the ground floor.

23 I am satisfied that an issue estoppel is established and that I am bound by the findings of fact set out in [13] and [14] above as these findings were not overturned on appeal (and in the absence of any notice of contention).

24 Even if I have erred and there is no issue estoppel am satisfied the landlord has filed no evidence to establish different facts. Despite being specifically directed to establish the agreement and to file evidence to that effect, the only evidence as to formation of the agreement is contained in the affidavit of ■■■■■ who provides hearsay evidence as to the formation of the contract. The evidence is entirely silent as to the terms of the agreement.

“The parties proceeded by way of an oral Lease Agreement”

25 The only relevant evidence before me at the hearing is contained in the tenant’s affidavit:

“10 In 2013, upstairs units had been occupied by tenants since 2006 and we were living in Glenmore Park since 2006.

11. Unit 2 only became available in March 2013.

12. We moved into ■■■■■ in March 2013.

13. ■■■■■ visited the restaurant to collect rent for the restaurant. I said “Uncle unit 2 is becoming available and we are looking to move near the restaurant.”

14. He agreed to let me occupy and we agreed the rent at \$300 per week including GST.

15. I said “Uncle should we formalise the lease?”

15. ■■■■■ said “no need, you can live as long as you leasing the restaurant [sic].

Evidence of [REDACTED]

26 The landlord gave sworn evidence in the witness box. He denied ever having a conversation with the tenant to the effect that the landlord could occupy the residential premises as long as the restaurant was in operation. The tenant gave evidence to the contrary in his undated, albeit sworn, affidavit at page 2 in the documents filed and served.

27 In the event that I have erred and an issue estoppel is not established, I make the following findings of fact. On balance I accept and prefer [REDACTED] evidence on this issue. From the reasons published by the Tribunal in RT 18/10018, I conclude that the tenant must have given evidence to the effect that he was permitted to occupy the residential tenancy as long as he was operating the restaurant, that his evidence was accepted, and the finding were made accordingly. I reject the landlord's submission that the evidence is a recent invention. The tenant must have provided evidence to the effect in RT 18/10018, otherwise the Tribunal could not have arrived at its finding. In addition, I find it more probable than not that the parties would have discussed the term of the agreement in the broadest of terms, and I reject the notion as advanced by the landlord, that the agreement was entirely open ended and the parties had not discussion about it. The landlord has filed no evidence and has made no submission that the agreement is a "periodic agreement" or the terms; i.e. weekly, monthly, of such an agreement.

Is the Notice of termination pursuant to s85 valid?

28 Section 85 of the Act deals with termination of periodic agreements (emphasis added). It provides

85 Termination of periodic agreement

(1) A landlord may, at any time, give a termination notice for a periodic agreement.

(2) The termination notice must specify a termination date that is not earlier than 90 days after the day on which the notice is given.

(3) The Tribunal must, on application by a landlord, make a termination order if it is satisfied that a termination notice was given in accordance with

this section and the tenant has not vacated the premises as required by the notice.

(4) This section does not apply to a residential tenancy agreement if the tenant has been in continual possession of the same residential premises for a period of 20 years or more.

- 29 The agreement between the parties is a fixed term agreement, for the term of the retail lease. In these circumstances the termination notice pursuant to section 85 is invalid and I make that finding accordingly.
- 30 In the event that the retail lease ceases to exist or the tenant vacates the retail lease premises and the tenant does not vacate the residential tenancy, the landlord may serve a fresh s85 Notice of Termination.
- 31 Nothing in these reasons precludes the landlord from serving a notice of termination for breach, for example for non-payment of rent, in the event the tenant breaches the terms of the agreement.

Is the termination notice retaliatory?

- 32 The tenant has applied to the Tribunal for an order pursuant to section 115 of the Act that would declare a Notice of Termination of the tenancy served on him by notice dated 3 August 2019 under section 85 of the Act is of no effect on the basis that it is retaliatory.
- 33 In light of the finding that the notice of termination served under s 85 invalid it is not necessary for me to determine whether the notice was retaliatory.

Orders

- 34 The application is dismissed.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



NSW Civil & Administrative Tribunal

District Registry: Penrith

COPY

File No. AP 18/22042

Division: Consumer and Commercial

GURJIT SINGH

Appellant

and

[REDACTED]



Respondent

APPELLANT'S SUBMISSION

Call over of appeal

1. The appellant places reliance on paperwork produced by Member [REDACTED] in File No. RT 18/10018 (this first instance file) on the 21st day of March 2018 directing the registry in relation to listing this matter.
2. Particularly, Member [REDACTED] provided a written direction to the registry to list the action, together with and after the proceeding in File No. COM 17/53291/7.
3. Efforts by the appellant to get a copy of that document had not been successful. The file has been unavailable.
4. At a hearing in File No. RT 18/10018 on Friday the 25th of March, 2018 before Member [REDACTED] for orders including that Member [REDACTED] be disqualified, the appellant requested Member [REDACTED] to provide a photocopy of the said written direction from the file because of the urgency of the appeal timetable.
5. Member [REDACTED] refused.
6. The appellant made a request of the registry after the hearing on the 25th of May. The registry directed the appellant to make an appointment for inspection of the file.

7. The appellant is unable to obtain a copy of this document within the time frame specified for this stay application.
8. Further, the appellant will look to rely on this document in the appeal when it is available.
9. The appellant has never seen the document so it will be a fresh document to the appellant and the appellant may need an opportunity to examine and consider the document.
10. The appellant requests that the timetable in relation to the appeal, take into account the appellant receiving a copy of this document and having a period of time, says three days, to consider it.
11. The appellant is otherwise ready to proceed to deal with this appeal.

Stay order

12. The appellant lodged an application for 12 orders and an affidavit with 72 paragraphs resisting the path taken by Member ██████ in proceeding to an unlawful appeal in action File No. RT 18/10018. That application and affidavit is attached.
13. That application and affidavit is relevant to all of the considerations pending on this stay application and the appellant relies on that application and affidavit.
14. The appearance is that Member ██████ did not address that application and affidavit and the issues raised by them.
15. Further to the grounds set out in the application for stay, the appellant submits as follows.
16. There are three considerations in relation to the question of the stay. They are:
 - 1 The obligation to pay rent while in occupation;
 - 2 Obligations to pay contended arrears; and
 - 3 The respondents' purported termination of the tenancy.

The obligation to pay rent while in occupation;

17. Member ██████ made a "pay and stay order" providing for \$300 per week rent.
18. That order was not vigorously resisted by the respondents.

19. The appellant's claim regarding shop one and this residential unit are set for hearing on the 19th and 20th of July, eight weeks away.
20. Issues at that trial include that there is a commitment by agreement, for which the appellant gave valuable consideration to the respondent, for a term of this residential tenancy to continue without rent change for three years from 1st November 2018.
21. Having to move home will be a massive disruption to the appellant and his family and a serious intrusion on the capacity to prepare for and conduct the trial.
22. It is appropriate to preserve the status quo until that issue is determined.
23. The appellant respectfully submits in all the circumstances, it is appropriate to continue the "pay and stay order" until after the trial of the matter and as directed by the trial member.

Obligations to pay contended arrears

24. Obligations to pay contended arrears were held over pending a decision in AP File No 18/15303.
25. Nothing that was dealt with or determined in that action had any impact of the issue of residential rental arrears.
26. Member ████████ made the order, linking to that decision, possibly on the basis of submissions or comments made to him by the respondents and their representatives or in the alternative, because of misinterpreted information on the file. At the time of the hearing, the appellant was in hospital.
27. In the appellant's respectful submission, this question of arrears should properly abide the event of the hearing in July and be stayed until then.
28. The status quo should remain, safeguarded by the "pay and stay order" until the trial in July.
29. In any event, the quantum of the arrears and the method of calculation is in issue in this appeal.

The respondents' purported termination of the tenancy

30. The respondents' termination of this tenancy is on a "no grounds" basis.

31. Given or that no prejudice is raised and relied upon in the termination, the appellant respectfully submits that this application can proceed on the basis of no demonstrated prejudice.
32. The appellant's claim regarding shop one and this residential unit are set for hearing on the 19th and 20th of July, eight weeks away.
33. Issues at that trial include that there is a commitment by agreement, for which the appellant gave valuable consideration, for a term of this residential tenancy to continue without rent change for three years from 1st November 2018.
34. Having to move home will be a massive disruption to the appellant and his family and a serious intrusion on the capacity to prepare for and conduct the trial.
35. It is appropriate to preserve the status quo until that issue is determined.
36. The appellant respectfully submits in all the circumstances, it is appropriate to continue the tenancy without termination until after the trial of the matter and as directed by the trial member.

Orders sought

37. That orders of Member [REDACTED] made on the 19th of April 2018 be stayed, particularly:
 - a. That order 2 be stayed until further order by the trial member in action File No. COM 17/53291/7;
 - b. That order 3 be stayed until further order by the trial member in action File No. COM 17/53291/7;
 - c. That order 5 continue until further order by the trial member in action File No. COM 17/53291/7;

Unless the Tribunal seeks to hear more from the appellant, that is the appellant's submission.



GURJIT SINGH
gurjit1@yahoo.com.au

File No: RT 18/16723
RT 18/10018
Quote in all enquiries
eNumber: 57013SZ50

**Application to the Tribunal concerning [REDACTED]
Australia**

Pursuant to section 63 of the Civil and Administrative Tribunal Act 2013, the Tribunal makes an amendment to paragraph 4 made in RT 18/16723 on 30 April 2018 as follows:

4. I gave oral reasons for my decision to make the orders listed above. In essence, I refused Mr Singh's application for these residential tenancy proceedings to be heard in conjunction with the retail lease proceedings. The **residential tenancy proceedings** have already been decided, in that the Tribunal has terminated the tenancy effective at the end of May 2018. If Mr Singh is of the opinion that both the retail lease and the residential tenancy proceedings ought to be heard together, the appropriate avenue is to appeal against the decision made on 19 April 2018 in RT 18/10018.

[REDACTED]
23/05/18

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

- (a) If the party causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or
- (b) If the party causing the disadvantage is not the applicant:
 - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
 - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

[REDACTED]

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NSW Civil & Administrative Tribunal

District Registry: Penrith

File No. RT 18/10018

Division: Consumer and Commercial

[REDACTED]

Applicant

and

GURJIT SINGH

Respondent

RESPONDENT'S SUBMISSION

1. This may be a very unusual residential tenancy application.
2. The allegation made by the applicant is based on unpaid rent.
3. What this applicant does not tell this tribunal is that as a result of an NCAT interim order, the respondent is paying \$6,500 per calendar month to the respondent pursuant to that interim order to abide the event of the decision made by NCAT in action number COM 17/53291.
4. In that action, this respondent as applicant makes an application for orders, including:
 3. "A further declaration that the applicant and the respondent made an agreement in relation to the premises in about October of 2015, (**the renovation agreement**) whereby the applicant at it's own expense would perform a substantial renovation and upgrade of shop 1 of the premises (which renovation is completed) in consideration for [REDACTED] agreeing that the rent would remain at its level as of September 2015 for the premises, for a period commencing at the completion of

the renovation for three years. The renovation completed on 31st October, 2017 and thereby, the term extends from the 1st of November, 2017 to the 31st of October 2020.

4. A further declaration that the rent payable from November 2017 until the 31st October 2020 in respect of the premises, is to be an amount of \$5,000.00 per month for shop 1 and an amount of \$300.00 per week for the residential accommodation to be paid by the applicant to [REDACTED], commencing 1st of November, 2017, and continuing, requiring rental payment on a monthly basis to be paid on the 1st day of each month for shop rent, and on the 15th of the month for residential rent, as monthly rent for the tenancy of the premises until the 31st of October, 2020.
5. A further declaration that the rent payable from November 2017 for shop 1 and also for the residential premises occupied by the applicant is to remain unchanged until the 31st October 2020.”

5. That claim and contention is presently before this Tribunal in the other action.
6. Rather than set out in depth or copy here, the 14 pages of the applicant’s Points of Claim and the similar sized defence served in the action, this submission will set out the principal terms of the agreement the applicant alleges between the parties in the other action:

Parties

[REDACTED]	Landlord
Gurjit Singh & ACN 605 054 242 Pty Ltd	Tenant

Premises

Shop one, [REDACTED].

Rent

\$6.300 per calendar month

Term

3 years from the 1st of November 2017 to the 30th October 2010.

7. That agreement is presently alleged and in issue between the parties in action COM 17/53291. Those pleadings deal with the allegations and background in much more detail.
8. The respondent in fairness to the tribunal and the applicant, is compelled to inform the tribunal that this applicant denies the existence of the agreement.
9. The respondent here, who is the applicant in the other action seeks orders that the agreement is binding and for enforcement of the terms of the agreement.

Principal Submission

3. The applicant makes 2 submissions to this tribunal for this hearing today.
4. The first submission is that the issue of the tenancy including the residential component which is the subject of the applicant's claim in this matter is already before the tribunal in the earlier instituted action and proceeding for determination.
5. The matter is properly before the tribunal in action number COM 17/53291 and in the respondents' respectful submission, this tribunal should stay the termination notices and this application to abide the event of the determination in the action COM 17/53291.
6. That submission is made, to the extent that this tribunal has any choice. The Residential Tenancies Act 2010 No 42, per section 7 deals with premises to which the Act does not apply and sets out;
 - (h) premises used for residential purposes, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture.
7. The respondent's position is that it relies on one agreement. That is an agreement between companies and natural persons on both sides. It is an agreement that relates to and provides for tenancies for a retail shop, particularly an Indian restaurant and a residential unit. The one agreement provides for a tenancy in both.

8. It suits the landlord's purposes to divide the two tenancies or suggest they can be divided. Nonetheless, in the circumstances, that flies in the face of common sense and also what actually happened.
9. In the respondent's submission, the reality is there is one agreement relating to both properties. One of the properties is a shop and the other is a residence. This is an agreement to which the Residential Tenancies Act does not apply.

The agent's conduct

10. This applicant makes no reference to the \$6,500 being paid by the respondent to the applicant each month. The agent does not deal with that topic to any extent at all.
11. There is an appearance that the agent has made this application and that the applicant and the agent are contending that as no rent is paid to the agent, therefore there must be a breach and default. The agent chooses not to tell the tribunal about the payment of \$6,500 each month.
12. It is one thing for the agent to come before this tribunal having set out the relevant portions of the other action and present cogent arguments about why the tribunal today should not pay attention to what is happening in the other action. It is a completely different thing for the agent to come before this tribunal explaining nothing or very little that is happening in the other action other than her conclusion that what is happening in the other action is irrelevant. Her position is, she will not be telling the tribunal much about the other action because she doesn't know much about it anyway. She has no involvement in the other action. This landlord is represented in that case by [REDACTED], solicitor.
13. What this demonstrates to the tribunal is how completely unreliable this agent is in terms of providing facts to this tribunal in this matter.
14. While this respondent pays this landlord \$6,500 a month pursuant to an interim order in action number COM 17/53291, there is no need for any order to be made other than an order staying the 2 notices of termination served by the applicant.

15. In all the circumstances, the respondents respectfully submit that is the only proper course.

Orders sought

16. The applicant seeks interim orders preserving the status quo as to the tenancy in this action.

17. The applicant seeks an order staying the termination notice served by the respondent in December 2017 until further order.

18. The applicant seeks an order staying the termination notice served by the respondent in March 2018 until further order.

19. That the above orders continue in operation until discharged by a member in the action number COM 17/53291 where a decision is currently being dealt with.

Unless the tribunal seeks to hear more from the respondent, that is the respondent's submission.

nne [redacted]

From: [redacted]
Sent: Thursday, 22 March 2018 2:47 PM
To: NCATCCDPenrith
Subject: File RT 18/10018
Attachments: 50 days arrears report & current rental ledger for Tribunal.pdf; File 18.10018 NCAT [redacted] TENANT Gurjit Singh.pdf

Dear Member & Registrar,

Re: RT 18/10018
 URGENT HEARING NEEDED PLEASE FOR RENTAL ARREARS [redacted]

Yesterday we had a hearing yesterday and I was in discussion with the tenant for over 2 hours in the conciliation room, nothing was resolved and the matter was adjourned due to the time limit at the hearing which is understandable.

The owner has provided me with the correct information and we are asking for an urgent hearing please to be given in regards to the file number 18/10018 Rental arrears & Termination Notice.

The tenant told the conciliator that he is paying the rent for [redacted] direct to the owner with the Restaurant rent monthly as below;

- ** \$4500 restaurant rent
- ** \$1500 [redacted] rent
- ** Total \$6500.00 every month

I was confused about this and it seems so was the Member. I was trying to explain to the tenant over the 2 hours at tribunal that he cannot pay rent to the owner for [redacted] as the owner appointed Real Homes Realty as of 19/12/18 to pay all rent to us even that he was not paying rent to the owner as now proved.

As attached;

- ** Is the lease from 2006 showing the rent for the restaurant is \$6500 per month plus gst
- ** 2 x copies of banking \$6500 for February & March 2018 to the owner (This is only for commercial Restaurant rent)
- ** Tribunal orders on commercial COM 17/53291

This mean the \$1500 that the tenant said he was paying to the owner for the unit is untruthful as was all for the commercial restaurant lease rent.

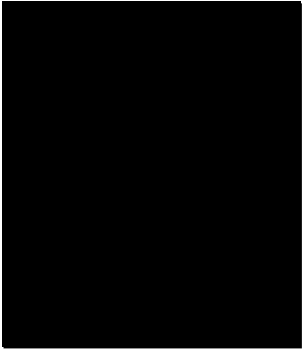
The tenant paid rent to our office in January 2018 and that was the first and last rent we ever received.

I do not manage the Restaurant as this is a commercial lease. The owner manages the commercial property. I do not want to discuss the commercial lease at the hearing as I am not managing the property and do not have commercial experience.

If you could please email me back by tomorrow with a hearing date & time would be much appreciated as the owner is not receiving any rent from the tenant for [redacted] and today the tenant is 50 days in arrears as per attached rental arrears report & ledger.

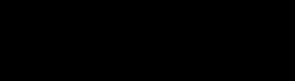
BCC Owner

Please don't hesitate to call anytime should you have any further questions.



2021-11-01
XXXXXXXXXX

Please be advised that our office number
has been changed to the number below





GURJIT SINGH
 [REDACTED]

File No: RT 18/10018

Quote in all enquiries

eNumber: 56874XH50

**Application to the Tribunal concerning [REDACTED]
 Australia**

On 28 March 2018 the Tribunal made the following procedural directions for the parties to application RT 18/10018.

1. This is an application by the landlord for the termination of a residential tenancy agreement. There are presently proceedings between the parties in relation to a retail leases matter which will proceed to a final 1 day hearing. A date has not yet been allocated for the retail leases matter. This matter was adjourned on 21 March 2018 to be listed for final hearing with the retail leases matter. The applicant landlord in this matter has sent a request that the matter be relisted for hearing urgently on the basis that the retail leases matter will not be heard for some time and it is unrelated to the residential tenancy matter and the tenant is not currently paying rent. The matter is relisted for hearing on 12 April 2018 at 3.30pm in Penrith to deal with the following issues at the hearing of 12 April 2018:

- i. Any reasons as to why the termination application in relation to the residential tenancy agreement cannot be dealt with prior to the finalisation of the retail leases matter.
- ii. If the matter can be dealt with, whether the residential tenancy should be terminated.

In that regard the following directions are made:

2. The applicant is to provide to the respondent and the Tribunal, either in person or by post, all the submissions and documents they intend to rely on in relation to the 2 issues raised in order 1 above by 3 April 2018.
3. The respondent is to provide to the applicant and the Tribunal, either in person or by post, all the submissions and documents they intend to rely on in relation to the 2 issues raised in order 1 above by 10 April 2018.
4. The documents are to include:

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

- (a) If the party causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or
- (b) If the party causing the disadvantage is not the applicant:
 - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
 - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

- i. Any written submissions the parties intend to make in relation to the issues
- ii. Copies of any residential tenancy agreements
- iii. Copies of any termination notices.
- iv. Copies of any payments ledgers
- v. Hearing notes from the applicant.
- vi. Any other documents that the parties intend to rely on.

5. The documents provided by each party must be placed in a folder, each page must be numbered to provide easy identification by all concerned at the hearing. Folders provided to the Tribunal and to the other party(ies) must be identical and in the same order. The folder(s) should be marked with the name of the party and include:

- an index
- a chronology of significant events
- all documents required by these directions

And all documents must be legible and in colour (if the original is in colour).

6. If either party seeks to be legally represented they must make such application to the Tribunal by 3 April 2018 and the Registry will deal with such request accordingly.

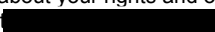
A separate written notice of the new hearing date will be sent to you in the near future



28/03/18

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

- (a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or
- (b) If the party causing the disadvantage is not the applicant:
 - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
 - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at 

RECEIVED
04 APR 2018
NCAT
PENRITH



COPY
NCAT
NSW Civil &
Administrative Tribunal

Please complete this sheet and attach to any documents you are forwarding to the Tribunal in relation to your matter.

Send your documents in relation to NCAT proceedings via post or in person to an NCAT Registry.

Note: In accordance with NCAT Procedural Direction 7 of the Consumer & Commercial Division – 'Use of Electronic Evidence in Tribunal proceedings.'

- Clause 5 - Where parties are, as a result of procedural directions, required to provide the Tribunal and other party/s with documents, these are to be provided to the Tribunal in hard copy only.
- Clause 6 - The Tribunal and Divisional Registrar will not accept service to the Tribunal of such documents via email, facsimile or other electronic means.

If your matter is listed at the [redacted] you should note that there are no NCAT registry facilities at that location. All enquiries and documents are to be forwarded to the [redacted]

=====

The attached documents are provided by the APPLICANT / RESPONDENT, in compliance with procedural directions made on _____ (insert date).

Name : _____

File No : 18/1008

I confirm that a duplicate copy of the attached documents has also been sent to all other party/s as directed by the Tribunal.

Signature _____

Day time telephone no. _____

Date 3/4/18

NSW Civil & Administrative Tribunal

File No. RT 18/10018



Gurjit Singh (Respondent)

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Document Description	Number of Pages
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Annexure to Affidavit GS3	3

NSW Civil & Administrative Tribunal

District Registry: Penrith

File No. RT 18/10018

Division: Consumer and Commercial

[REDACTED]

Applicant

and

GURJIT SINGH

Respondent

APPLICATION FOR ORDERS

Orders Sought

The Respondent seeks for the following orders to be made:

1. An order that the hearing set for the 12th of April 2018 be a resumption of the hearing conducted on the 21st of March 2018 and include a resumption of the conciliation conference;
2. An order that Member [REDACTED] is part heard in that hearing and that Member Alamali hear the listed application on 12th of April 2018;
3. An order that Conciliator [REDACTED] is part heard in the conciliation conference of and in that hearing;
4. An order that in relisting the issues for hearing, Member [REDACTED] has authorised an appeal process and effectively granted permission to the applicant to appeal the

order of Member [REDACTED] of the 21st of March 2018 as embodied in the Member's formal written order and statements made by the member in relation to orders, recorded in the transcript. In dealing with and ordering this appeal process, Member [REDACTED] has exceeded her authority and jurisdiction.

5. That the hearing on the 12th of April be limited and restricted to a determination of the issue as to whether the Residential Tenancies Act does not apply to the tenancy agreement in this matter as a result of the operation of section 7 of the said Act.
6. Interim orders preserving the status quo as to the tenancy in this action.
7. An order staying the termination notice served by the applicant in December 2017 until further order.
8. An order staying the termination notice served by the applicant in March 2018 until further order.
9. That the above orders continue in operation until discharged by a member in action number COM 17/53291/7 in this Tribunal where a decision is currently being dealt with.
10. That Member [REDACTED] be disqualified from further involvement in this matter.
11. Leave to apply for further orders as necessary and appropriate;
12. Costs

Dated: 4 April 2018

Signed by Gurjit Singh
Applicant

[REDACTED]

This application is to be filed in the registry and served upon the Applicant by email to [REDACTED]

NSW CIVIL & ADMINISTRATIVE TRIBUNAL

District Registry: Penrith
Division: Consumer and Commercial

File No. RT 18/10018

[REDACTED]

Applicant

and

GURJIT SINGH

Respondent

AFFIDAVIT REGARDING TENANCY

I, GURJIT SINGH of [REDACTED] restaurant proprietor MAKE OATH

AND SAY:

1. I am the respondent.

The home occupation

2. Since 2013, My wife and I, together with our children have lived in [REDACTED]
[REDACTED] NSW, an apartment unit owned by the applicant.

3. My wife and I had together with our trading company operate an Indian restaurant in a shop
in the same building.

4: We say (and the applicant disputes) that we entered a single agreement whereby we occupy
both the unit and the shop on a term of three years from 1st November 2017 with fixed rent
pursuant to the agreement we made at the end of 2015.

5. Payments of rent in cash in the amount of \$300 per week have been made during that 5 year
period of time. We have requested receipts for payments to [REDACTED] and other
members of his family which have been ignored.

[REDACTED]

6. In December of 2017, [REDACTED] told us in writing that [REDACTED] had told her that we had not paid rent for months. That statement was prior to us receiving termination notices.

[REDACTED] email seeking relisting

7. I have never been provided with a copy of this email by [REDACTED] or the Tribunal. I obtained a copy by attending at the registry on Thursday the 29th of March and buying a copy.

8. I say about the content of this email, the following:

- 1) Statements made by [REDACTED] in relation to the 2 actions under the Retail Leases Act are not statements about which she has knowledge. [REDACTED] admits this. I say that information provided by [REDACTED] is what she is told by [REDACTED] and nothing more.
- 2) The statement made in the third paragraph is inaccurate and reconstruction. The information I provided was contained in my written submission which was read to [REDACTED] by the conciliator. My position was supported by the provision of the Points of Claim I filed in action number File No. COM 17/53291 and the order made by Member [REDACTED] on the 23rd of January 2018. Further, communication in the conciliation conference is without prejudice and the statements of [REDACTED] are a flagrant breach and disclosure of that without prejudice communication by [REDACTED]
[REDACTED]
- 3) The proposition in that email, that a tenant cannot pay rent direct to the landlord has no foundation in law, in spite of the misconceived assurances and contentions of [REDACTED]. A request for legal authority for this contention has been made and [REDACTED] ignored.

[REDACTED]

4) The balance of the comments contained in the 4th and 5th paragraphs of the email are an attempt by [REDACTED] in this proceeding to argue or convey the effect of the Tribunal order made on the 23rd of January, 2018. To that extent, I repeat, I believe these statements are not [REDACTED] comments or opinions. She is repeating what she has been told by [REDACTED] refuses to accept anything other than what he wants.

5) In the seventh paragraph, [REDACTED] sets out that she does not manage the commercial tenancy. She may not, but the land agency that employs her does. Her employer, [REDACTED] is the appointed agent for the landlord of our commercial tenancy.

9. To summarize the list of all errors in the email of [REDACTED]

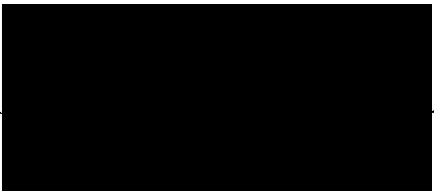
- 1) \$4500 plus \$1500 do not add up to \$6500;
- 2) The lease from 2006 was for shop 1 and shop 2. Since 1st November 2018 and pursuant to an agreement of 2015, commencing 1st November 2017, shop 2 has not been occupied by us as tenants;
- 3) [REDACTED] personally has no knowledge of what is happening in the action number COM 17/53291;
- 4) The home rent payment in January was made before Member [REDACTED] made the order of the 23rd of January;
- 5) The owner does not manage the commercial property, [REDACTED] employer, [REDACTED]
- 6) That [REDACTED] can ignore section 7h of the Residential Tenancies Act.

10. I will deal with my response to the conduct of [REDACTED] in relation to this e-mail and of the Tribunal's dealing with it, in my written submission for the next hearing.

[REDACTED]

Resumption of hearing

11. I say that the application by [REDACTED] is not an application for a fresh hearing but is an application for a resumption of the hearing conducted and adjourned on the 21st of March, 2018.
12. No fresh evidence is provided to support a fresh hearing or a resumed hearing. No fresh argument is provided as to section 7f of the Residential Tenancies Act. No argument has ever been provided by the applicant on the subsection.
13. I say that the basis upon which the proceeding was dealt with on the 21st of March was that there is a claim for a tenancy agreement in late 2015, a single agreement, for the tenancy of shop one and the residential premises, unit 2, to be occupied for a period of three years from November 1st, 2017 with fixed rent from that day for the three years. That is the allegation made and pleaded in my Points of Claim in action number COM 17/53291.
14. [REDACTED] did not understand the nature, scope and application of this agreement at the hearing on the 21st of March, 2018. Without wanting to breach without prejudice rules, the conciliator went to some length and the reason the conciliation took so long was the ineffective efforts by the conciliator to explain to [REDACTED] that this matter was not limited to an isolated residential tenancy application. It seems [REDACTED] still does not grasp the point.
15. I provided a written submission to the Tribunal for the hearing on the 21st of March. Conciliator [REDACTED] read that submission out word for word in the conciliation conference. That submission was provided to Member [REDACTED] in the Tribunal hearing and the member read the submission.



16. Now produced and shown to me and marked with the letters GS1 is a true copy of the written submission which is annexed hereto.

17. [REDACTED] applies for and is granted a fresh hearing to argue the same propositions she put forward, I say in error, in the conciliation conference.

18. Member [REDACTED] has granted the applicant a further hearing, which in my respectful contention must be a resumption of the hearing conducted on the 21st of March, 2018. Member [REDACTED] does not make this clear and it is certainly arguable that this relisted hearing is a new hearing.

19. As a resumed hearing, the respondent contends the matter is part heard before Member [REDACTED]

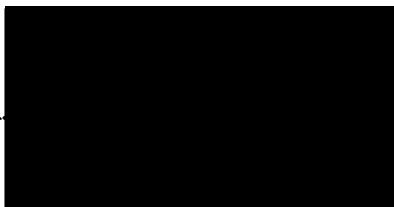
20. This is especially the case given the comments made by Member [REDACTED] as to the dealing with the matter at that hearing. The scope and extent of that dealing is contained in the transcript.

21. Given that the hearing is resuming and given the operative provisions regarding conciliation and given the matter is resuming solely because [REDACTED] does not understand what she was told on the 21st of March and [REDACTED] does not like what was done on the 21st of March, and given that the vast majority of information provided to [REDACTED] was provided by Conciliator [REDACTED] in the conciliation conference, it is appropriate and necessary for the conciliation conference to resume.

22. I say Conciliator [REDACTED] is part heard in that conciliation conference.

Appeal process

23. The order of Member [REDACTED] is unclear. Member [REDACTED] does not direct that this hearing resume before Member [REDACTED] Member [REDACTED] does not direct on the issue of resumption

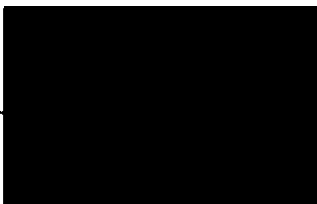


of the conciliation conference. To the extent that Member ██████ directs a fresh hearing, a fresh hearing would be, in effect, an appeal.

- 24. The order of Member ██████ would, in effect, grant permission for the appeal.
- 25. That appeal process would be irregular and beyond the capability of Member ██████ to order in the circumstances. Any order in the nature of an appeal made by Member ██████ in this context should be recalled or struck out or inevitably, once the effect and definition of the order is clarified, proceed to appeal to be struck out by an appeal panel.
- 26. I contend and depose that any appeal or permission to appeal granted by Member ██████ is beyond the scope of her authority and capacity, irregular and illegal.
- 27. I contend that any step taken by way of hearing other than a resumption of the hearing before Member ██████ part heard, and the conciliation conference before Conciliator ██████ part heard, is unlawful.

The jurisdiction issue

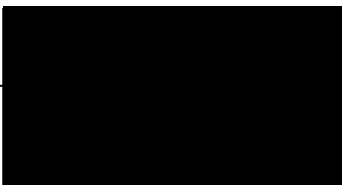
- 28. I say the effect of section 7f of the Residential Tenancies Act is that this application relates to an agreement to which the act does not apply. No order can be made in relation to that agreement under that act. No other agreement is contended to exist in any deposition or pleading in this matter.
- 29. A preliminary question before this matter goes any further is whether the existence and operation of the tenancy aspect for unit 2 is to be dealt with in this action or in action COM 17/53291.
- 30. The issue is not a question of whether a termination application in relation to the residential tenancy agreement can be dealt with prior to the finalization of the retail lease matter. This is the issue Member ██████ has set for hearing and this issue does not exist.



31. The issue is, given that the contended tenancy agreement is a single agreement providing for shop one and the residential unit, and given the operation and requirements of section 7f of the Residential Tenancies Act, whether any order can be made at all on this application.
32. The matter is further complicated by the disappointing events of the hearing before Member [REDACTED] on the 6th of March in COM 17/53291/7. Two applications I had made specifically addressing this issue and looking for resolution of it were before Member [REDACTED] at that hearing on that day. In spite of my persistent and repeated requests that they be addressed, they were not dealt with. Those applications, filed on the 12th of February, 2018 and 26th of February, 2018 have still not been listed for hearing by the registry. Further, although they were on the Tribunal file on the 6th of March, Member [REDACTED] rejected my submission to read and consider them.
33. That has now devolved into a situation where this matter is in chaos in the absence of a conclusive determination in either action as to the effect and operation of section 7f of the Act. A further issue remains pending as to the effect of the interim order and rent payment under that order. The two applications specifically referred to that issue and sought for the Tribunal in action COM 17/53291 to deal with that issue.
34. I respectfully say and submit that this issue must be determined before this matter proceeds to any extent, further. I further say, once this issue is determined and it is clear where this matter will be dealt with, a timetable should be set up to address the issues in accordance with that ruling.

Conduct of landlord/agent

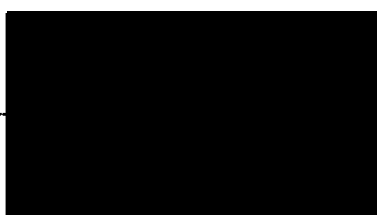
35. I am critical of the conduct of this applicant and this agent. I say the allegations I am about to make are relevant in any assessment of any application by this applicant and agent in this action.



36. I will deal further with this issue in relation to the conduct of the applicant in this action, dealing with both the conduct of the applicant in this action and the conduct of the applicant, who is the respondent in COM 17/53291/7 in my written submission for the hearing on the 12th of April, once I have seen the applicant's case on this application.
37. My dealings with [REDACTED] over the 12 years have been difficult, terse and with constant focus on benefit to him.
38. The allegation in action number COM 17/53291/7 regarding the 2015 agreement demonstrates this. My position is that in exchange for a secure three year term for home and shop with fixed rent, we agreed to undertake a renovation of shop 1. Nothing was written but we spent \$160,000 plus our own personal efforts under this agreement. The position taken by [REDACTED] on that issue is that he committed to nothing and is now entitled to increase the shop rent by 50% and the home rent by 20%. I say this contention will not stand close examination. When this contention is fully and properly examined at trial, it will be seen to be unbelievable if not ridiculous. [REDACTED] is evasive and dismissive in his pleading in actions COM 17/53291/7.
39. Nothing is ever written from [REDACTED]. He says one thing and does another. We have no written agreement for the residential unit, either in 2013 when we moved in, or in 2015 under the renovation agreement. I was not aware of section 14 of the Residential Tenancies Act which has not been complied with by either [REDACTED] or the agent.
40. On the 19th of December 2017 I requested [REDACTED] to provide me with a summary and record of rent paid across the term of our tenancy or to obtain one from her client. As a result of the deteriorating relationship with the applicant, I read the Residential Tenancies Act, particularly section 37 and made the request to [REDACTED] under the act. [REDACTED] and [REDACTED] have ignored that request.

41. Now produced and shown to me and marked with the letters GS2 is a true copy of the email requesting rent record which is annexed hereto.
42. On the 6th of February, 2018 in response to communication from [REDACTED] as to why there were rent payment (so she contends) delays, I forwarded an email with a list of defects in the residential unit we live in. I made the request pursuant to section 63 of the act and further in the context of section 44. [REDACTED] has ignored that request.
43. Now produced and shown to me and marked with the letters GS3 is a true copy of the email requesting repairs and maintenance which is annexed hereto.
44. There is a history of repeated, recalcitrant, contumelious and I say, premeditated disregard for tenant's rights and landlord's obligations by this applicant, its director, [REDACTED] and this agent.
45. Further, in pursuit of their singular and abusive purpose, there is a constant stream of harassment by e-mail from [REDACTED] which is the subject of an application for harassment and breach of the interim order in action number COM 17/53291. The application is made in that action because the respondent's belief is, that action is the only proper action and there are is no proper exercise of jurisdiction in this action. There is one agreement and it is presently and completely before the Tribunal in actions COM 17/53291/7, and not to be dealt with, otherwise and elsewhere.
46. I invite this Honourable Tribunal not to disregard these considerations in the determination of the issues before this Tribunal in this action.

Interim orders



47. Pending this determination, if the interim order in action COM 17/53291 does not preserve the status quo, then I persist with the orders raised in my written submission and my application, particularly the orders sought numbered 6, 7, 8 and 9 in my present application.

Disqualification of Member [REDACTED]

48. I seek an order that Member [REDACTED] be disqualified from further involvement in this action.

49. An appeal has been instituted against the decision of Member [REDACTED] of the 6th of March, 2018 in action COM 17/53291.

50. The grounds of appeal include contentions that Member [REDACTED]

- a. Discriminated against the respondent in that hearing;
- b. Was prejudiced against the respondent in that hearing;
- c. Made rulings that were contrary to law;
- d. Made rulings that were contrary to proper procedure and practice;
- e. Made rulings that undermined and impeded the progression of the matter in accordance with the weight of evidence and in a fair and equitable manner and did so, by conduct leading to and providing for a miscarriage of justice.

51. That appeal has been instituted and is pending. An application to stay all orders of Member [REDACTED] of that day is also pending.

52. An application has been made for an order that Member [REDACTED] be excused (disqualified) from further hearings and involvement in that action.

53. On the basis that there is a pending appeal questioning the conduct of Member [REDACTED] in proceedings involving this respondent, I respectfully contend it is inappropriate for Member [REDACTED] to have any ongoing involvement in this matter.

54. Further, I contend that there are grounds for a contention that Member [REDACTED] has improperly managed and dealt with this action.

[REDACTED]

55. An examination of transcript would show that there is more involved at the conclusion of the hearing on the 21st of March than a simple adjournment.
56. There is an issue as to the exercise of a discretion, relisting by Member [REDACTED] in a number of perspectives.
57. The first is, in a context where the order of Member [REDACTED] clearly contemplates that the hearing in this action be joined with and follow the hearing in action COM 17/53291 and COM 17/53297, Member [REDACTED] has called on this action rather than action COM 17/53291/7.
58. Member [REDACTED] demonstrates an awareness of the considerations which were dealt with by Member [REDACTED] in the fourth line of paragraph one of her order of 28th March 2018 but ignores them.
59. A second consideration is, to the extent that the order of Member A [REDACTED] is based on considerations of the application of section 7f of the Residential Tenancies Act and the lack of jurisdiction under that act, Member [REDACTED] ignores the determination and considerations of Member [REDACTED] and the statements made by Member A [REDACTED] as to ongoing procedure and considerations of section 7f, as recorded in the transcript and my submission.
60. A third reason is, Member [REDACTED] effectively grants permission to appeal procedurally and sets up an appeal hearing which is improper and beyond her authority, as dealt with in paragraph 20 of this affidavit and the application for an order recalling the appeal process.
61. Further, in the second listing of issues by Member [REDACTED] the member demonstrates a propensity in this action to harass the respondent and a propensity to list for hearing and make an order terminating the respondent's residential tenancy.
62. This is the same style of discrimination and harassment, prejudice and bias that is the subject of complaint and contended in the current appeal.

63. A 5th reason is that Member [REDACTED] takes into account the email request of the applicant without confirmation that notice of the request has been provided to the respondent, or, without causing the respondent to receive a copy of the contentions of the applicant in that email. As a result, the respondent is denied an opportunity to say and argue that there is nothing new in the email of the applicant and no cause to relist which is an issue warranting argument of itself.
64. The matters listed above demonstrate abrupt, injudicious, dismissive and demonstrably unfair and inequitable determinations of Member [REDACTED] in this matter which mirror the matters complained about in the appeal.
65. The respondent contemplated appealing against the order of Member [REDACTED] of the 28th of March. While the respondent believes that all of the malevolent ingredients of the discretion of Member [REDACTED] are present, what the member has done is list the 2 issues for hearing. It is difficult to mount a contention that there can be conduct which is not fair and equitable or against the weight of evidence when all that is done is list 2 issues for hearing. Regardless of the purport and innuendo of the balance of the order, that is primarily what is done.
66. There are many members of this Tribunal. It is not proper practice for members to look to seize proceedings in which a particular party is involved. There is nothing in this respondent's complaint that cannot be dealt with and disposed of by another member hearing the issues between the parties and Member [REDACTED] not being involved.
67. That is a consideration subject to the respondent's contention that this matter is part heard before Member [REDACTED] and should not be heard on the rehearing by anyone other than Member [REDACTED]. Equally, a relisting of the conciliation, part heard by Conciliator [REDACTED] is proper. Those steps additionally provide for the proper and effective administration of justice, with those officers seized of the matter and not new to it.

68. If the applicant is forum shopping, the resumed hearing stops Member [redacted] order fulfilling that purpose.

69. For the reasons set out above, the respondent seeks an order that Membe [redacted] be disqualified from further involvement in this matter.

Orders sought

70. The applicant seeks interim orders set out in the application.

71. As the applicant seeks nothing other than a rehearing of the 21st March hearing with no new evidence or argument, the respondent seeks costs.

72. I know the facts deposed herein to be true of my own knowledge and belief except where deposed otherwise.

#SWORN #AFFIRMED at [redacted]

Signature of deponent [redacted]

Name of witness [redacted]

Address of witness [redacted]

Capacity of witness

[#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public]

JP #202526

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable] #I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.¹

2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable] #I have confirmed the deponent's identity using the following identification document:

Signature of witness [redacted]

73.

[redacted] may be original or certified copy²

¹[The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

²["Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit" at the following address: <http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf>]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

"GS1"

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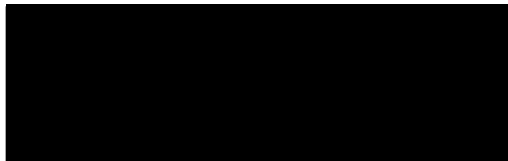
the annexure marked "GS1"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{4th} April 2018

Before Me



NSW Civil & Administrative Tribunal

District Registry: Penrith

File No. RT 18/10018

Division: Consumer and Commercial

Applicant

[REDACTED]

and

Respondent

GURJIT SINGH

RESPONDENT'S SUBMISSION

1. I have prepared my written submissions for my interpreter to read out in open court.
2. This may be a very unusual residential tenancy application.
3. The allegation made by the applicant is based on unpaid rent.
4. What this applicant does not tell this tribunal is that as a result of an NCAT interim order, the respondent is paying \$6,500 per calendar month to the respondent pursuant to that interim order to abide the event of the decision made by NCAT in action number COM 17/53291.
5. In that action, this respondent as applicant makes an application for orders, including:
 3. "A further declaration that the applicant and the respondent made an agreement in relation to the premises in about October of 2015, (the renovation agreement) whereby the applicant at it's own expense would perform a substantial renovation and upgrade of shop 1 of the premises (which renovation is completed) in consideration for [REDACTED] agreeing that the rent would remain at its level as

of September 2015 for the premises, for a period commencing at the completion of the renovation for three years. The renovation completed on 31st October, 2017 and thereby, the term extends from the 1st of November, 2017 to the 31st of October 2020.

4. A further declaration that the rent payable from November 2017 until the 31st October 2020 in respect of the premises, is to be an amount of \$5,000.00 per month for shop 1 and an amount of \$300.00 per week for the residential accommodation to be paid by the applicant to [REDACTED] commencing 1st of November, 2017, and continuing, requiring rental payment on a monthly basis to be paid on the 1st day of each month for shop rent, and on the 15th of the month for residential rent, as monthly rent for the tenancy of the premises until the 31st of October, 2020.

5. A further declaration that the rent payable from November 2017 for shop 1 and also for the residential premises occupied by the applicant is to remain unchanged until the 31st October 2020."

6. That claim and contention is presently before this Tribunal in the other action.

7. Rather than set out in depth or copy here, the 14 pages of the applicant's Points of Claim and the similar sized defence served in the action, this submission will set out the principal terms of the agreement the applicant alleges between the parties in the other action:

Parties

[REDACTED]	Landlord
Gurjit Singh & ACN 605 054 242 Pty Ltd	Tenant

Premises

Shop one, [REDACTED]

Rent

\$6300 per calendar month

Term

3 years from the 1st of November 2017 to the 30th October 2010.

8. That agreement is presently alleged and in issue between the parties in action COM 17/53291. Those pleadings deal with the allegations and background in much more detail.
9. The respondent in fairness to the tribunal and the applicant, is compelled to inform the tribunal that this applicant denies the existence of the agreement.
10. The respondent here, who is the applicant in the other action seeks orders that the agreement is binding and for enforcement of the terms of the agreement.

Principal Submission

3. The applicant makes 2 submissions to this tribunal for this hearing today.
4. The first submission is that the issue of the tenancy including the residential component which is the subject of the applicant's claim in this matter is already before the tribunal in the earlier instituted action and proceeding for determination.
5. The matter is properly before the tribunal in action number COM 17/53291 and in the respondents' respectful submission, this tribunal should stay the termination notices and this application to abide the event of the determination in the action COM 17/53291.
6. That submission is made, to the extent that this tribunal has any choice. The Residential Tenancies Act 2010 No 42, per section 7 deals with premises to which the Act does not apply and sets out;

(h) premises used for residential purposes, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture.
7. The respondent's position is that it relies on one agreement. That is an agreement between companies and natural persons on both sides. It is an agreement that relates to and provides for tenancies for a retail shop, particularly an Indian restaurant and a residential unit. The one agreement provides for a tenancy in both.

8. It suits the landlord's purposes to divide the two tenancies or suggest they can be divided. Nonetheless, in the circumstances, that flies in the face of common sense and also what actually happened.
9. In the respondent's submission, the reality is there is one agreement relating to both properties. One of the properties is a shop and the other is a residence. This is an agreement to which the Residential Tenancies Act does not apply.

The agent's conduct

10. This applicant makes no reference to the \$6,500 being paid by the respondent to the applicant each month. The agent does not deal with that topic to any extent at all.
11. There is an appearance that the agent has made this application and that the applicant and the agent are contending that as no rent is paid to the agent, therefore there must be a breach and default. The agent chooses not to tell the tribunal about the payment of \$6,500 each month.
12. It is one thing for the agent to come before this tribunal having set out the relevant portions of the other action and present cogent arguments about why the tribunal today should not pay attention to what is happening in the other action. It is a completely different thing for the agent to come before this tribunal explaining nothing or very little that is happening in the other action other than her conclusion that what is happening in the other action is irrelevant. Her position is, she will not be telling the tribunal much about the other action because she doesn't know much about it anyway. She has no involvement in the other action. This landlord is represented in that case by [REDACTED] solicitor.
13. What this demonstrates to the tribunal is how completely unreliable this agent is in terms of providing facts to this tribunal in this matter.
14. While this respondent pays this landlord \$6,500 a month pursuant to an interim order in action number COM 17/53291, there is no need for any order to be made other than an order staying the 2 notices of termination served by the applicant.

15. In all the circumstances, the respondents respectfully submit that is the only proper course.

Orders sought

16. The applicant seeks interim orders preserving the status quo as to the tenancy in this action.

17. The applicant seeks an order staying the termination notice served by the respondent in December 2017 until further order.

18. The applicant seeks an order staying the termination notice served by the respondent in March 2018 until further order.

19. That the above orders continue in operation until discharged by a member in the action number COM 17/53291 where a decision is currently being dealt with.

Unless the tribunal seeks to hear more from the respondent, that is the respondent's submission.

"GS2"

The following pages comprise

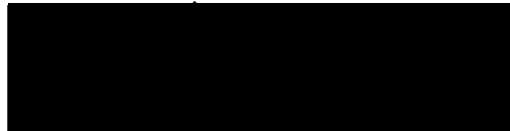
the annexure marked "GS2"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{4th} April 2018

Before Me



Subject: Rent Detail Statement

From: [REDACTED]

To: [REDACTED]

Date: Tuesday, 19 December 2017, 1:14:04 pm AEDT

Hi [REDACTED]

Yesterday you told us that [REDACTED] told you we haven't paid rent for months.

We dispute that and say we have paid all rent up to 31.12.17.

Given the uncertainty, we require a complete rent statement confirming our rent is paid to 31.12.17 and also setting out amount and date of rental payments we made to [REDACTED] and members of his family.

The commercial tenancy is proceeding to Tribunal. This probably will too.

We have no issue with you personally

The problem is, there is a lot of information you don't have.

The arrangements you seek will not be made.

If [REDACTED] told you the truth, you would not be making these demands. Our suggestion that the meeting be on 27th December was so as to give time for information to come out including for you.

I see now you are on holidays till early February.
I don't have an answer for your absence.

We are not trying to be difficult with you

When the rent detail statement is provided to you and to us, things will become clearer.

[REDACTED] solicitor is acting for [REDACTED] regarding the commercial tenancy and this residential tenancy is involved in that dispute

He may be able to help in your absence.

Best regards

Gurjit Singh

Subject: RE: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh vs [REDACTED]

From: [REDACTED]

To: [REDACTED]

Date: Tuesday, 19 December 2017, 4:08:53 pm AEDT

Dear [REDACTED]

Our application to NSW civil and administrative tribunal **also** refers to arrangement we have with [REDACTED] under oral lease for home. My obligations is to make you aware of orders.

Is [REDACTED] refusing to provide rent records as required under residential tenancies act 2010, section 37?

Did you even ask?

Best regards

Gurjit Singh

On Tuesday, 19 December 2017, 3:40:09 pm AEDT, [REDACTED] wrote:

This is not the [REDACTED] as we do not manage the shop

Thank you

From: [REDACTED]

Sent: Tuesday, 19 December 2017, 3:24 PM

To: [REDACTED]

Subject: Fw: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh vs [REDACTED]

Best regards

Gurjit Singh

— Forwarded message —

From: [Redacted]

To: [Redacted]

Sent: Tuesday, 19 December 2017, 2:20:35 pm AEDT

Subject: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh vs [Redacted]

Dear Gurjit Singh

RE: File Number COM 17/53291 | GURJIT SINGH - [Redacted]

Please find attached correspondence relating to the above mentioned matter.

It is important that you review this material immediately.

NSW Civil & Administrative Tribunal

[Redacted]



NCAT
NSW Civil &
Administrative Tribunal

[Large Redacted Block]



"GS3"

The following pages comprise

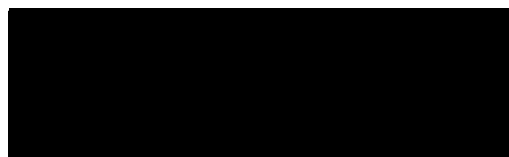
the annexure marked "GS3"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{FFA} 5 April 2018

Before Me



Subject: Defect List, Residential tribunal application

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Date: Tuesday, 6 February 2018, 11:44:46 am AEDT

Hi [REDACTED]

I hope you had nice holidays and wish you have good new year ahead of you and your family.

It is not for me to give you or your client legal advice. But I do not think you should be communicating with me, the lawyer should be.

At least you are communicating in writing. We will only communicate in writing

There will be an application in the residential tribunal before this inspection occurs. However, we do not resist the inspection. It will give you an opportunity to see all the un repaired defects in this property.

[REDACTED] have been notified at various times about the following defects and nothing has been done. You now have a list as below:

1. Bathroom light is not working and needs replacement.
2. No Blinds on one of windows (near entrance)
3. Another window has blinds which needs replacement.
4. Bathroom tub is leaking.
5. Kitchen light is not working
6. Exhaust fan not working in kitchen.
7. Grill not working
8. Knobs of cooktop were missing when we arrived.
9. Shelves under sink is broken and is home for infestation.
10. Air conditioner unit is leaking and damaging skirting board underneath.
11. Skirting is damaged all around.
12. There are 5 holes in home in walls and doors approx 2inch to 8 inch in diametre.
13. Bedroom roof leaks in rain.
14. Exhaust fan of both the bathrooms not working.(221)
15. Smoke alarm not working. An automatic fire detection and alarm system is required as per council requirements.(277)
16. Light globes need replacement as ceiling lights are too high.
17. One bedroom has no blinds on windows.
18. Locks need replacement for one of glass door and require proper sealing. (this was since there was robbery) (389)
19. Entrance step tiles are broken and need sealing to prevent pest infestation (392)
20. Pest control.
21. Provision of Garbage rooms as per council requirements.(690)
22. Common area lights need replacement.
23. Common area needs regular cleaning.

- 24. Cloth dryer need replacement. (688)
- 25. Walls had drawings and scribbling. It needs repainting.
- 26. Bathroom sinks shelves are damaged and missing door knobs.
- 27. No provision of emergency lighting (621)
- 28. Inadequate fire safety measure as unit only has one exit. (465)
- 29. Corner seals in kitchen require resealing to stop infestation.
- 30. Service ducts and false ceiling between flats shall be sound insulated in accordance with the provision of part F5 of building code of australia (058)
- 31. Mechanical ventilation of first storey does not seems to be adequate. (628)

Best regards

Gurjit Singh

On Tuesday, 6 February 2018, 9:32:58 am AEDT, [REDACTED] wrote:

[REDACTED]

T: [REDACTED]
F: [REDACTED]
E: [REDACTED]
E: [REDACTED]
W: [REDACTED]

Tuesday, 6 February 2018

Mr Gurjit Singh

[REDACTED]

Dear Gurjit,

RE: ROUTINE INSPECTION FOR [REDACTED] (REMINDER OF INSPECTION)

In accordance with our responsibility as Managing Agents, it is a policy of this company to carry out regular inspections and report to the Landlord on the conditoin of the property.

With this in mind, I therefore wish to conduct a routine inspection at the above mentioned property on 22/02/2018 between the times of 8.15am - 11.30am.

If the above date is not suitable, could you please contact [REDACTED] urgently to organise a new date that we both can agree to. No inspections will be conducted on the weekends or after hours.

ONCE YOU RECEIVE THIS LETTER, COULD YOU PLEASE EMAIL ME WITH CONFIRMATION TO

IF YOU WOULD LIKE ME TO USE KEYS FOR THE INSPECTION, PLEASE EMAIL ME PERMISSION. IF NOONE IS HOME & I HAVE THE KEYS ON ME, I WILL BE ENTERING THE PROPERTY FOR THIS INSPECTION. SO THIS IS VERY VITAL THAT YOU DO COMMUNICATE WITH ME IF YOU ARE NOT HOME.

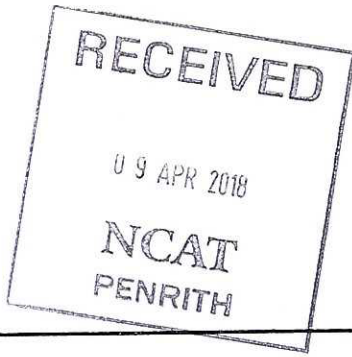
IF I DO NOT HEAR FROM YOUR, I WILL EXPECT SOMEONE HOME FOR MY APPOINTMENT PLEASE.

Can you please make sure the property is very clean to inside & outside. E.G. vertical blinds dusted & dirty marks removed, windows clean, window tracks, window ledges, carpet clean, any dirty marks on walls washed off, light shades cleaned, whole kitchen clean, oven clean, whole bathroom clean, shower grout all clean, toilets clean, ceiling fans clean, all gardens weeded, lawns mowed & edges whipper snipped. Please can you make sure the property is clean and tidy for this inspection and all future inspections.

Please remember if the condition of the property is dirty, the lease might not be renewed. Also the report will state to the owner that property is dirty and to any future Rental Agents. So can you please take the time and make sure the property is clean and all tidy for my inspection so I can write a letter to the owner that the house is clean & all tidy.

Thank you for your understanding.

Yours faithfully,



COACT

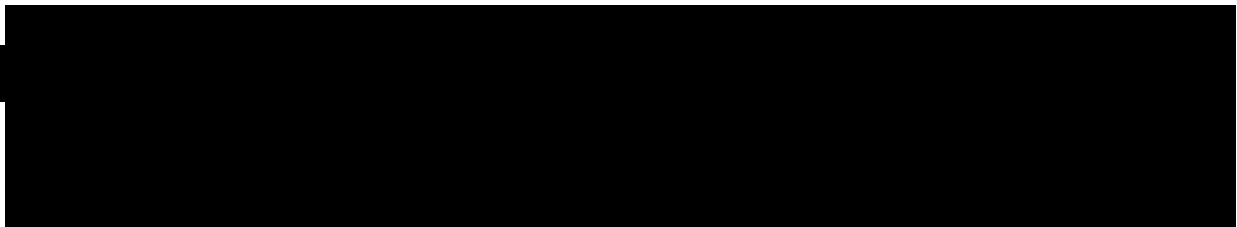
NCAT
NSW Civil &
Administrative Tribunal

Please complete this sheet and attach to any documents you are forwarding to the Tribunal in relation to your matter

Send your documents in relation to NCAT proceedings via post or in person to an NCAT Registry.

Note: In accordance with NCAT Procedural Direction 7 of the Consumer & Commercial Division – ‘Use of Electronic Evidence in Tribunal proceedings.’

- Clause 5 - Where parties are, as a result of procedural directions, required to provide the Tribunal and other party/s with documents, these are to be provided to the Tribunal in hard copy only.
- Clause 6 - The Tribunal and Divisional Registrar will not accept service to the Tribunal of such documents via email, facsimile or other electronic means.



=====

The attached documents are provided by the APPLICANT / RESPONDENT, in compliance with procedural directions made on 28/3/18 (insert date).

Name : GURJIT SINGH

File No : 18/10018

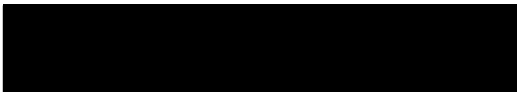
I confirm that a duplicate copy of the attached documents has also been sent to all other party/s as directed by the Tribunal.

Signature Gurjit Singh

Day time telephone no.

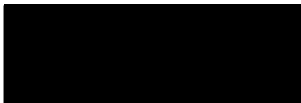
Date _____

NSW Civil & Administrative Tribunal



File No. RT 18/10018

Division: Consumer and Commercial



Applicant

and

GURJIT SINGH

Respondent

RESPONDENT'S SUBMISSION

Confirmation of filed documents

1. The respondent has filed the following documents:
 - 1 Points of Claim from the action number COM 17/53291/7
 - 2 Interim order from action number COM 17/53291/7
 - 3 Respondents' submission presented to the hearing on the 21st of March 2018.
 - 4 Copy of Applicant's application and affidavit filed 4th April 2018.
2. The respondent has filed and served an application and supporting affidavit in this matter and specifically requested of the registry, that the application be listed for 12th April, 2017 with this current listed hearing. The respondent has received nothing to confirm that the registry has listed as requested.

3. The respondent relies on the entirety of the application and affidavit in relation to this matter.
4. The respondent, without limiting the generality of the application of the material, specifically relies on the application to disqualify Member [REDACTED]
5. The respondent contends no action can be taken on the tenancy in this action today or at all.
6. The only step that should be taken was taken by Member [REDACTED] on the 21st of March, 2018.
7. The grounds for the contention of the respondent are:
 - a. That the question of the tenancy under a single tenancy agreement for both shop one and the residential unit are presently before the Tribunal in actions numbered File No. COM 17/53291/7 and subject to the Interim Order and should not be otherwise dealt with;
 - b. That pursuant to the Residential Tenancies Act, section 7f, the tenancy pleaded in action File No. RT 18/10018 is a tenancy to which that Act has no application and no order made in the matter of the application of [REDACTED] is proper in law.
8. No action, in all the circumstances can properly be taken in this action today.
9. The applicant's papers and argument establish nothing, do not deal with the subject of 7a and 7b above and present no cogent argument to sustain an order of this Tribunal in all the circumstances.
10. The order and registry direction of Member [REDACTED] of the 21st of March 2018 was correct and should be confirmed.
11. As set out in the application and affidavit, this process is an unlawful appeal.

Orders sought

12. No orders should be made at the hearing today.
13. In the event that there is an inclination to make orders today, the following orders should be made:
 14. The order and registry direction of Member [REDACTED] of the 21st of March 2018 be confirmed.

15. Interim orders preserving the status quo as to the tenancy in this action, particularly:
- 1 An order staying the termination notice served by the applicant in December 2017 until further order.
 - 2 An order staying the termination notice served by the applicant in March 2018 until further order.
 - 3 That the above orders continue in operation until discharged by a member in the actions number COM 17/53291/7 .

Unless the tribunal seeks to hear more from the respondent, that is the respondent's submission.

10th January 2018

Mr Gurjit Singh



NSW Civil & Administrative Tribunal



Division: Consumer and Commercial
File No. COM 17/53291

Registrar

I was ordered to file my Points of Claim yesterday.

I instructed solicitors to deal with this before Xmas.

I received assurances since instructing those solicitors and in reply to my specific daily requests on Thursday and Friday of last week and Monday of this week that they would ensure compliance with the order. They were on holidays from the 22nd of December until the 4th of January.

As of 5:00 PM yesterday, it became clear they were not going to cause compliance with the Tribunal order.

I have applied my best energies since 5:00 pm yesterday with some support available to me to make my best endeavours to achieve compliance as best I can.

I am filing the Points of Claim with delivery of this letter on the 10th of January.

This will mean I am 1 day late. Accordingly I could not resist an extension to the respondent of one extra day to provide their documentation as ordered.

I still wish to be represented in this matter and I am looking for representation now.

I will forward a copy of this letter with service on the respondents.

I'm thinking, the attempt to have a mediation might be possible at 3:00 pm on Friday the 19th of January, subject to the respondent complying with the order for provision of their documentation.

Best wishes



Gurjit Singh

NSW Civil & Administrative Tribunal

[REDACTED]

File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[REDACTED]

Respondents

POINTS OF CLAIM

Orders Sought

The applicant seeks for the following orders to be made:

1. A declaration that the applicant is the tenant of a portion of the premises at [REDACTED] [REDACTED] (folio identifier 3/33084) (which includes shop 1 and the residential home) (**the premises**) pursuant to a lease dated 21st October 2006 (**the Lease**) between [REDACTED] which lease and terms of lease are as varied from time to time across the term of the tenancy, by the applicant together with the applicant's trading company as in place from time to time, presently [REDACTED] (**the applicant**). The lease expires, pursuant to the terms of the lease and exercised renewals thereunder, on the 31st October 2019.
2. A further declaration that the applicant is the tenant of residential premises at [REDACTED] [REDACTED] pursuant to an agreement between the parties in which agreement, it was an express term, or in the alternative, an implied term of the lease itself, that the applicant will remain in possession of and

occupy the residential premises in which the applicant has lived during the 12 years of the tenancy, for the term of the lease.

3. A further declaration that the applicant and the respondent made an agreement in relation to the premises in about October of 2015, **(the renovation agreement)** whereby the applicant at it's own expense would perform a substantial renovation and upgrade of shop 1 of the premises (which renovation is completed) in consideration for [REDACTED] agreeing that the rent would remain at its level as of September 2015 for the premises, for a period commencing at the completion of the renovation for three years. The renovation completed on 31st October, 2017 and thereby, the term extends from the 1st of November, 2017 to the 31st of October 2020.
4. A further declaration that the rent payable from November 2017 until the 31st October 2020 in respect of the premises, is to be an amount of \$5,000.00 per month for shop 1 and an amount of \$300.00 per week for the residential accommodation to be paid by the applicant to [REDACTED] commencing 1st of November, 2017, and continuing, requiring rental payment on a monthly basis to be paid on the 1st day of each month for shop rent, and on the 15th of the month for residential rent, as monthly rent for the tenancy of the premises until the 31st of October, 2020.
5. A further declaration that the rent payable from November 2017 for shop 1 and also for the residential premises occupied by the applicant is to remain unchanged until the 31st October 2020.
6. An order that the respondents not call upon the Security Bond in respect of the applicant's Lease without prior order of this Tribunal.

7. An order that the respondent provide particulars of the appropriation of an amount of \$85,000 demanded by the respondent as a condition of declining to lock out the applicant in 2010 and allowing the lease and tenancy to continue its term.
8. An order that there be accounts and inquiries as to the payment, receipt and appropriation of the said amount of \$85,000.
9. An order that there be strict compliance with section 33 and section 34 of the Retail Leases Act in relation to two substantial aspects of building work required in relation to shop 1, particularly:

Sub-Division of shops, subdividing shops 1 and 2:

That the respondents provide:

- a. A written specification of the works including drawings;
 - b. A written specification of the timing for the works;
 - c. A written specification of the extent of intrusion the works will have on the applicant's business;
 - d. Any proposals for compensation for the intrusion.
10. Repair on first floor:
- That the respondents provide:
- a. A written specification of the works including drawings;
 - b. A written specification of the timing for the works;
 - c. A written specification of the extent of intrusion the works will have on the applicant's business;
 - d. Any proposals for compensation for the intrusion.

11. An order that the respondents be restrained from commencing or performing either of the construction works, nor making any demands of the applicant until all orders in relation to the works are complied with.
12. An order that the respondents be restrained from terminating the Lease or evicting the applicant from the premises until its expiration on 31st October 2020, without reasonable cause, I only with an order of this Honourable Tribunal, and after providing written notice of breach including setting out in comprehensive detail any contended breach and method of remedy.
13. An order that the respondents be restrained from interfering with the applicant's entitlement to quiet enjoyment of the premises to conduct their business and to reside.
14. An order that the respondents compensate the applicant for any loss of profits, or damage sustained as a result of:
 - (a) Damage to the premises caused by storm on 30 January 2016; and
 - (b) The amount of \$85,000.00 paid by the applicant to the respondents to avoid a threatened lockout in 2010 in circumstances where there was no notification of contended breach, no provision of a notice of default, no detail provided of the alleged breach and no opportunity to rectify any breach provided; and
 - (c) Damages for harassment and breach of the applicant's entitlement to quiet enjoyment and possession.

Background

15. On or about 21 October 2006, [REDACTED] entered into a lease with [REDACTED] (the

lessor) in respect of the premises and shop 2 located at the premises (the Initial Lease).

Particulars

- (a) The commencement date of the Initial Lease was 1st November 2006 and was to proceed on a term of 3 years with the first term termination date of the Initial Lease to be 31st October 2009;
- (b) The Initial Lease contained the following options to renew at Item 12, Clause 4 of Annexure A to the Lease:
 - (i) Further period of 5 Years from 1st November 2009 to 31 October 2014;
 - (ii) Further period of 5 Years from 1st November 2014 to 31 October 2019;
 - (iii) The Maximum Period of tenancy under the Initial Lease and permitted renewals was for a period of 13 years.

- 16. The applicant signed the Initial Lease in his capacity as director of [REDACTED]
- 17. The directors of the lessor are [REDACTED] and [REDACTED] [REDACTED] the respondents. The directors caused the lease to be executed and to become a binding agreement between the parties.
- 18. [REDACTED] was, at all material times, and remains the registered proprietor of the premises.

Particulars

Title search of the premises conducted on 8th January 2018.

- 19. Gurjit Singh of the applicant was guarantor under the Initial Lease.

Particulars

Page 3 of the Lease – execution as guarantor.

20. A guarantee sum on money was deposited by Gurjit Singh in the amount of \$21,450.00 to the respondents, being the quantum, of 3 months' rent plus GST.
21. The guarantee fund has not been refunded to the applicant and remains in the possession of the respondents.
22. The applicant, together with [REDACTED] and other associated entities ran a business, being an Indian restaurant, at the premises (**the business**) for the whole of the period from the commencement of the tenancy in 2006, ongoing to the date of this document.

First renewal and alterations to terms

23. In about June of 2009, Gurjit Singh approached [REDACTED] for discussion regarding renewal of the tenancy and exercise of the option for the renewed term. As a result of those discussions, it was agreed:
 - a. That there would be no need for formal documentation for the tenancy and exercise of options to continue. Communication could be informal, oral and binding;
 - b. That the exercise of the option for five years from October 2009 was approved and commenced;
 - c. That the respondents approved any change of corporate operator of the business and that they would have no objection to company involvement and alteration in the company involvement in operation and conduct of the business provided that Gurjit Singh continued to be involved in and conduct the business in the shop portion of the premises.
24. The applicant and other associated entities occupied the premises, conducted the business and caused all due rent to be paid from the commencement of the Initial Lease in November 2006 to the end of October 2017. Payments were

made in accordance with the terms of the Initial Lease, to the respondents by way of cash and cheque payment on a monthly basis, as requested and required by [REDACTED]

25. In about June 2010, [REDACTED] contended that there was a material breach without providing written notification of the breach or any opportunity to remedy the breach and threatened termination of the lease and tenancy and lock out.
26. The applicant engaged legal representation who communicated with [REDACTED] and who advised Gurjit Singh (which pleading and statement is not provided with the release of legal professional privilege) that the best available prospect for the applicant was to negotiate a settlement of the issues with [REDACTED]
27. A negotiation occurred in which [REDACTED] told Gurjit Singh that he was the property owner any would decide who occupied the property. [REDACTED] told Gurjit Singh that the applicant was in breach of the initial agreement. No written documentation dealing with the breach or opportunity for remedy was provided.
28. [REDACTED] told Gurjit Singh that he would proceed with a lockout unless payment was made to him of the amount of \$85,000 in cash. Unless he was paid \$85,000 in cash, he would not allow the tenancy to continue, he would terminate the tenancy and lock the applicant out.
29. [REDACTED] told Gurjit Singh the tenancy could only continue if payment was made of the amount of \$85,000 in cash.
30. At the time of the demand for \$85,000, the only breach known to the applicant to be capable of sustaining the conduct of [REDACTED] was in relation to plant and equipment purchase.
31. There was an agreement in 2006 that the applicant's would purchase the respondent's plant and equipment for \$120,000, much of which was installed in the shop. \$102,500 had been paid and \$17,500 remained to be paid.

32. In all the circumstances, the applicant now contends that any breach pending at the time would not have justified lock out.
33. The applicant now perceives, there was no legal foundation for the threat of lock out and there was no legal foundation for the demand and obtaining of \$85,000 in cash.
34. Without being aware of the lack of legal foundation and relying on legal advice that the best available option to the applicant was to resolve the issues pending by negotiation and settlement, the applicant was inclined to pay the \$85,000 in cash but did not have the available cash.
35. As a result of subsequent negotiations, it was agreed that the amount of \$85,000 in cash as a lump sum would be paid by instalments. The amount has been paid. On the basis of the agreement to pay the \$85,000 and meet all other obligations under the tenancy, the tenancy of the premises continued. The amount of \$85,000 is in addition to all of the payment obligations of the applicant which have been separately paid. The applicant did regard the \$85,000 cash payment as discharging the obligation to pay any balance and particularly the outstanding \$17,500 acknowledged by the applicant as still being due to be paid.
36. The applicant does not know who the final recipient for tax and accounting purposes was for the payment of \$85,000 in cash.
37. During the period of time while the \$85,000 in cash was paid, the tenancy proceeded without contention of breach by the respondents. The payment of the \$85,000 in cash was completed by mid 2013.
38. There was a discussion about the time of the second renewal, about October 2014. The applicant advised the respondent, that is, Gurjit Singh to [REDACTED] that the applicant wished to proceed with the next five year term of the tenancy. [REDACTED] approved. This all occurred oral conversations.

39. The tenancy continued without contention of breach from the respondents from the October 2014 discussion until the 31st of October 2017. All rentals and related obligations were up to date and current at the 31st of October 2017.
40. The applicant by the trading company, [REDACTED] paid rental payments to the respondents from 1st November 2017 to date by way of cheque payment on a monthly basis.
41. The respondents have failed or neglected to provide the applicant [REDACTED] and/or associated entities with receipts for the monthly cash rental payments on a regular basis. Hundreds of cash payments are unrecorded and not confirmed.

The renovation and extension of time agreement

42. In the second half of 2015 the tenancy arrangement was amended by mutual agreement **(the renovation agreement)** so that the applicant together with the applicant's trading company as in place at that time was to perform at the tenant's own cost, a renovation and upgrade of shop 1, ground floor.
43. In consideration of the applicant undertaking the renovation without cost to the respondent, the respondent agreed that the applicant would pay an amount of \$5,000.00 per month for a fixed period of 3 years in respect of rent for tenancy of the premises from the date of completion of the renovation, which has now occurred before the 1st of November, 2017.
44. Further In consideration of the applicant undertaking the renovation without cost to the respondent, the respondent agreed for the residential accommodation rented by the applicant from the respondent to continue without rent increase for 3 years from the completion of the renovation of Shop 1.
45. The renovation was completed at the end of October 2017.
46. The applicant sought to confirm the commencement of the operation of the renovation agreement by making arrangements for returning shop 2 to the respondents and the commencement of all payments of rent in the agreed amount by cheque or EFT.
47. The applicant provided a cheque to the respondents which the respondents did not bank.

48. [REDACTED] discussed the tenancy with Gurjit Singh seeking that the occupation of shop 2 continue until the end of the year and that the applicant continue to make cash payments until the end of the year.
49. The applicant declined. When [REDACTED] attended shop 1 in November 2017 to discuss arrangements with Gurjit Singh, Gurjit's wife offered [REDACTED] the December rent cheque. He ripped it up and dropped it on the floor.
50. A request was made for the respondent's bank details so that EFT payments could be made.
51. In late November 2017, the bank details were provided and December shop rent was paid by EFT.
52. After the EFT payment, the cheque sent to the respondents for November rent was presented to the applicant's bank.
53. An agent was appointed in relation to the residential tenancy before Christmas.
54. The agent contended that she had been informed by [REDACTED] that the applicant was months behind with rent for the residential property.
55. Before Christmas, the agent provided notice on behalf of the respondents of termination of the applicant's residential tenancy. The termination was notified on grounds of no cause.

Proposed subdivision of shops 1 and 2

56. As a result of the agreement of 2015 between the applicant and the respondents for the renovation, about the 31st of October 2017, the respondents, initially by [REDACTED], then by their agents, a [REDACTED] land agent and [REDACTED] solicitor commenced to make demands for keys to shop 2, formerly occupied by the applicant's and vacant and unused by the applicant's from 31st October, 2017.
57. [REDACTED] demanded access in the afternoon of one day for 6.30 am the next day for a tradesperson to attend and perform concrete or brickwork between the two shops.

58. There have been repeated numerous requests/demands from [REDACTED] land agent and [REDACTED] solicitor for the keys for access to undertake this work.
59. At no time has there been any mention of sections 33 and 34 of the Retail Leases Act, any detailing for the works or any of the information required which is set out in paragraph 9 and 10, a to d of these Points of Claim.
60. The applicant contends the respondents show no regard for the applicant's right as occupant and the ongoing operation, without intrusion to the applicant, or the applicant's business.
61. Unless restrained by this Honourable Tribunal, it seems more likely than not that the respondent and their agents will proceed with this work, without council approval for material construction work, and approval from other statutory agencies, without notice of the scope and extent of the work to the applicant and without regard to intrusion on the applicant's ongoing business.
62. The respondents have and will breach the applicant's entitlement to ongoing quiet enjoyment and possession of the premises to conduct its Indian food business.

Renovation and Breach of Lease

63. On or around 30th January 2016, a storm occurred which caused damage to the premises whereby part of Shop 1 was unable to be utilised by the applicant. Representatives on behalf of the respondents organised for partial emergency repairs to be carried out on the damaged areas of the premises. More repairs were required at the premises but were waiting on an insurance claim or required the approval of the respondents.
64. The Lessor has breached clause 7 of the written lease by failing to maintain the premises (the restaurant upstairs and predominantly the first floor party room) in a state of good condition.

Particulars

Clause 7 of the Initial Lease.

65. Part of shop 1 of the premises remains extensively damaged and unusable by the applicant, and its associated entities, since 30th January 2016.
66. The applicant has paid rent to the respondents in respect of tenancy of the premises up to and including 31st January 2018.
67. The applicant is properly required to pay a diminished amount of rent to the lessor during the period in which the premises remain damaged and are unable to be used by the applicant to the full extent.
68. The applicant incurred loss of profits due to the damage to Shop 1 of the premises that remains unrectified by the respondents.

Demand

69. The respondents demanded that a new lease be entered into by the applicant providing for substantial rent increases, otherwise the respondents will immediately terminate the lease and immediately take possession of the premises from the applicant (and/or his associated entities).

Particulars

Correspondence including:

- (a) Letter from [REDACTED] Lawyers, acting on behalf of the lessor, to the applicant dated 13th December 2017.
- (b) Letter from the applicant to [REDACTED] Lawyers dated 14th December 2017.
- (c) Email from [REDACTED] of [REDACTED] Lawyers to the applicant dated 14th December 2017.
- (d) Email from the applicant to [REDACTED] Lawyers dated 14th December 2017.

Reasons

70. The applicant denies the respondent's capacity and entitlement to demand a new lease as a result of:

- a. The ongoing operation and application of the 2006 lease, providing for occupation up until the 31st of October, 2019; and
 - b. The ongoing operation and application of the 2015 agreement for renovation providing for occupation up until the 31st of October, 2020.
70. The applicant seeks the relief sought in paragraphs 1 to 14 above based on the information and facts set out in paragraphs 15 to 67 above.
71. The applicant seeks to continue the lease as varied from time to time between the applicant and respondents, whereby the applicant is to continue occupying the premises until 31st October 2019.
72. In addition or in the alternative, the applicant seeks to continue the lease as varied from time to time between the applicant and respondents, particular, the renovation agreement of 2015 whereby the applicant is to continue occupying the premises until 31st October 2020.

Damages

73. The applicant seeks damages.
74. The applicant seeks compensation in respect of loss of profits from 30th January 2016 to date in respect of a portion of the premises unable to be used by the applicant or its associated entities due to the respondents' breach and failure to rectify damage to the premises.
75. The applicant seeks accounts and inquiries as to the payment demanded and made of \$85,000 in cash and the reimbursement of any amount unlawfully demanded and received.
76. The applicant seeks damages arising from the failure of the respondents to invoice, provide written confirmation of receipt of, and acknowledge as duly paid, the applicant's numerous cash payments made to the respondent. The applicant is preparing an itemised spreadsheet setting out the alleged cash payments and will provide the printed spreadsheet to the respondent upon completion and to the Tribunal in the evidence.
77. The applicant's claim for damages is not presently capable of precise arithmetic calculation.

Costs

78. The applicant seeks costs.

Interim Order

79. The applicant seeks to the interim order to continue until further order of the Tribunal.

Dated: 10 January 2018



Signed by Gurjit Singh
Applicant



NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

Gurjit Singh
[REDACTED]

File No: COM 17/53291
Quote in all enquiries
eNumber: 56634DD06

Application to the Tribunal concerning GURJIT SINGH - [REDACTED]

The Tribunal has received an application for orders under the Retail Lease Act 1994 (The Act).

In addition, the applicant has applied for an interim order under s72(4) of the Act.

On 19/12/2017 the Tribunal made the following orders:

1. Having considered the material provided in the application, the Tribunal is satisfied that it is desirable to make the following order(s) on an interim basis without hearing from the respondent:

(a) The applicant is granted relief against forfeiture in respect of premises at [REDACTED]

(b) The above order is conditional on payment of rent as and when it falls due.

2. The above order(s) will remain in force until 5.00pm on 23/1/2018, being the date on which the application for interim orders will be listed for hearing and the application for substantive orders will be listed for directions.

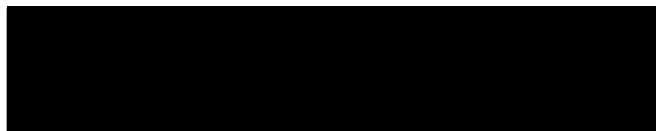
3. Any application to continue or revoke the above interim order will be considered at the hearing on 23/1/2018.

4. At the directions hearing in relation to the application for substantive orders, the parties are to provide evidence of attempted mediation. If mediation has not been attempted, the parties are to provide evidence that an application for mediation has been made to the Office of the Small Business Commissioner, together with the mediation date if it has been set.

5. The applicant is to provide to the respondent and the Tribunal points of claim setting out the orders sought and the reasons for the orders sought in the application for substantive orders, by 9/1/2018.

6. The respondent is to provide to the applicant and the Tribunal any evidence and submissions in response to the application for interim orders, by 16/1/2018.

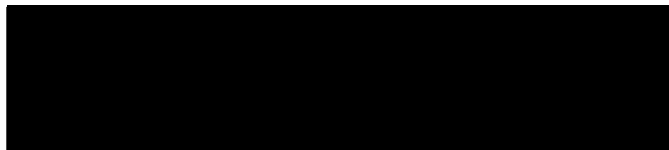
Section 62 (2) of the Civil and Administrative Tribunal Act 2013 provides the following:
Any party may, within 28 days of being given notice of a decision, request the Tribunal provide a written statement of reasons for its decision. The request should be, in writing, addressed to the Registrar.





19/12/17

Section 62 (2) of the Civil and Administrative Tribunal Act 2013 provides the following:
Any party may, within 28 days of being given notice of a decision, request the Tribunal provide a written statement of reasons for it's decision.
The request should be, in writing, addressed to the Registrar.





NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

Gurjit Singh
[REDACTED]

File No: COM 17/53291
Quote in all enquiries
eNumber: 56634DD06

Application to the Tribunal concerning GURJIT SINGH - [REDACTED]

Applicant: Gurjit Singh

Respondent: [REDACTED]

On 23-Jan-2018 the following orders were made:

1. By Determination of member, on 23 January 2018 the hearing was adjourned to a directions hearing on a date to be fixed by the Divisional Registrar.
2. Order for interlocutory relief: Provided the applicant pays an amount of \$6,500.00 (inclusive of GST) on account of rent by monthly instalments commencing 1 February 2018, the respondent is restrained from attempting to terminate the retail lease the subject of this application, from repossessing the premises or otherwise disturbing the applicant's quiet enjoyment of the premises until this dispute is resolved at mediation (or otherwise) or until the Tribunal has made a decision pursuant to the application in File No COM 17/53297.
3. In circumstances where both parties have radically different perspectives as to the proper rental payable and where there are serious issues of fact and law to be tried, the intent of the order for interlocutory relief is to preserve the status quo (by reference to the monthly rental payable at the commencement of the term of the lease in 2006).
4. On or before 6 February 2018, the respondent is to give to the Tribunal and the other party, in person or by post, Points of Defence to the Points of Claim of the applicant which was received by the Tribunal on 10 January 2018. The Points of Defence are to be a brief summary of the defence, stating in point form (by reference to the numbered paragraphs in the applicant's Points of Claim) the reasons that the applicant's claims are opposed.
5. The parties are to attend Mediation at the Office of the NSW Small Business Commissioner, no later than 20 February 2018.

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

- (a) If the party is causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or
- (b) If the party causing the disadvantage is not the applicant:
 - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
 - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

6. Should there be any disputes between the parties as regards the application of the order for interlocutory relief, leave is granted to the parties to apply to the Deputy Divisional Registrar on 2 days' notice to have the matter relisted for further directions.

7. Costs of today are reserved.

8. The Tribunal may make consent orders in the absence of the parties on receipt of signed terms of agreement.

9. On the next occasion the parties or their legal representatives will be expected to inform the Tribunal at a directions hearing as to the following matters:

(1) the ambit of the remaining issues in dispute (including issues arising in any cross application to be brought by the lessor);

(2) the number of witnesses (lay and expert) in their respective cases;

(3) a realistic timetable of directions (e.g. for exchange of lay and expert evidence) as required to enable the proper preparation of all matters in dispute between the parties for a formal hearing.

10. The Tribunal notes the parties agree that they will liaise co-operatively as regards access to the lessor and the lessor's contractors to carry out works (between 7 am and 11 am on weekdays) to the Shop 2 wall and the return of the Shop 2 keys to the lessor.

11. The Tribunal further notes that the lessor reserves its position in respect of a cross application for orders including recovery of outstanding rent arrears and outgoings and an order for compensation.

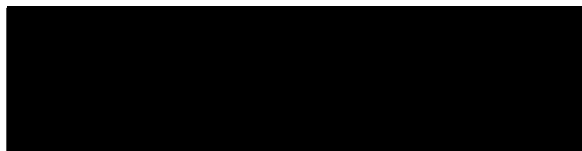
A separate written notice of the new hearing date will be sent to you in the near future.



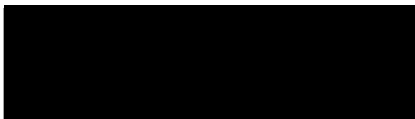
23/01/18

Schedule 4, Clause 10(2) of the NSW Civil & Administrative Tribunal Act 2013 provides the following:

- (a) If the party causing the disadvantage is the applicant – order that the proceedings (or part of the proceedings) be dismissed or struck out, or
- (b) If the party causing the disadvantage is not the applicant:
 - (i) determine the proceedings (or part of the proceedings) in favour of the applicant and make any appropriate orders, or
 - (ii) order that the party causing the disadvantage be struck out of the proceedings (or part of the proceedings).

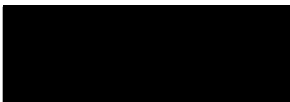


NSW Civil & Administrative Tribunal



File No. RT 18/10018

Division: Consumer and Commercial



Applicant

and

GURJIT SINGH

Respondent

RESPONDENT'S SUBMISSION

1. This may be a very unusual residential tenancy application.
2. The allegation made by the applicant is based on unpaid rent.
3. What this applicant does not tell this tribunal is that as a result of an NCAT interim order, the respondent is paying \$6,500 per calendar month to the respondent pursuant to that interim order to abide the event of the decision made by NCAT in action number COM 17/53291.
4. In that action, this respondent as applicant makes an application for orders, including:
 3. "A further declaration that the applicant and the respondent made an agreement in relation to the premises in about October of 2015, (the renovation agreement) whereby the applicant at it's own expense would perform a substantial renovation and upgrade of shop 1 of the premises (which renovation is completed) in consideration for [REDACTED] agreeing that the rent would remain at its level as of September 2015 for the premises, for a period commencing at the completion of

the renovation for three years. The renovation completed on 31st October, 2017 and thereby, the term extends from the 1st of November, 2017 to the 31st of October 2020.

- 4. A further declaration that the rent payable from November 2017 until the 31st October 2020 in respect of the premises, is to be an amount of \$5,000.00 per month for shop 1 and an amount of \$300.00 per week for the residential accommodation to be paid by the applicant to [REDACTED] commencing 1st of November, 2017, and continuing, requiring rental payment on a monthly basis to be paid on the 1st day of each month for shop rent, and on the 15th of the month for residential rent, as monthly rent for the tenancy of the premises until the 31st of October, 2020.
- 5. A further declaration that the rent payable from November 2017 for shop 1 and also for the residential premises occupied by the applicant is to remain unchanged until the 31st October 2020."

- 5. That claim and contention is presently before this Tribunal in the other action.
- 6. Rather than set out in depth or copy here, the 14 pages of the applicant's Points of Claim and the similar sized defence served in the action, this submission will set out the principal terms of the agreement the applicant alleges between the parties in the other action:

Parties

[REDACTED]	Landlord
Gurjit Singh & [REDACTED]	Tenant

Premises

Shop one, [REDACTED]

Rent

\$6.300 per calendar month

Term

3 years from the 1st of November 2017 to the 30th October 2010.

7. That agreement is presently alleged and in issue between the parties in action COM 17/53291. Those pleadings deal with the allegations and background in much more detail.
8. The respondent in fairness to the Tribunal and the applicant, is compelled to inform the tribunal that this applicant denies the existence of the agreement.
9. The respondent here, who is the applicant in the other action seeks orders that the agreement is binding and for enforcement of the terms of the agreement.

Principal Submission

3. The applicant makes 2 submissions to this Tribunal for this hearing today.
4. The first submission is that the issue of the tenancy including the residential component which is the subject of the applicant's claim in this matter is already before the Tribunal in the earlier instituted action and proceeding for determination.
5. The matter is properly before the Tribunal in action number COM 17/53291 and in the respondents' respectful submission, this tribunal should stay the termination notices and this application to abide the event of the determination in the action COM 17/53291.
6. That submission is made, to the extent that this Tribunal has any choice. The Residential Tenancies Act 2010 No 42, per section 7 deals with premises to which the Act does not apply and sets out;
 - (h) premises used for residential purposes, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture.
7. The respondent's position is that it relies on one agreement. That is an agreement between companies and natural persons on both sides. It is an agreement that relates to and provides for tenancies for a retail shop, particularly an Indian restaurant and a residential unit. The one agreement provides for a tenancy in both.

8. It suits the landlord's purposes to divide the two tenancies or suggest they can be divided. Nonetheless, in the circumstances, that flies in the face of common sense and also what actually happened.
9. In the respondent's submission, the reality is there is one agreement relating to both properties. One of the properties is a shop and the other is a residence. This is an agreement to which the Residential Tenancies Act does not apply because of section 7f.

The agent's conduct

10. This applicant makes no reference to the \$6,500 being paid by the respondent to the applicant each month. The agent does not deal with that topic to any extent at all.
11. There is an appearance that the agent has made this application and that the applicant and the agent are contending that as no rent is paid to the agent, therefore there must be a breach and default. The agent chooses not to tell the Tribunal about the payment of \$6,500 each month. [REDACTED] chooses not to tell the Tribunal about the Interim Order.
12. It is one thing for the agent to come before this Tribunal having set out the relevant portions of the other action and present cogent arguments about why the Tribunal today should not pay attention to what is happening in the other action. It is a completely different thing for the agent to come before this Tribunal, explaining nothing or very little that is happening in the other action other than her conclusion that what is happening in the other action is irrelevant. Her position is, she will not be telling the Tribunal much about the other action because she doesn't know much about it anyway. She has no involvement in the other action. This landlord is represented in that case by [REDACTED] solicitor.
13. What this demonstrates to the Tribunal is how completely unreliable this agent is in terms of providing facts to this Tribunal in this matter.
14. While this respondent pays this landlord \$6,500 a month pursuant to an interim order in action number COM 17/53291, there is no need for any order to be made other than an order staying the 2 notices of termination served by the applicant.

15. In all the circumstances, the respondents respectfully submit that is the only proper course.

Orders sought

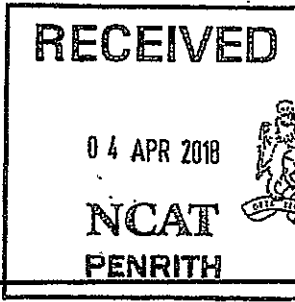
16. The respondent seeks interim orders preserving the status quo as to the tenancy in this action.

17. The respondent seeks an order staying the termination notice served by the applicant in December 2017 until further order.

18. The respondent seeks an order staying the termination notice served by the applicant in March 2018 until further order.

19. That the above orders continue in operation until discharged by a member in the action number COM 17/53291 where a decision is currently being dealt with.

Unless the tribunal seeks to hear more from the respondent, that is the respondent's submission.



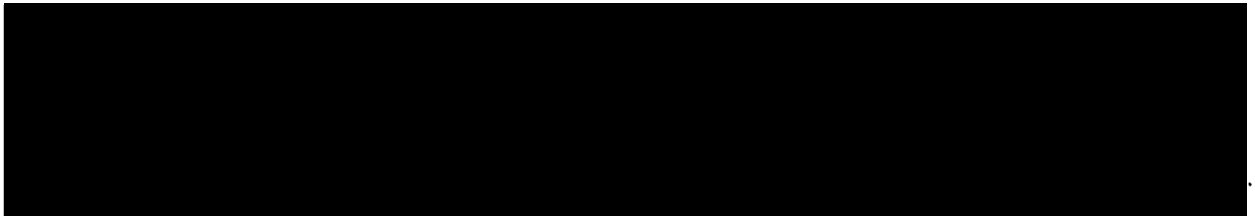
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NCAT
NSW Civil &
Administrative Tribunal

Please complete this sheet and attach to any documents you are forwarding to the Tribunal in relation to your matter.

Send your documents in relation to NCAT proceedings via post or in person to an NCAT Registry.

Note: In accordance with NCAT Procedural Direction 7 of the Consumer & Commercial Division – 'Use of Electronic Evidence in Tribunal proceedings.'

- Clause 5 - Where parties are, as a result of procedural directions, required to provide the Tribunal and other party/s with documents, these are to be provided to the Tribunal in hard copy only.
- Clause 6 - The Tribunal and Divisional Registrar will not accept service to the Tribunal of such documents via email, facsimile or other electronic means.



=====

The attached documents are provided by the APPLICANT / RESPONDENT, in compliance with procedural directions made on _____ (insert date).

Name : x GURJIT SINGH

File No : 18/1008

I confirm that a duplicate copy of the attached documents has also been sent to all other party/s as directed by the Tribunal.

Signature [Redacted]

Day time telephone no. _____

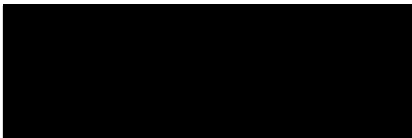
Date 3/4/18

NSW Civil & Administrative Tribunal



Division: Consumer and Commercial

File No. RT 18/10018



Gurjit Singh (Respondent)

Documents Index

Document Description	Number of Pages
Application to be listed on 12 April 2018	3
Affidavit in Support	14
Annexure to Affidavit GS1	5
Annexure to Affidavit GS2	3
Annexure to Affidavit GS3	3

NSW Civil & Administrative Tribunal

[REDACTED]

File No. RT 18/10018

Division: Consumer and Commercial

[REDACTED]

Applicant

and

GURJIT SINGH

Respondent

APPLICATION FOR ORDERS

Orders Sought

The Respondent seeks for the following orders to be made:

1. An order that the hearing set for the 12th of April 2018 be a resumption of the hearing conducted on the 21st of March 2018 and include a resumption of the conciliation conference;
2. An order that Member [REDACTED] is part heard in that hearing and that Member [REDACTED] hear the listed application on 12th of April 2018;
3. An order that Conciliator [REDACTED] is part heard in the conciliation conference of and in that hearing;
4. An order that in relisting the issues for hearing, Member [REDACTED] has authorised an appeal process and effectively granted permission to the applicant to appeal the

order of Member [REDACTED] of the 21st of March 2018 as embodied in the Member's formal written order and statements made by the member in relation to orders, recorded in the transcript. In dealing with and ordering this appeal process, Member [REDACTED] has exceeded her authority and jurisdiction.

5. That the hearing on the 12th of April be limited and restricted to a determination of the issue as to whether the Residential Tenancies Act does not apply to the tenancy agreement in this matter as a result of the operation of section 7 of the said Act.
6. Interim orders preserving the status quo as to the tenancy in this action.
7. An order staying the termination notice served by the applicant in December 2017 until further order.
8. An order staying the termination notice served by the applicant in March 2018 until further order.
9. That the above orders continue in operation until discharged by a member in action number COM 17/53291/7 in this Tribunal where a decision is currently being dealt with.
10. That Member [REDACTED] be disqualified from further involvement in this matter.
11. Leave to apply for further orders as necessary and appropriate;
12. Costs

Dated: 4 April 2018

[REDACTED]

Signed by Gurjit Singh
Applicant

.....

This application is to be filed in the registry and served upon the Applicant by email to [REDACTED]

NSW CIVIL & ADMINISTRATIVE TRIBUNAL

File No. RT 18/10018


Division: Consumer and Commercial



Applicant

and

 GURJIT SINGH

Respondent


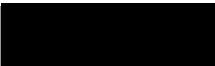

AFFIDAVIT REGARDING TENANCY

I, GURJIT SINGH of Unit  MAKE OATH

AND SAY:

1. I am the respondent.

The home occupation

2. Since 2013, My wife and I, together with our children have lived in 
 an apartment unit owned by the applicant.
3. My wife and I had together with our trading company operate an Indian restaurant in a shop in the same building.
4. We say (and the applicant disputes) that we entered a single agreement whereby we occupy both the unit and the shop on a term of three years from 1st November 2017 with fixed rent pursuant to the agreement we made at the end of 2015.
5. Payments of rent in cash in the amount of \$300 per week have been made during that 5 year period of time. We have requested receipts for payments to  and other members of his family which have been ignored.

6. In December of 2017, [REDACTED] told us in writing that [REDACTED] had told her that we had not paid rent for months. That statement was prior to us receiving termination notices.

[REDACTED] email seeking relisting

7. I have never been provided with a copy of this email by [REDACTED] or the Tribunal. I obtained a copy by attending at the registry on Thursday the 29th of March and buying a copy.

8. I say about the content of this email, the following:

- 1) Statements made by [REDACTED] in relation to the 2 actions under the Retail Leases Act are not statements about which she has knowledge. [REDACTED] admits this. I say that information provided by [REDACTED] is what she is told by [REDACTED] and nothing more.
- 2) The statement made in the third paragraph is inaccurate and reconstruction. The information I provided was contained in my written submission which was read to [REDACTED] by the conciliator. My position was supported by the provision of the Points of Claim I filed in action number File No. COM 17/53291 and the order made by Member [REDACTED] on the 23rd of January 2018. Further, communication in the conciliation conference is without prejudice and the statements of [REDACTED] are a flagrant breach and disclosure of that without prejudice communication by [REDACTED] [REDACTED]
- 3) The proposition in that email, that a tenant cannot pay rent direct to the landlord has no foundation in law, in spite of the misconceived assurances and contentions of [REDACTED]. A request for legal authority for this contention has been made and ignored.

4) The balance of the comments contained in the 4th and 5th paragraphs of the email are an attempt by [REDACTED] in this proceeding to argue or convey the effect of the Tribunal order made on the 23rd of January, 2018. To that extent, I repeat, I believe these statements are not [REDACTED] comments or opinions. She is repeating what she has been told by [REDACTED] refuses to accept anything other than what he wants.

5) In the seventh paragraph, [REDACTED] sets out that she does not manage the commercial tenancy. She may not, but the land agency that employs her does. Her employer, [REDACTED] is the appointed agent for the landlord of our commercial tenancy.

9. To summarize the list of all errors in the email of [REDACTED]

- 1) \$4500 plus \$1500 do not add up to \$6500;
- 2) The lease from 2006 was for shop 1 and shop 2. Since 1st November 2018 and pursuant to an agreement of 2015, commencing 1st November 2017, shop 2 has not been occupied by us as tenants;
- 3) [REDACTED] personally has no knowledge of what is happening in the action number COM 17/53291;
- 4) The home rent payment in January was made before Member [REDACTED] made the order of the 23rd of January;
- 5) The owner does not manage the commercial property, [REDACTED] employer, [REDACTED] the commercial property;
- 6) That [REDACTED] can ignore section 7h of the Residential Tenancies Act.

10. I will deal with my response to the conduct of [REDACTED] in relation to this e-mail and of the Tribunal's dealing with it, in my written submission for the next hearing.

[REDACTED]

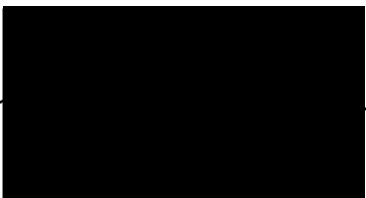
Resumption of hearing

11. I say that the application by [REDACTED] is not an application for a fresh hearing but is an application for a resumption of the hearing conducted and adjourned on the 21st of March, 2018.
12. No fresh evidence is provided to support a fresh hearing or a resumed hearing. No fresh argument is provided as to section 7f of the Residential Tenancies Act. No argument has ever been provided by the applicant on the subsection.
13. I say that the basis upon which the proceeding was dealt with on the 21st of March was that there is a claim for a tenancy agreement in late 2015, a single agreement, for the tenancy of shop one and the residential premises, unit 2, to be occupied for a period of three years from November 1st, 2017 with fixed rent from that day for the three years. That is the allegation made and pleaded in my Points of Claim in action number COM 17/53291.
14. [REDACTED] did not understand the nature, scope and application of this agreement at the hearing on the 21st of March, 2018. Without wanting to breach without prejudice rules, the conciliator went to some length and the reason the conciliation took so long was the ineffective efforts by the conciliator to explain to [REDACTED] that this matter was not limited to an isolated residential tenancy application. It seems [REDACTED] still does not grasp the point.
15. I provided a written submission to the Tribunal for the hearing on the 21st of March. Conciliator [REDACTED] read that submission out word for word in the conciliation conference. That submission was provided to Member [REDACTED] in the Tribunal hearing and the member read the submission.

16. Now produced and shown to me and marked with the letters GS1 is a true copy of the written submission which is annexed hereto.
17. [REDACTED] applies for and is granted a fresh hearing to argue the same propositions she put forward, I say in error, in the conciliation conference.
18. Member [REDACTED] has granted the applicant a further hearing, which in my respectful contention must be a resumption of the hearing conducted on the 21st of March, 2018.
- Member [REDACTED] does not make this clear and it is certainly arguable that this relisted hearing is a new hearing.
19. As a resumed hearing, the respondent contends the matter is part heard before Member [REDACTED]
20. This is especially the case given the comments made by Member [REDACTED] as to the dealing with the matter at that hearing. The scope and extent of that dealing is contained in the transcript.
21. Given that the hearing is resuming and given the operative provisions regarding conciliation and given the matter is resuming solely because [REDACTED] does not understand what she was told on the 21st of March and [REDACTED] does not like what was done on the 21st of March, and given that the vast majority of information provided to [REDACTED] was provided by Conciliator [REDACTED] in the conciliation conference, it is appropriate and necessary for the conciliation conference to resume.
22. I say Conciliator [REDACTED] is part heard in that conciliation conference.

Appeal process

23. The order of Member [REDACTED] is unclear. Member [REDACTED] does not direct that this hearing resume before Member [REDACTED] Member [REDACTED] does not direct on the issue of resumption



of the conciliation conference. To the extent that Member [REDACTED] directs a fresh hearing, a fresh hearing would be, in effect, an appeal.

24. The order of Member [REDACTED] would, in effect, grant permission for the appeal.

25. That appeal process would be irregular and beyond the capability of Member [REDACTED] to order in the circumstances. Any order in the nature of an appeal made by Member [REDACTED] in this context should be recalled or struck out or inevitably, once the effect and definition of the order is clarified, proceed to appeal to be struck out by an appeal panel.

26. I contend and depose that any appeal or permission to appeal granted by Member [REDACTED] is beyond the scope of her authority and capacity, irregular and illegal.

27. I contend that any step taken by way of hearing other than a resumption of the hearing before Member [REDACTED] part heard, and the conciliation conference before Conciliator [REDACTED], part heard, is unlawful.

The jurisdiction issue

28. I say the effect of section 7f of the Residential Tenancies Act is that this application relates to an agreement to which the act does not apply. No order can be made in relation to that agreement under that act. No other agreement is contended to exist in any deposition or pleading in this matter.

29. A preliminary question before this matter goes any further is whether the existence and operation of the tenancy aspect for unit 2 is to be dealt with in this action or in action COM 17/53291.

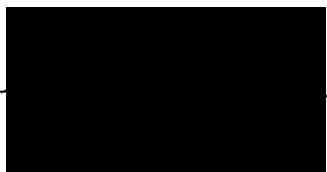
30. The issue is not a question of whether a termination application in relation to the residential tenancy agreement can be dealt with prior to the finalization of the retail lease matter. This is the issue Member [REDACTED] has set for hearing and this issue does not exist.

[REDACTED]

31. The issue is, given that the contended tenancy agreement is a single agreement providing for shop one and the residential unit, and given the operation and requirements of section 7f of the Residential Tenancies Act, whether any order can be made at all on this application.
32. The matter is further complicated by the disappointing events of the hearing before Member [REDACTED] on the 6th of March in COM 17/53291/7. Two applications I had made specifically addressing this issue and looking for resolution of it were before Member [REDACTED] at that hearing on that day. In spite of my persistent and repeated requests that they be addressed, they were not dealt with. Those applications, filed on the 12th of February, 2018 and 26th of February, 2018 have still not be been listed for hearing by the registry. Further, although they were on the Tribunal file on the 6th of March, Member [REDACTED] rejected my submission to read and consider them.
33. That has now devolved into a situation where this matter is in chaos in the absence of a conclusive determination in either action as to the effect and operation of section 7f of the Act. A further issue remains pending as to the effect of the interim order and rent payment under that order. The two applications specifically referred to that issue and sought for the Tribunal in action COM 17/53291 to deal with that issue.
34. I respectfully say and submit that this issue must be determined before this matter proceeds to any extent, further. I further say, once this issue is determined and it is clear where this matter will be dealt with, a timetable should be set up to address the issues in accordance with that ruling.

Conduct of landlord/agent

35. I am critical of the conduct of this applicant and this agent. I say the allegations I am about to make are relevant in any assessment of any application by this applicant and agent in this action.



36. I will deal further with this issue in relation to the conduct of the applicant in this action, dealing with both the conduct of the applicant in this action and the conduct of the applicant, who is the respondent in COM 17/53291/7 in my written submission for the hearing on the 12th of April, once I have seen the applicant's case on this application.

37. My dealings with [REDACTED] over the 12 years have been difficult, terse and with constant focus on benefit to him.

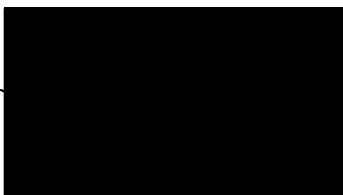
38. The allegation in action number COM 17/53291/7 regarding the 2015 agreement demonstrates this. My position is that in exchange for a secure three year term for home and shop with fixed rent, we agreed to undertake a renovation of shop 1. Nothing was written but we spent \$160,000 plus our own personal efforts under this agreement. The position taken by [REDACTED] on that issue is that he committed to nothing and is now entitled to increase the shop rent by 50% and the home rent by 20%. I say this contention will not stand close examination. When this contention is fully and properly examined at trial, it will be seen to be unbelievable if not ridiculous. [REDACTED] is evasive and dismissive in his pleading in actions COM 17/53291/7.

39. Nothing is ever written from [REDACTED]. He says one thing and does another. We have no written agreement for the residential unit, either in 2013 when we moved in, or in 2015 under the renovation agreement. I was not aware of section 14 of the Residential Tenancies Act which has not been complied with by either [REDACTED] or the agent.

40. On the 19th of December 2017 I requested [REDACTED] to provide me with a summary and record of rent paid across the term of our tenancy or to obtain one from her client. As a result of the deteriorating relationship with the applicant, I read the Residential Tenancies Act, particularly section 37 and made the request to [REDACTED] under the act. [REDACTED] [REDACTED] have ignored that request.

41. Now produced and shown to me and marked with the letters GS2 is a true copy of the email requesting rent record which is annexed hereto.
42. On the 6th of February, 2018 in response to communication from [REDACTED] as to why there were rent payment (so she contends) delays, I forwarded an email with a list of defects in the residential unit we live in. I made the request pursuant to section 63 of the act and further in the context of section 44. [REDACTED] has ignored that request.
43. Now produced and shown to me and marked with the letters GS3 is a true copy of the email requesting repairs and maintenance which is annexed hereto.
44. There is a history of repeated, recalcitrant, contumelious and I say, premeditated disregard for tenant's rights and landlord's obligations by this applicant, its director, [REDACTED] and this agent.
45. Further, in pursuit of their singular and abusive purpose, there is a constant stream of harassment by e-mail from [REDACTED] which is the subject of an application for harassment and breach of the interim order in action number COM 17/53291. The application is made in that action because the respondent's belief is, that action is the only proper action and there are is no proper exercise of jurisdiction in this action. There is one agreement and it is presently and completely before the Tribunal in actions COM 17/53291/7, and not to be dealt with, otherwise and elsewhere.
46. I invite this Honourable Tribunal not to disregard these considerations in the determination of the issues before this Tribunal in this action.

Interim orders



47. Pending this determination, if the interim order in action COM [REDACTED] does not preserve the status quo, then I persist with the orders raised in my written submission and my application, particularly the orders sought numbered 6, 7, 8 and 9 in my present application.

Disqualification of Member [REDACTED]

48. I seek an order that Member [REDACTED] be disqualified from further involvement in this action.

49. An appeal has been instituted against the decision of Member [REDACTED] of the 6th of March, 2018 in action COM 17/53291.

50. The grounds of appeal include contentions that Member [REDACTED]

- a. Discriminated against the respondent in that hearing;
- b. Was prejudiced against the respondent in that hearing;
- c. Made rulings that were contrary to law;
- d. Made rulings that were contrary to proper procedure and practice;
- e. Made rulings that undermined and impeded the progression of the matter in accordance with the weight of evidence and in a fair and equitable manner and did so, by conduct leading to and providing for a miscarriage of justice.

51. That appeal has been instituted and is pending. An application to stay all orders of Member [REDACTED] of that day is also pending.

52. An application has been made for an order that Member [REDACTED] be excused (disqualified) from further hearings and involvement in that action.

53. On the basis that there is a pending appeal questioning the conduct of Member [REDACTED] in proceedings involving this respondent, I respectfully contend it is inappropriate for Member [REDACTED] to have any ongoing involvement in this matter.

54. Further, I contend that there are grounds for a contention that Member [REDACTED] has improperly managed and dealt with this action.

55. An examination of transcript would show that there is more involved at the conclusion of the hearing on the 21st of March than a simple adjournment.
56. There is an issue as to the exercise of a discretion, relisting by Member [REDACTED] in a number of perspectives.
57. The first is, in a context where the order of Member [REDACTED] clearly contemplates that the hearing in this action be joined with and follow the hearing in action COM 17/53291 and COM 17/53297, Member [REDACTED] has called on this action rather than action COM 17/53291/7.
58. Member [REDACTED] demonstrates an awareness of the considerations which were dealt with by Member [REDACTED] in the fourth line of paragraph one of her order of 28th March 2018 but ignores them.
59. A second consideration is, to the extent that the order of Member [REDACTED] is based on considerations of the application of section 7f of the Residential Tenancies Act and the lack of jurisdiction under that act, Member [REDACTED] ignores the determination and considerations of Member [REDACTED] and the statements made by Member [REDACTED] as to ongoing procedure and considerations of section 7f, as recorded in the transcript and my submission.
60. A third reason is, Member [REDACTED] effectively grants permission to appeal procedurally and sets up an appeal hearing which is improper and beyond her authority, as dealt with in paragraph 20 of this affidavit and the application for an order recalling the appeal process.
61. Further, in the second listing of issues by Member [REDACTED] the member demonstrates a propensity in this action to harass the respondent and a propensity to list for hearing and make an order terminating the respondent's residential tenancy.
62. This is the same style of discrimination and harassment, prejudice and bias that is the subject of complaint and contended in the current appeal.

[REDACTED]

63. A 5th reason is that Member [REDACTED] takes into account the email request of the applicant without confirmation that notice of the request has been provided to the respondent, or, without causing the respondent to receive a copy of the contentions of the applicant in that email. As a result, the respondent is denied an opportunity to say and argue that there is nothing new in the email of the applicant and no cause to relist which is an issue warranting argument of itself.
64. The matters listed above demonstrate abrupt, injudicious, dismissive and demonstrably unfair and inequitable determinations of Member [REDACTED] in this matter which mirror the matters complained about in the appeal.
65. The respondent contemplated appealing against the order of Member [REDACTED] of the 28th of March. While the respondent believes that all of the malevolent ingredients of the discretion of Member [REDACTED] are present, what the member has done is list the 2 issues for hearing. It is difficult to mount a contention that there can be conduct which is not fair and equitable or against the weight of evidence when all that is done is list 2 issues for hearing. Regardless of the purport and innuendo of the balance of the order, that is primarily what is done.
66. There are many members of this Tribunal. It is not proper practice for members to look to seize proceedings in which a particular party is involved. There is nothing in this respondent's complaint that cannot be dealt with and disposed of by another member hearing the issues between the parties and Member [REDACTED] not being involved.
67. That is a consideration subject to the respondent's contention that this matter is part heard before Member [REDACTED] and should not be heard on the rehearing by anyone other than Member [REDACTED]. Equally, a relisting of the conciliation, part heard by Conciliator Marchionnoi is proper. Those steps additionally provide for the proper and effective administration of justice, with those officers seized of the matter and not new to it.

68. If the applicant is forum shopping, the resumed hearing stops Member [redacted] order fulfilling that purpose.

69. For the reasons set out above, the respondent seeks an order that Member [redacted] be disqualified from further involvement in this matter.

Orders sought

70. The applicant seeks interim orders set out in the application.

71. As the applicant seeks nothing other than a rehearing of the 21st March hearing with no new evidence or argument, the respondent seeks costs.

72. I know the facts deposed herein to be true of my own knowledge and belief except where deposed otherwise.

#SWORN #AFFIRMED at PCNR1TH

Signature of deponent [redacted]

Name of witness [redacted]

Address of witness [redacted]

Capacity of witness

[#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public]

JP #202526

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1 #I saw the face of the deponent. [OR, delete whichever option is inapplicable]
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.¹~~

2 #I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]
#I have confirmed the deponent's identity using the following identification document:

[redacted]

Signature of witness

73.

¹[The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

²["Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit" at the following address: <http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf>]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

"GS1"

The following pages comprise

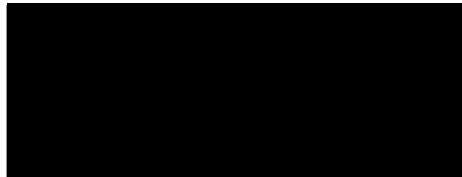
the annexure marked "GS1"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{4th} 5 April 2018

Before Me



NSW Civil & Administrative Tribunal

[REDACTED]

File No. RT 18/10018

Division: Consumer and Commercial

[REDACTED]

Applicant

and

GURJIT SINGH

Respondent

RESPONDENT'S SUBMISSION

1. I have prepared my written submissions for my interpreter to read out in open court.
2. This may be a very unusual residential tenancy application.
3. The allegation made by the applicant is based on unpaid rent.
4. What this applicant does not tell this tribunal is that as a result of an NCAT interim order, the respondent is paying \$6,500 per calendar month to the respondent pursuant to that interim order to abide the event of the decision made by NCAT in action number COM 17/53291.
5. In that action, this respondent as applicant makes an application for orders, including:
 3. "A further declaration that the applicant and the respondent made an agreement in relation to the premises in about October of 2015, (the renovation agreement) whereby the applicant at it's own expense would perform a substantial renovation and upgrade of shop 1 of the premises (which renovation is completed) in consideration for [REDACTED] agreeing that the rent would remain at its level as

of September 2015 for the premises, for a period commencing at the completion of the renovation for three years. The renovation completed on 31st October, 2017 and thereby, the term extends from the 1st of November, 2017 to the 31st of October 2020.

4. A further declaration that the rent payable from November 2017 until the 31st October 2020 in respect of the premises, is to be an amount of \$5,000.00 per month for shop 1 and an amount of \$300.00 per week for the residential accommodation to be paid by the applicant to [REDACTED] commencing 1st of November, 2017, and continuing, requiring rental payment on a monthly basis to be paid on the 1st day of each month for shop rent, and on the 15th of the month for residential rent, as monthly rent for the tenancy of the premises until the 31st of October, 2020.
5. A further declaration that the rent payable from November 2017 for shop 1 and also for the residential premises occupied by the applicant is to remain unchanged until the 31st October 2020."
6. That claim and contention is presently before this Tribunal in the other action.
7. Rather than set out in depth or copy here, the 14 pages of the applicant's Points of Claim and the similar sized defence served in the action, this submission will set out the principal terms of the agreement the applicant alleges between the parties in the other action:

Parties

[REDACTED]	Landlord
Gurjit Singh & [REDACTED]	Tenant

Premises

[REDACTED]

Rent

\$6300 per calendar month

Term

3 years from the 1st of November 2017 to the 30th October 2010.

8. That agreement is presently alleged and in issue between the parties in action COM 17/53291. Those pleadings deal with the allegations and background in much more detail.
9. The respondent in fairness to the tribunal and the applicant, is compelled to inform the tribunal that this applicant denies the existence of the agreement.
10. The respondent here, who is the applicant in the other action seeks orders that the agreement is binding and for enforcement of the terms of the agreement.

Principal Submission

3. The applicant makes 2 submissions to this tribunal for this hearing today.
4. The first submission is that the issue of the tenancy including the residential component which is the subject of the applicant's claim in this matter is already before the tribunal in the earlier instituted action and proceeding for determination.
5. The matter is properly before the tribunal in action number COM 17/53291 and in the respondents' respectful submission, this tribunal should stay the termination notices and this application to abide the event of the determination in the action COM 17/53291.
6. That submission is made, to the extent that this tribunal has any choice. The Residential Tenancies Act 2010 No 42, per section 7 deals with premises to which the Act does not apply and sets out;
 - (h) premises used for residential purposes, if the predominant use of the premises is for the purposes of a trade, profession, business or agriculture.
7. The respondent's position is that it relies on one agreement. That is an agreement between companies and natural persons on both sides. It is an agreement that relates to and provides for tenancies for a retail shop, particularly an Indian restaurant and a residential unit. The one agreement provides for a tenancy in both.

8. It suits the landlord's purposes to divide the two tenancies or suggest they can be divided. Nonetheless, in the circumstances, that flies in the face of common sense and also what actually happened.
9. In the respondent's submission, the reality is there is one agreement relating to both properties. One of the properties is a shop and the other is a residence. This is an agreement to which the Residential Tenancies Act does not apply.

The agent's conduct

10. This applicant makes no reference to the \$6,500 being paid by the respondent to the applicant each month. The agent does not deal with that topic to any extent at all.
11. There is an appearance that the agent has made this application and that the applicant and the agent are contending that as no rent is paid to the agent, therefore there must be a breach and default. The agent chooses not to tell the tribunal about the payment of \$6,500 each month.
12. It is one thing for the agent to come before this tribunal having set out the relevant portions of the other action and present cogent arguments about why the tribunal today should not pay attention to what is happening in the other action. It is a completely different thing for the agent to come before this tribunal explaining nothing or very little that is happening in the other action other than her conclusion that what is happening in the other action is irrelevant. Her position is, she will not be telling the tribunal much about the other action because she doesn't know much about it anyway. She has no involvement in the other action. This landlord is represented in that case by [REDACTED] solicitor.
13. What this demonstrates to the tribunal is how completely unreliable this agent is in terms of providing facts to this tribunal in this matter.
14. While this respondent pays this landlord \$6,500 a month pursuant to an interim order in action number COM 17/53291, there is no need for any order to be made other than an order staying the 2 notices of termination served by the applicant.

15. In all the circumstances, the respondents respectfully submit that is the only proper course.

Orders sought

16. The applicant seeks interim orders preserving the status quo as to the tenancy in this action.

17. The applicant seeks an order staying the termination notice served by the respondent in December 2017 until further order.

18. The applicant seeks an order staying the termination notice served by the respondent in March 2018 until further order.

19. That the above orders continue in operation until discharged by a member in the action number COM 17/53291 where a decision is currently being dealt with.

Unless the tribunal seeks to hear more from the respondent, that is the respondent's submission.

"GS2"

The following pages comprise

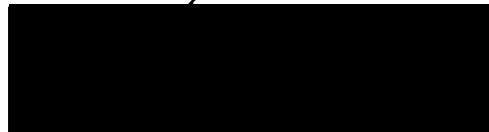
the annexure marked "GS2"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{4th} April 2018

Before Me



Subject: Rent Detail Statement

From: [REDACTED]

To: [REDACTED]

Date: Tuesday, 19 December 2017, 1:14:04 pm AEDT

Hi [REDACTED]

Yesterday you told us that [REDACTED] told you we haven't paid rent for months.

We dispute that and say we have paid all rent up to 31.12.17.

- Given the uncertainty, we require a complete rent statement confirming our rent is paid to 31.12.17 and also setting out amount and date of rental payments we made to [REDACTED] and members of his family.

The commercial tenancy is proceeding to Tribunal. This probably will too.

We have no issue with you personally

The problem is, there is a lot of information you don't have.

The arrangements you seek will not be made.

If [REDACTED] told you the truth, you would not be making these demands. Our suggestion that the meeting be on 27th December was so as to give time for information to come out including for you.

I see now you are on holidays till early February.

I don't have an answer for your absence.

- We are not trying to be difficult with you

When the rent detail statement is provided to you and to us, things will become clearer.

[REDACTED] solicitor is acting for [REDACTED] regarding the commercial tenancy and this residential tenancy is involved in that dispute

He may be able to help in your absence.

Best regards

Gurjit Singh

Subject: Re: RE: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh v [REDACTED]

From: [REDACTED]

To: [REDACTED]

Date: Tuesday, 19 December 2017, 4:08:53 pm AEDT

Dear [REDACTED]

Our application to NSW civil and administrative tribunal **also** refers to arrangement we have with [REDACTED] under oral lease for home. My obligations is to make you aware of orders.

Is [REDACTED] refusing to provide rent records as required under residential tenancies act 2010, section 37?

Did you even ask?

Best regards

Gurjit Singh

On Tuesday, 19 December 2017, 3:40:09 pm AEDT, [REDACTED] wrote:

This is not the [REDACTED] as we do not manage the shop

Thank you

From: [REDACTED]

Sent: Tuesday, 19 December 2017 3:24 PM

To: [REDACTED]

Subject: Fw: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh vs [REDACTED]

Best regards

Gurjit Singh

— Forwarded message —

From: [REDACTED]

To: [REDACTED]

Sent: Tuesday, 19 December 2017, 2:20:35 pm AEDT

Subject: NSW Civil & Administrative Tribunal - COM 17/53291 - Gurjit Singh vs [REDACTED]
[REDACTED]

Dear Gurjit Singh

RE: File Number COM 17/53291 | GURJIT SINGH - [REDACTED]
[REDACTED]

Please find attached correspondence relating to the above mentioned matter.

It is important that you review this material immediately.

[REDACTED]



[REDACTED]

"GS3"

The following pages comprise

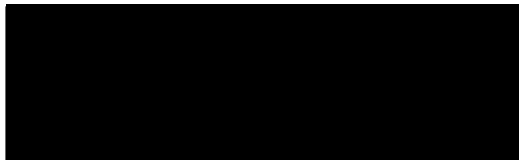
the annexure marked "GS3"

Referred to in the Affidavit of

Gurjit Singh

Sworn ^{4th} 5 April 2018

Before Me



Subject: Defect List, Residential tribunal application

From: [REDACTED]

To: [REDACTED]

Cc: [REDACTED]

Date: Tuesday, 6 February 2018, 11:44:46 am AEDT

Hi [REDACTED]

I hope you had nice holidays and wish you have good new year ahead of you and your family.

It is not for me to give you or your client legal advice. But I do not think you should be communicating with me, the lawyer should be.

At least you are communicating in writing. We will only communicate in writing

There will be an application in the residential tribunal before this inspection occurs. However, we do not resist the inspection. It will give you an opportunity to see all the un repaired defects in this property.

[REDACTED] have been notified at various times about the following defects and nothing has been done. You now have a list as below:

1. Bathroom light is not working and needs replacement.
2. No Blinds on one of windows (near entrance)
3. Another window has blinds which needs replacement.
4. Bathroom tub is leaking.
5. Kitchen light is not working
6. Exhaust fan not working in kitchen.
7. Grill not working
8. Knobs of cooktop were missing when we arrived.
9. Shelves under sink is broken and is home for infestation.
10. Air conditioner unit is leaking and damaging skirting board underneath.
11. Skirting is damaged all around.
12. There are 5 holes in home in walls and doors approx 2inch to 8 inch in diametre.
13. Bedroom roof leaks in rain.
14. Exhaust fan of both the bathrooms not working.(221)
15. Smoke alarm not working. An automatic fire detection and alarm system is required as per council requirements.(277)
16. Light globes need replacement as ceiling lights are too high.
17. One bedroom has no blinds on windows.
18. Locks need replacement for one of glass door and require proper sealing. (this was since there was robbery) (389)
19. Entrance step tiles are broken and need sealing to prevent pest infestation (392)
20. Pest control.
21. Provision of Garbage rooms as per council requirements.(690)
22. Common area lights need replacement.
23. Common area needs regular cleaning.

- 24. Cloth dryer need replacement. (688)
- 25. Walls had drawings and scribbling. It needs repainting.
- 26. Bathroom sinks shelves are damaged and missing door knobs.
- 27. No provision of emergency lighting (621)
- 28. Inadequate fire safety measure as unit only has one exit. (465)
- 29. Corner seals in kitchen require resealing to stop infestation.
- 30. Service ducts and false ceiling between flats shall be sound insulated in accordance with the provision of part F5 of building code of australia (058)
- 31. Mechanical ventilation of first storey does not seems to be adequate. (628)

Best regards

Gurjit Singh

On Tuesday, 6 February 2018, 9:32:58 am AEDT, [REDACTED] wrote:

[REDACTED]

T: [REDACTED]
 F: [REDACTED]
 E: [REDACTED]
 E: [REDACTED]
 W: [REDACTED]

Tuesday, 6 February 2018

Mr Gurjit Singh

[REDACTED]

Dear Gurjit,

RE: ROUTINE INSPECTION FOR: [REDACTED] (REMINDER OF INSPECTION)

In accordance with our responsibility as Managing Agents, it is a policy of this company to carry out regular inspections and report to the Landlord on the conditoin of the property.

With this in mind, I therefore wish to conduct a routine inspection at the above mentioned property on 22/02/2018 between the times of 8.15am - 11.30am.

If the above date is not suitable, could you please contact [REDACTED] urgently to organise a new date that we both can agree to. No inspections will be conducted on the weekends or after hours.

ONCE YOU RECEIVE THIS LETTER, COULD YOU PLEASE EMAIL ME WITH CONFIRMATION TO


IF YOU WOULD LIKE ME TO USE KEYS FOR THE INSPECTION, PLEASE EMAIL ME PERMISSION. IF NOONE IS HOME & I HAVE THE KEYS ON ME, I WILL BE ENTERING THE PROPERTY FOR THIS INSPECTION. SO THIS IS VERY VITAL THAT YOU DO COMMUNICATE WITH ME IF YOU ARE NOT HOME.

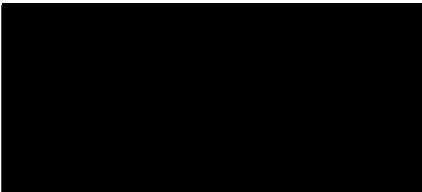
IF I DO NOT HEAR FROM YOUR, I WILL EXPECT SOMEONE HOME FOR MY APPOINTMENT PLEASE.

Can you please make sure the property is very clean to inside & outside. E.G. vertical blinds dusted & dirty marks removed, windows clean, window tracks, window ledges, carpet clean, any dirty marks on walls washed off, light shades cleaned, whole kitchen clean, oven clean, whole bathroom clean, shower grout all clean, toilets clean, ceiling fans clean, all gardens weeded, lawns mowed & edges whipper snipped. Please can you make sure the property is clean and tidy for this inspection and all future inspections.

Please remember if the condition of the property is dirty, the lease might not be renewed. Also the report will state to the owner that property is dirty and to any future Rental Agents. So can you please take the time and make sure the property is clean and all tidy for my inspection so I can write a letter to the owner that the house is clean & all tidy.

Thank you for your understanding.

Yours faithfully,





NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

NOTICE OF ORDER

GURJIT SINGH
[REDACTED]

File No: RT 18/10018
Quote in all enquiries
eNumber: 56874XH50

**Application to the Tribunal concerning [REDACTED]
Australia**

Applicant: [REDACTED]
Respondent: GURJIT SINGH

On 19-Apr-2018 the following orders were made:

ORDERS

- 1 The respondent's application today for an adjournment is dismissed.
- 2 The respondent is to pay the applicant the sum of \$3,771.43 on the later of 30 May 2018 or seven days after the Appeal Panel gives its decision in the Retail Lease dispute, plus interest on that amount from 21/4/18 until paid, at the rate of 7.5% pa.
- 3 The tenancy agreement is terminated on the later of 31 May 2018 or seven days after the Appeal Panel gives its decision in the Retail Lease dispute, and vacant possession is to be given on that date if the tenant has not complied with Order 2..
- 4 Orders 2 and 3 are suspended under s114 or stayed under s188 to the later of the dates in those orders or seven days after the determination of the Appeal Panel in the Retail Lease Dispute, if not given before the dates in those Orders .
- 5 The respondent is to pay the applicant the sum of \$300 payable weekly from 20/4/18 (or pro rata \$42.86 per day) until vacant possession is given to the applicant.
- 6 The hearing date in RT 18/16723 is vacated and is to be listed after the Appeal determination is given together with any application made by the tenant pursuant to the following order.
- 7 By 27/4/18 the respondent is to file any application he may have under RTA s63 (in which he alleges the landlord's breach thereof) and seeking a remedy under RTA s187(1)(d) for compensation. He is to also include any application for an extension of time under the Civil and Administrative Tribunal Act s41.

REASONS

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]



Application

1 This matter concerns an application filed 28/2/18 pursuant to the Residential Tenancies Act 2010 (RTA) s 187 for termination of a tenancy agreement, and for unpaid rent.

2 The matter is listed today to determine the matters set out in Order 1 made 28/3/18, namely (in summary), to determine whether or not the application can be determined prior to the finalisation of the retail leases matter, and if the matter can be dealt with, whether or not it should be terminated. The related issue of unpaid rent should also be determined.

The dispute

3 The respondent contests the application on the ground that there is no residential tenancy agreement, and the tribunal has no jurisdiction to determine the application under the RTA by reason of RTA s7f (sic) which (refers to a hospital or nursing home) and I assume that this should be a reference to s7(h) which relevantly provides:

"7. Premises to which Act does not apply

This Act does not apply in respect of the following premises:

...

(h) premises used for residential purposes, if the predominant use of the premises is for the purposes of a ...business..."

Appearances

4 The applicant appeared by [REDACTED], managing agent.

5 The respondent did not appear but had delivered an email to the Registry at 4.39 AM in which he relevantly said:

"I am unwell today and not able to attend hearing today. Right now I am going through test in ED of Nepean Hospital. I seek adjournment today. You can verify this with Nepean Hospital."

and there was no medical certificate provided, and no representative (including his wife) attended the Tribunal to provide any evidence about the respondent's condition. I will return to the question of an adjournment below.

Jurisdiction

7 The Tribunal has jurisdiction pursuant to the Civil and Administrative Tribunal Act 2013 (NSW) ("CATA") ss28 (Jurisdiction of Tribunal generally), 29 (General jurisdiction) and Schedule 4 clause 3 (Functions allocated to Division) to determine this application and power to make orders pursuant to the Residential Tenancies Act 2010 (RTA) and Residential Tenancies Regulations 2010 (RTR) apply.

8 This jurisdiction is in contest insofar as the claim is brought under the RTA.

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

9 I find (for the reasons more fully set out later) that the Tribunal has jurisdiction to determine the application as RTA s7(h)) does not apply, by reason of the respondent's concessions that the weekly payment of \$300 is rent, and his claims under the RTA s37 and 63, as set out below.

Application for adjournment

10 As I have said, an application for adjournment was received by the Registry. The application was not sent to the managing agent, and it should have been as it is inappropriate for a party to communicate with the tribunal without also sending a copy of the communication to the other party. Such conduct may lead to a denial of procedural fairness to the party not include min the communication. However, I remedied this problem by advising the applicant of the email and asked whether or not the applicant consented or opposed the application for adjournment. The applicant opposed the application, which is determined in the following paragraphs.

11 There was no medical certificate provided, and the respondent did not arrange for his wife or any other person to appear on his behalf and provide any evidence to support his application.

12 Where a party has not appeared but requested an adjournment, the Tribunal exercises a discretion whether to grant the adjournment or not. Parties should not assume that adjournments will be automatically granted on request. In [REDACTED] [2005] NSWSC 1137 the appellant failed to appear at the hearing in the Supreme Court but the day before faxed a medical certificate to the Court requesting an adjournment. The Court declined the adjournment and dismissed the appeal. In [REDACTED] [2004] NSWSC 762, Master Malpass refused to disturb a decision of the Tribunal dismissing an application for the non-attendance of an applicant where a medical certificate was tendered.

13 In this matter, although there was no medical certificate the respondent referred to hospital attendance and tests being done at 4.39 AM. We do not know what happened after that. Assuming for the moment that this was the equivalent of a medical certificate (although it is not) it does not entitle a party to an adjournment as of right. The NSW Court of Appeal has refused an application for an adjournment based on a medical certificate: [REDACTED] (NSW) [2016] NSWCA 345 at [5], [6] and [10] per [REDACTED] JJA, where the medical certificate opined that the party would not be fit to attend court for the next month. The Court at [6] held that the certificate provided an unsatisfactory basis for a further adjournment for a number of reasons, including: the reference to a "flare up" was imprecise; no indication of the party's normal health; nothing about results of admission to hospital; no medication identified; and no indication "...as to the likelihood of a change in his fitness to attend court in the future." The Court said at [10]:

"[10] It would not be satisfactory if an applicant who is unwilling or unable to obtain representation (in this case it may be assumed that [REDACTED] is unable to obtain representation) were able to obtain indefinite adjournments on the basis that he or she is not fit to attend court and cannot provide any firm indication as to when he or she will be fit, and does not consent to an application for leave to appeal being dealt with on the papers."

14 In [REDACTED] [2014] NSWCA 40. The application was made by email and referred to the party feeling "quite ill with influenza" and attached a medical certificate which stated: "...is receiving medical treatment and is unfit for work / school from blank date to blank date inclusive due to a medical condition". The medical certificate was described by the court as "inadequate to establish his unfitness to attend the hearing today." The court said that a court "...would not ordinarily act on such a formulaic document and will require an explanation on oath from the medical practitioner of the illness and the reasons for the applicant's inability to attend Court". To be granted an adjournment a party "...is ordinarily required to attend court and explain precisely why that adjournment is warranted".

15 See also [REDACTED] [2016] [REDACTED] [220] to [222], [REDACTED] agreeing with Pain J at first instance who held that the appellants' medical certificates have no probative value if they fail to address the critical question as to whether, and if so why, the medical condition would prevent each of them from travelling to the Court and participating effectively in a court hearing.

16 The respondent has not satisfied any of the matters in the above decisions, and most relevantly, has not explained why he is unable to travel to the Tribunal and participate in this hearing.

17 The application for adjournment must be refused.

Facts

18 The material facts (as defined by the Courts) are:

(a) The parties made a retail lease agreement for a ground floor restaurant at [address redacted] (the Retail Lease). At the same time, the parties made a collateral agreement for the respondent to occupy residential premises on the first floor in the same building (the Premises).

(b) There was no separate written residential tenancy agreement for the Premises which was made as an oral agreement and collateral to the Retail Lease.

(c) The amount payable by the respondent is in two parts, rent for the Retail Lease (not relevant here) and a separate amount of \$300 as rent for the Premises. The term of the occupation of the Premises is for the duration of the Retail Lease on the ground floor.

(d) In December 2017 the parties agreed that the respondent had fully paid what the respondent conceded was "rent" up to 31 December 2017, and that he would continue to pay \$300 per week after that.

(e) The respondent made some payment, the last being on 16/1/18 so that he is paid to and including 28/1/18.

(f) On 16/2/18 the managing agent served a Notice of Termination on the tenant requiring payment of rent arrears;

(g) The tenant failed to remedy the breach of the Agreement as not all the rent owing has been paid;

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

(h) The current application was brought within 30 days of the date for vacant possession set out in the Notice;

(i) The rent ledger records the amount of rent paid, and that there is currently an arrears of rent owing of \$3,771.43.

(j) There is currently an appeal on the Retail Lease which has apparently been heard and the decision is pending, but when it will be delivered is currently unknown.

Determination of the RTA s7 issue

19 The material facts show there was no written tenancy agreement.

20 However, I am satisfied that the evidence shows an oral residential tenancy agreement for the Premises, albeit as a collateral agreement to the Retail Lease.

21 The essential terms are clear as the parties and Premises are identified, the rent is stated and the terms of the agreement is stated. The parties have performed the essential terms for some years.

22 I find that the parties have accepted that the relationship of the parties is as landlord and tenant for the Premises.

23 I further find that the respondent has accepted there is a tenancy agreement by his references to the weekly payments as ":rent" and his submissions that the landlord is in breach of its obligations under the RTA, namely ss 37 (no rent records) and s 63 (failure to provide and maintain the premises).

Law

24 RTA s88 provides for termination of the tenancy where the respondent tenant fails to pay rent, and requires the notice of termination to inform the tenant that the tenant is not required to give vacant possession if all the rent owing is paid, or the tenant enters into and fully complies with a repayment plan agreed with the landlord. This requirement has been satisfied.

Formal requirements

25 The respondent was in breach of the terms of the Agreement by failure to pay rent: s87.

26 The applicant served a notice of termination (the Notice) which complied with the requirements of the RTA s 82 and provided sufficient time in accordance with the RTA for the respondent to comply.

27 The Notice was served in accordance with the provisions of the RTA s223.

28 On the day the Notice was served or deemed served the rent was unpaid for not less than 14 days.

29 The grounds in the Notice have been satisfied as the respondent has not paid all the rent owing.

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

38. The Tribunal has power to make an ancillary orders to a principal order, under RTA s188. I have made a principal order for the payment of rent arrears, but stayed it. The ancillary order power allows for an order for interest on that unpaid sum. The appropriate rate is the rate for a judgement amount: CPA s101 which is 7.5%; as the applicant would normally be entitled to immediately obtain a money order and enter the above order in a Court, and the interest would commence from that date. As I have stayed the money order, the applicant should nevertheless recover interest for the whole period from tomorrow, notwithstanding the stay. The respondent may of-course avoid the interest accumulating by paying the said amount of rent arrears immediately rather than waiting for the Appeal determination. This balances the respective interests of the parties.

Conclusion

39 The Orders are made in the interests of justice as between the parties to determine their dispute.

[REDACTED]

19/04/18

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

[REDACTED]

Medical certificate

SINGH, GURJIT - [REDACTED]

Result Type: Medical certificate
Result Date: 19 April 2018 10:43
Performed By: [REDACTED] n 19 April 2018 10:43



-

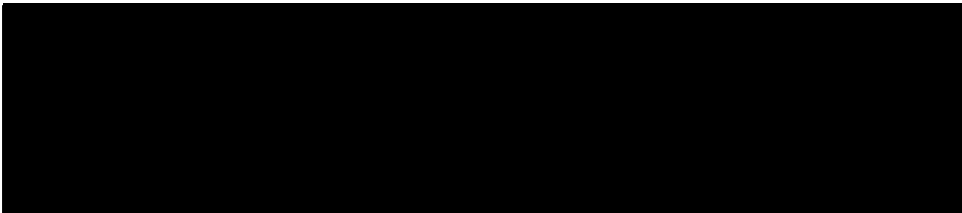
To Whom it May Concern,

This is to certify that I saw GURJIT SINGH on 19/04/2018 at Nepean Hospital Emergency Department

-

I consider him to be unable to attend normal duties
Until 19/04/2018 (inclusive)

-



Completed Action List:

*
*
*



Printed by: [REDACTED]
Printed on: 19-04-2018 10:43

Page 1 of 1
(End of Report)



NCAT
NSW Civil &
Administrative Tribunal
Consumer and Commercial Division

Gurjit Singh
[REDACTED]

File No: AP 18/22042
Quote in all enquiries
eNumber: 57127JA06

Application to the Tribunal concerning SYDNEY NSW 2000 Australia

I write to confirm that the following directions were made on 24 May 2018 by the Appeal Panel constituted by [REDACTED]

1. The Appeal is listed for Call Over and Hearing of the Application for Stay on 29 May 2018 at 11:00 AM.
2. On or before 28 May 2018 the Appellant is to file and serve any evidence and submissions in support of the stay application.
3. On or before 29 May 2018 at 9.00am the Respondent is to file and serve any evidence and submissions in opposition of the stay application.
3. The Call Over scheduled on 31 May 2018 is vacated.

A separate written notice of the Call Over and Hearing of the Stay Application will be sent to the parties.

[REDACTED]
24/05/18

For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at [REDACTED]

NSW Civil & Administrative Tribunal

[Redacted]

File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[Redacted]

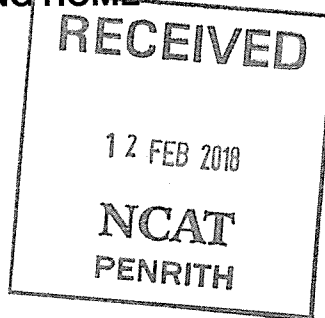
Respondents

APPLICATION FOR ORDERS REGARDING HOME

Orders Sought

The applicant seeks for the following orders to be made:

1. Directions;
2. An order that the notice of termination provided to the applicant by [Redacted] on the 19th of December 2017 be stayed until further order;
3. An order that the applicant pay rental in an amount and by a method to be directed by this Honourable Tribunal;
4. Such further or other order as the Tribunal deems appropriate;
5. Leave to apply for further orders as necessary and appropriate;
6. Costs.



Dated: 12 February 2018

[Redacted signature area]

Signed by Gurjit Singh
Applicant

NSW Civil & Administrative Tribunal

[REDACTED]

File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[REDACTED]

Respondents

AFFIDAVIT REGARDING HOME TENANCY TERMINATION

I, GURJIT SINGH of [REDACTED] restaurant

proprietor **MAKE OATH AND SAY:**

1. I am the applicant.

The home occupation

2. Since 2013, My wife and I, together with our children have lived in unit 2, Unit

[REDACTED] an apartment unit owned by the

respondent and rented to us for \$300 per week.

[REDACTED]

[REDACTED]

90 day termination notice

On the 19th of December 2017, I receive an email from [REDACTED], a tenancy officer for [REDACTED] a real estate agency engaged by the respondents.

3. The email had a document attached, a 90 day termination notice informing us of the respondent's termination of our residential tenancy.
4. Now produced and shown to me and marked with the letters GS1 is a true copy of the 90 day termination notice which is annexed hereto.
5. There had been communication in the proceeding weeks between myself and [REDACTED] discussing her efforts seeking a new tenancy. It was clear she had been told nothing about the renovation agreement alleged in our Points of Claim.
6. From our point of view, it was already clear the respondents were not honouring the 2015 agreement, were agitating for huge increases in rent and not regarding themselves as constrained by anything. We had realised and accepted that we would need to pursue remedies in the Tribunal.

Further pressing 90 day termination notice

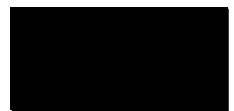
7. [REDACTED] has returned to work on the 5th of February from her Christmas vacation and resumed sending us emails. She pressed in relation to an inspection later in February to which we responded raising defects and maintenance. [REDACTED] then changed the inspection date in the 3rd email to a date after she thinks we will be gone.
8. Now produced and shown to me and marked with the letters GS2 is a true copy of the 3 emails, which are annexed hereto.

[REDACTED]

[REDACTED]

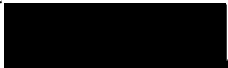

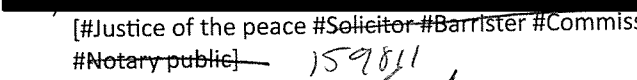
Possible need for directions

9. I performed some research to find out the proper way to make application for the orders sought here. My research led me to see that the application is made to this Tribunal.
10. It was not clear to me how the internal business of the Tribunal is managed and whether this would be treated as a new matter or a separate matter. The agreement we rely on for the 3 year term without rent increase is pleaded and asserted in this proceeding. The interim order is made in this proceeding. For those reasons I have made the application here.
11. Nonetheless, I am not certain that what I have done is procedurally correct.
12. The appearance to me is it that the respondents assert that this shop tenancy matter should not be linked in any way to the residential tenancy issue.
13. In that regard, I refer to the respondent's defence, particularly paragraphs 53, 54 and 55. The applicant does not understand what the respondent is contending in these pleadings and the basis of the contention. However it does seem clear that the respondent is contending that the residential tenancy should not be considered in this matter.
14. That is a view the applicant does not share, but accepts as contended by the respondents.
15. For those reasons, the applicant's first application is for directions.
16. If the applicant has made an error as to the method to proceed to pursue the relief sought, the applicant will accept and comply with any directions given by the Tribunal.



Orders sought

- 17. The applicant seeks interim orders preserving the status quo as to the residential tenancy.
- 18. The applicant will pursue final orders in that respect either in this matter or as the Tribunal requires.
- 19. In any event, when the consideration of those aspects of the interim orders are dealt with, there are other aspects related to the interim orders which the applicant contends require some attention. The applicant intends to make a formal application in respect of those interim order variations and set out in full detail, the variations sought and the reasons why.
- 20. I know the facts deposed herein to be true of my own knowledge and belief except where deposed otherwise.

#SWORN #AFFIRMED at PENKITH
 Signature of deponent 
 Name of witness 
 Address of witness 
 Capacity of witness [#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits #Notary public] 159811



And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

- 1 ~~#I saw the face of the deponent. [OR, delete whichever option is inapplicable]~~
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.¹~~
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~
 #I have confirmed the deponent's identity using the following identification document:

¹[The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

Identifica

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

²["Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011 or refer to the guidelines in the NSW Department of Attorney General and Justice's "Justices of the Peace Handbook" section 2.3 "Witnessing an affidavit" at the following address: <http://www.jp.nsw.gov.au/Documents/jp%20handbook%202014.pdf>]

Subject: 90 days notice 28/3/2018

From: [REDACTED]

To: [REDACTED]

Date: Thursday, 8 February 2018, 12:17:04 pm AEDT

Dear Gurjit,

Re: [REDACTED]

Please be advised our termination notice under no grounds will still be standing as there will be renovations completed to the property.

You will have to vacate the property on or before 28/03/2018.

This means by the NSW Tenancy Law you can vacate the property at any time though rent needs to be paid up to the day you vacate and all keys must be returned to our office at Reception Monday to Saturday between office hours (office closed Sundays).

At present, your rent is not being paid in accordance with the NSW Tenancy Laws. Please make a payment so your rent is not in arrears.

As of today, your rent is only paid to 28/01/2018 with \$128.57 in credit.

Thank you.

CC Owner

Subject: RE: Defect List, Residential tribunal application

From: [REDACTED]

To: [REDACTED]

Date: Wednesday, 7 February 2018, 2:16:06 pm AEDT

Thank you

I will forward your complaint to the owner

Please advise the inspection for February I have to cancel and I will contact you in future for another inspection for April 2018. Thank you

From: [REDACTED]
Sent: Tuesday, 6 February 2018 11:45 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: Defect List, Residential tribunal application

Hi [REDACTED]

I hope you had nice holidays and wish you have good new year ahead of you and your family.

It is not for me to give you or your client legal advice. But I do not think you should be communicating with me, the lawyer should be.

At least you are communicating in writing. We will only communicate in writing

There will be an application in the residential tribunal before this inspection occurs. However, we do not resist the inspection. It will give you an opportunity to see all the un repaired defects in this property.

[REDACTED] have been notified at various times about the following defects and nothing has been done. You now have a list as below:

1. Bathroom light is not working and needs replacement.
2. No Blinds on one of windows (near entrance)
3. Another window has blinds which needs replacement.
4. Bathroom tub is leaking.
5. Kitchen light is not working
6. Exhaust fan not working in kitchen.
7. Grill not working
8. Knobs of cooktop were missing when we arrived.
9. Shelves under sink is broken and is home for infestation.
10. Air conditioner unit is leaking and damaging skirting board underneath.
11. Skirting is damaged all around.
12. There are 5 holes in home in walls and doors approx 2inch to 8 inch in diametre.
13. Bedroom roof leaks in rain.

Supporting Documents

- 14. Exhaust fan of both the bathrooms not working.(221)
- 15. Smoke alarm not working. An automatic fire detection and alarm system is required as per council requirements.(277)
- 16. Light globes need replacement as ceiling lights are too high.
- 17. One bedroom has no blinds on windows.
- 18. Locks need replacement for one of glass door and require proper sealing. (this was since there was robbery) (389)
- 19. Entrance step tiles are broken and need sealing to prevent pest infestation (392)
- 20. Pest control.
- 21. Provision of Garbage rooms as per council requirements.(690)
- 22. Common area lights need replacement.
- 23. Common area needs regular cleaning.
- 24. Cloth dryer need replacement. (688)
- 25. Walls had drawings and scribbling. It needs repainting.
- 26. Bathroom sinks shelves are damaged and missing door knobs.
- 27. No provision of emergency lighting (621)
- 28. Inadequate fire safety measure as unit only has one exit. (465)
- 29. Corner seals in kitchen require resealing to stop infestation.
- 30. Service ducts and false ceiling between flats shall be sound insulated in accordance with the provision of part F5 of building code of australia (058)
- 31. Mechanical ventilation of first storey does not seems to be adequate. (628)

Best regards

Gurjit Singh

On Tuesday, 6 February 2018, 9:32:58 am AEDT, [REDACTED] > wrote:

[REDACTED]

T: [REDACTED]
F: [REDACTED]
E: [REDACTED]
E: [REDACTED]
W: [REDACTED]

Tuesday, 6 February 2018

Mr Gurjit Singh

[REDACTED]

Dear Gurjit,

RE: ROUTINE INSPECTION FOR: [REDACTED] (REMINDER OF INSPECTION)

In accordance with our responsibility as Managing Agents, it is a policy of this company to carry out regular inspections and report to the Landlord on the condition of the property.

With this in mind, I therefore wish to conduct a routine inspection at the above mentioned property on 22/02/2018 between the times of 8.15am - 11.30am.

If the above date is not suitable, could you please contact Rachel Dimitri on 4706 0940 urgently to organise a new date that we both can agree to. No inspections will be conducted on the weekends or after hours.

ONCE YOU RECEIVE THIS LETTER, COULD YOU PLEASE EMAIL ME WITH CONFIRMATION TO
[REDACTED]

-
IF YOU WOULD LIKE ME TO USE KEYS FOR THE INSPECTION, PLEASE EMAIL ME PERMISSION. IF NO ONE IS HOME & I HAVE THE KEYS ON ME, I WILL BE ENTERING THE PROPERTY FOR THIS INSPECTION. SO THIS IS VERY VITAL THAT YOU DO COMMUNICATE WITH ME IF YOU ARE NOT HOME.

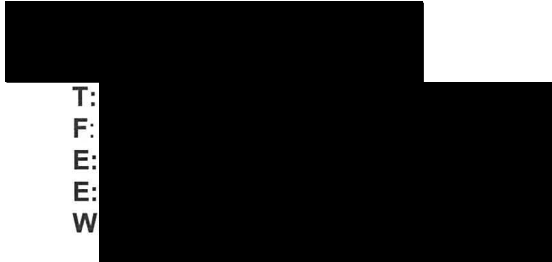
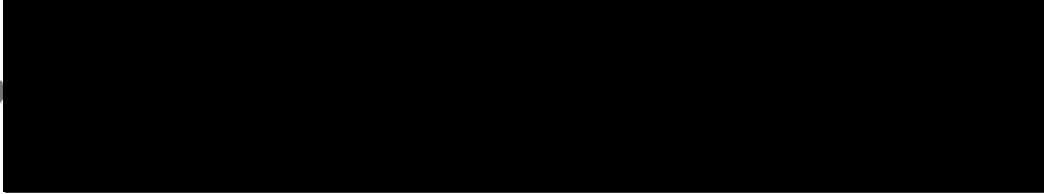
-
IF I DO NOT HEAR FROM YOUR, I WILL EXPECT SOMEONE HOME FOR MY APPOINTMENT PLEASE.

Can you please make sure the property is very clean to inside & outside. E.G. vertical blinds dusted & dirty marks removed, windows clean, window tracks, window ledges, carpet clean, any dirty marks on walls washed off, light shades cleaned, whole kitchen clean, oven clean, whole bathroom clean, shower grout all clean, toilets clean, ceiling fans clean, all gardens weeded, lawns mowed & edges whipper snipped. Please can you make sure the property is clean and tidy for this inspection and all future inspections.

Please remember if the condition of the property is dirty, the lease might not be renewed. Also the report will state to the owner that property is dirty and to any future Rental Agents. So can you please take the time and make sure the property is clean and all tidy for my inspection so I can write a letter to the owner that the house is clean & all tidy.

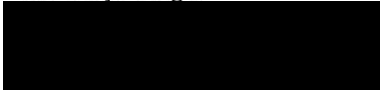
Thank you for your understanding.

Yours faithfully,
[REDACTED]



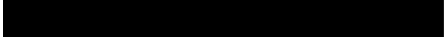
Tuesday, 19 December 2017

Mr Gurjit Singh



Dear Gurjit ,

RE:



ATTACHED 90 DAYS TERMINATION NOTICE UNDER NO GROUNDS

Please find attached a 90 day Termination Notice under no grounds.

The owner will be undergoing renovations to this property and the property will need to vacant to complete.

The termination date will be 28/03/2018.

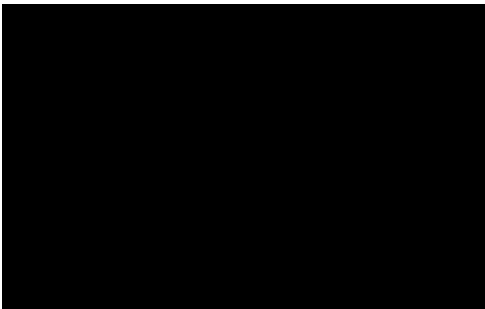
Your rent is currently paid to 31/12/2017.

By the Residential Tenancy Act, you can vacate the property at any time that you have received this 90 days Termination Notice. Though, If you do decide to vacate the property before the 90 day termination date, all rent needs to be paid to the date the keys are handed back into Real Homes Realty office.

Do not hand the keys to anyone other than Real Homes Realty or you will be charged rent till and if we receive the keys.

If no keys are received by 5pm on the termination date or if you have not vacated the property, further action will have to be taken.

Thank you.



90 DAYS

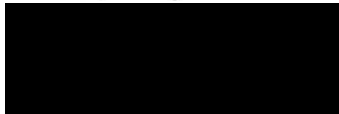
NOTICE OF TERMINATION

Residential Tenancies Act 2010 (The Act) - Sections 84 - 89

To the Tenant/s: Further information about your rights and obligations can be found in your Residential Tenancy Agreement.

Tenant/s Names and Address:

Mr Gurjit Singh



TO THE TENANT/S (Names of Tenants to whom this notice is being served)

Name/s: Mr Gurjit Singh

IN RESPECT OF THE PREMISES

Address: [Redacted]

NOTICE GIVEN BY LANDLORD / AGENT

Landlord: [Redacted]

Landlord's Agent: [Redacted]

Address: [Redacted]

ABN: [Redacted]

Email: [Redacted]

VACANT POSSESSION (see below for notice periods required)

The Tenant will deliver up vacant possession of the Premises on: **28/03/2018** (Termination Date)

REASON FOR TERMINATION OF TENANCY AGREEMENT (Please tick the appropriate box and fill in detail where required)

This Notice of Termination is being served in accordance with the Act on the ground as ticked below:

- End Fixed Term - Section 84 of the Act**
Termination Date: Not earlier than 30 days after the day on which notice is served or on or after the day the term of the Tenancy Agreement ends, whichever is the later.
- End of Periodic Agreement - No Grounds - Section 85 of the Act**
Termination Date: Not earlier than 90 days after the day on which notice is served.
- Premises are being sold and vacant possession is required - Section 86 of the Act** The Landlord has entered into a contract for the sale of the residential premises.
Termination Date: Not earlier than 30 days after the day which notice is served.
- Breach of Agreement - Section 87 of the Act** The Tenant has breached the Tenancy Agreement in the following manner:

[Redacted area for breach of agreement details]

In accordance with Clause(s) _____ of the Tenancy Agreement.

Termination Date: Not earlier than 14 days after the day which notice is served.

- Non Payment of Rent - Sections 88 and 89 of the Act**
Rent is unpaid for 14 days or more prior to this notice being served, the Tenant is thus in breach of the Tenancy Agreement. If the Tenant pays all the Rent owing or enters into, and fully complies with, a repayment plan agreed with the Landlord then the Tenant is not required to vacate the Premises unless the Tribunal makes a termination order on the basis that the Tenant has frequently failed to pay rent on time*.

*Note: The Tribunal may, on application by a Landlord, make a termination order if it is satisfied that the Tenant has frequently failed to pay rent owing for the Premises on or before the day set out in the Tenancy Agreement. (Section 89(5) of the Act)

Termination Date: Not earlier than 14 days after the day which notice is served

- Agreement Frustrated - Section 109 of the Act** The agreement has become frustrated in the following manner:

[Redacted area for agreement frustrated details]

Termination Date: unless otherwise specified in the Vacant Possession Item above, on the date this notice is given.

SERVICE OF NOTICE Note: Where notice is served by post the service period will commence (4) business days after posting.

This notice is delivered to the Tenant by:

- Hand
- Post
- Email

Date Notice was Served: **27 / 12 / 2017**

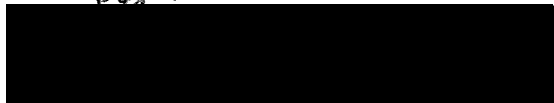
SIGNATURE

Landlord/Landlord's Agent: [Redacted]

Date: **19 / 12 / 2017**

FILED
WITH GLORIA
26/2/2018: 3:30 PM
DENRIM

NSW Civil & Administrative Tribunal

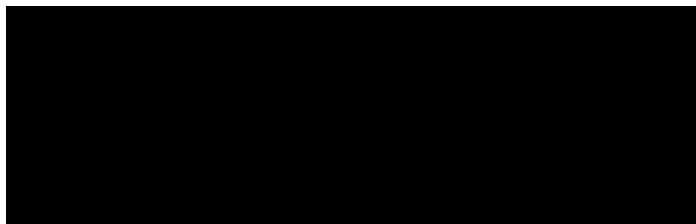


File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant



Respondents

APPLICATION (2ND) FOR ORDERS REGARDING HOME

Orders Sought

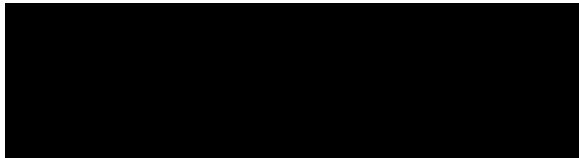
The applicant seeks for the following orders to be made:

1. Directions;
2. An order that the notice of termination provided to the applicant by [REDACTED] on the 16th of February 2018 be set aside or stayed until further order;
3. An order that the applicant pay rental in an amount and by a method to be directed by this Honourable Tribunal;
4. An order that [REDACTED] stop sending daily harassing emails to the applicant.
5. A specific order regarding the interim order and the communication permitted by [REDACTED] to the applicant by the order.
6. An order that the one monthly payment made by the applicant to the respondent as directed by this Honourable Tribunal be the only payment the applicant is required to pay to the respondent each month and that the respondent be estopped from demanding any further payment and the applicant relieved of any

obligation to make any further payment unless so ordered by this Honourable Tribunal.

7. Such further or other order as the Tribunal deems appropriate;
8. Leave to apply for further orders as necessary and appropriate;
9. Costs.

Dated: 26 February 2018



.....
Signed by Gurjit Singh
Applicant

This application is to be filed in the registry and served upon the respondent by email to the respondent's solicitors.

NSW Civil & Administrative Tribunal

[REDACTED]

File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[REDACTED]

Respondents

AFFIDAVIT REGARDING HOME TENANCY TERMINATION (2nd)

I, GURJIT SINGH of [REDACTED] restaurant

proprietor **MAKE OATH AND SAY:**

1. I am the applicant.

The home occupation

2. Since 2013, My wife and I, together with our children have lived in unit 2, Unit [REDACTED], an apartment unit owned by the respondent and rented to us for \$300 per week.

Termination notices

3. On the 19th of December 2017, I receive an email with a termination notice from [REDACTED], a tenancy officer for [REDACTED] a real estate agency engaged by the respondents.
4. I have lodged an application in relation to that termination notice, (the first home tenancy application) which I expect to be heard on the 6th of March. I have served that application and supporting affidavit upon the respondent by email to the solicitors.
5. On the 22nd of February 2017, I receive in the post, a letter and another termination notice from [REDACTED]
6. Now produced and shown to me and marked with the letters GS1 is a true copy of the letter and the termination notice which are annexed hereto.

Directions

7. My application for directions in my earlier application regarding the residential tenancy is still pending hearing.
8. The agreement we rely on for the 3 year term without rent increase for the residential tenancy is pleaded and asserted in this proceeding. The applicant's Points of Claim deal with this residential tenancy in paragraphs 4, 5, 12, 13, and 42 to 55 of the Points of Claim. The interim order is made in this proceeding. For those reasons I have made this application here.
9. My earlier application was accepted by the Tribunal so the applicant has no reason to believe this is the wrong place to make this application.
10. The appearance to me is it that the respondents assert that this shop tenancy matter should not be linked in any way to the residential tenancy issue.

11. In that regard, I refer to the respondent's defence, particularly paragraphs 53, 54 and 55. The applicant does not understand what the respondent is contending in these pleadings and the basis of the contention. However it does seem clear that the respondent is contending that the residential tenancy should not be considered in this matter.
12. That is a view the applicant does not share, but accepts is contended by the respondents which contention they are entitled to make. The Tribunal will decide that issue.
13. For those reasons, the applicant's first application is for directions.
14. If the applicant has made an error as to the method to proceed to pursue the relief sought, the applicant will accept and comply with any directions given by the Tribunal.

Payments

15. For reasons that the applicant believes are obvious, the applicant seeks for payments which the applicant is required to pay to the respondent to be regulated by this Tribunal and subject to the orders of this Tribunal.
16. For this reason, the applicant applies to bring the residential rent payment into the interim order for payment presently made.
17. The Tribunal's order was that an amount of \$6,500 per calendar month be paid by the applicant to the respondent. The applicant seeks no variation in that amount.
18. On the previous occasion when that amount was set, the applicant was represented by [REDACTED]. There were many aspects in the applicant's Points of Claim which the applicant believes [REDACTED] should

properly have dealt with at that hearing. He did not. [REDACTED] no longer represents the applicant.

19. One of the matters that required attention was that the residential tenancy rent needed to be included in the amount ordered by the Tribunal to be paid each month. That amount is \$300 per week which computes to \$1300 per calendar month. The applicant contends this amount should be added to the monthly payment.
20. At that hearing, the member looked at the initial rent of \$6,500 per month and chose that amount for payment under the interim order.
21. When that order was proposed and then made, contrary to his instructions, [REDACTED] remained silent.
22. What [REDACTED] was instructed to tell the Tribunal, what was evident in the Points of Claim and what the evidence shows is, that amount of rent is for both the shops 1 and 2 and the applicant presently only occupies of shop 1.
23. The applicant has obtained a photocopy of the title by attending at the Registrar of Land Titles for a formal copy. Now produced and shown to me and marked with the letters GS2 is a true copy of the title and plans, which are annexed hereto.
24. The title shows it is the folio reference for this tenancy as set out in the original lease and the plan shows the allotment as designated in the plan is a 15 metre frontage. A 15 metre frontage is the frontage for both shops 1 and 2. The initial tenancy agreement is clearly and unequivocally for both shops.

25. The rent the Tribunal has relied upon, without any assistance from [REDACTED] [REDACTED] or counsel for the respondent and ordered the applicant to pay is the rent for both shops.
26. On the 1st of February, the amount of \$6,500 was paid.
27. The applicant does not resist paying rent for shop 1 which is a occupied by the applicant. The applicant contends it is unfair to the applicant to require the applicant to pay the rent for shop 2 which the applicant does not occupy.
28. The applicant has contended that the agreed rent for shop one is \$5,000 per calendar month under the renovation agreement. The respondent does not seem to resist the contention that, under that agreement, shop two was to revert to the respondent. The applicant respectfully contends to the Tribunal that the amount of rent for shop one should be \$5,000 per calendar month. As earlier set out, the applicant concedes that residential rent is \$1300 per calendar month. That makes a total of \$6,300.
29. Significantly, the respondent's position is this. They deny cash rent for 2013 to November 2015 (paragraph 24) which means the only rent is \$750 paid by cheque each month during that time (see applicant's spreadsheet for particulars). Then they say the period November 2015 to October 2017 is rent free (paragraph 42b). This is disputed with the applicant saying \$6,750 was paid monthly for both shops, one and two. \$5,000 was for shop 1 and \$1,750 was for shop 2. In November and December of 2017, the applicant's volunteered \$5,000 payments which the respondents accepted (paragraph 66), later proposing new tenancy terms and denying the renovation

agreement. The applicant respectfully suggests the respondents on this history are not in a position to dispute the interim rent.

30. The applicant understands that the amount in the interim order is an interim amount. The amount does not fix any point or conclusion. It is an amount to preserve the status quo and a balance rather than allow overdue rental to grow because it is unpaid. It is an amount required to preserve the status quo until these issues between the parties are determined. Accordingly the applicant feels it is inappropriate to ask for adjustment over \$200 per month and accepts the current amount of \$6,500 per month.
31. What's the applicant seeks, for the reasons set out above, is for the order to be varied to specifically provide that the amount of \$6,500 covers both shop one rent and residential premises rent.
32. The title is further significant in that it shows the plans the respondents have to divide the shops will be a subdivision requiring council approval, formal plans approved and other considerations as contended by the applicant. This is relevant to the other application on subdivision. The title search had not been done when that application was made.

Harassment by [REDACTED]

33. There has been communication in the preceding weeks between the applicant and [REDACTED] discussing her efforts seeking a new home tenancy and otherwise dealing with the home tenancy. It was clear she had been told nothing about the renovation agreement alleged in the Points of Claim.
34. It also seemed clear that [REDACTED] had no knowledge of the interim order pending between the parties in this action.

35. From our point of view, it was already clear the respondents were not honouring the 2015 agreement, were agitating for huge increases in rent and not regarding themselves as constrained by anything. We had realised and accepted that we would need to pursue remedies in the Tribunal.
36. As [REDACTED] seems to have no knowledge of the renovation agreement allegations and the interim order, she has embarked on virtually daily harassing emails for the entire period she has been involved other than during her annual vacation from 24th December until 5th February.
37. Now produced and shown to me and marked with the letters GS3 is a true copy of the full set of the emails sent by [REDACTED] to the applicant which is annexed hereto.
38. The applicant believes [REDACTED] will not stop sending these emails and the respondent, particularly [REDACTED] will continue to direct her to send these emails unless restrained by this Tribunal.
39. When [REDACTED] returned to work on the 5th of February she resumed sending us emails. She pressed in relation to an inspection later in February to which we responded raising defects and maintenance. [REDACTED] then changed the inspection date to a date after she thinks we will be gone.
40. There was no dealing with the listed defects set out as an attachment to the affidavit in support of our earlier residential tenancy application. [REDACTED] simply ignored the defects notification. The respondents do nothing about the defects either.
41. The applicant believes this style of harassment will continue unless restrained.

42. The applicant believes the defects will not be remedied unless the Tribunal makes an order for the remedy. No formal application for defect repair is made in this application and the applicant's rights are reserved. The applicant will wait and see if this deposition makes any difference to the respondents' conduct.
43. The applicant seeks an appropriate restraining order regarding the email harassment.

Breach of the interim order

44. The applicant contends this conduct by the respondents and their agents is exactly what the applicant sought to be protected from by the interim order.
45. [REDACTED] is a very wealthy man with many properties and this jurisdiction is well known to him.
46. [REDACTED] has demonstrated that he will read down anything in relation to this matter that does not specifically bind him and take advantage of it.
47. The applicant seeks the Tribunal address this issue in relation to variation of orders on this and other applications and that the Tribunal lock down [REDACTED] [REDACTED] until the final determination and orders in relation to the issues in dispute between the parties are finalised and the interim order is replaced by final orders.
48. The applicant seeks for the Tribunal to sanction this conduct of [REDACTED]
49. The applicant seeks orders for damages for breach of the interim order.
50. I know the facts deposed herein to be true of my own knowledge and belief except where deposed otherwise.

#SWORN #AFFIRMED at *Permith.*
Signature of deponent [REDACTED]

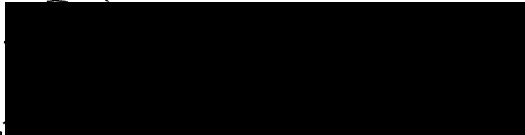
Name of witness
Address of witness
Capacity of witness



[#Justice of the peace #Solicitor #Barrister #Commissioner for affidavits
#Notary public]

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

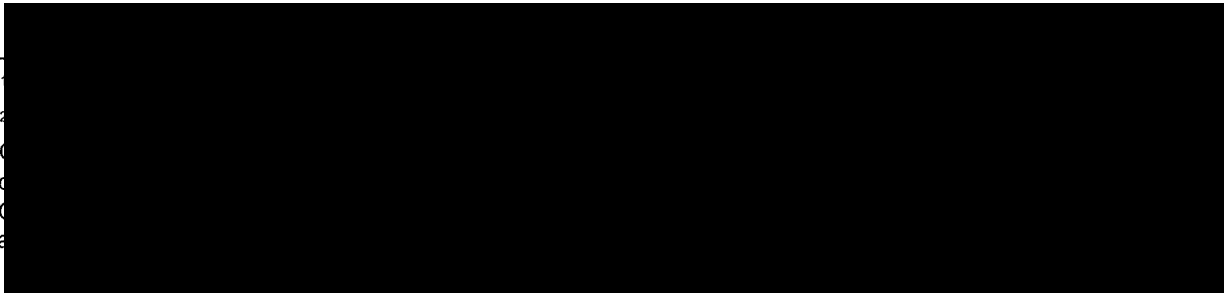
- 1 ~~#I saw the face of the deponent. [OR, delete whichever option is inapplicable]~~
~~#I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.¹~~
- 2 ~~#I have known the deponent for at least 12 months. [OR, delete whichever option is inapplicable]~~
#I have confirmed the deponent's identity using the following identification document:



Signature of witness

(certified copy)²

It still enough Note: The deponent and witness must sign each page of the affidavit. See OCFR 35.7B.



NSW CIVIL & ADMINISTRATIVE TRIBUNAL

[REDACTED]

ercial

File No. COM 17/53291

GURJIT SINGH

Applicant

[REDACTED]

Respondents

TRANSCRIPT OF HEARING 6TH MARCH 2016

1 Member [REDACTED] The matter of Gurjit Singh and [REDACTED], and [REDACTED], and [REDACTED]
2 [REDACTED] Can I get the parties to come to the tables please? Alright, I am senior a member
3 [REDACTED] Who is here for Gurjit Singh?
4 Gurjit Singh: Ma'am, that's me. Gurjit Singh.
5 Member [REDACTED] Right. And for, [REDACTED] ?
6 [REDACTED]
7 Member [REDACTED]: So, is it a solicitor?
8 [REDACTED] Solicitor, yes, thank you.
9 Member [REDACTED] Thank you. I'm just seeing a few other people in the room.
10 Observer: I'm from the small business commissioners office.
11 Member [REDACTED]: Fantastic.
12 [REDACTED] The other gentleman is my client's son.
13 Member [REDACTED] Great, thank you. Right. On the last occasion the matter was before the tribunal, there
14 was an interim application and a substantive application. And directions were made for
15 the applicant to pay an amount of \$6,500 on account of rent by monthly installments.
16 And that on the 6th of February the respondent was to give to the tribunal and the
17 other party, in person, points of defence to the points of claim. And the parties were to
18 attend the offices of the New South Wales Small Business Commissioner. Maybe I'll
19 start with you [REDACTED], what's happened?

1 [REDACTED] Thank you. Maybe, can I just please seek a leave to tender an affidavit on the 6th of
2 March and today. Can I approach?

3 Member [REDACTED] Yes. Copy for you.

4 Gurjit Singh: I object to this, but [crosstalk 00:02:08].

5 [REDACTED]: Let me see it before you object. You've already provided a copy?
6 [REDACTED] I've given him a copy.

7 Member [REDACTED] Okay. Just so I can understand, on what basis are you objecting?

8 Gurjit Singh: It's too late.

9 Member [REDACTED] What's too late?

10 Gurjit Singh: They're supposed to file evidence by 27th of February.

11 Member [REDACTED]: Okay.

12 [REDACTED]: The affidavit only goes to the interlocutory relief granted to the applicant that rentals
13 not paid for March.

14 Member [REDACTED]: Yes, so it's got nothing to do with providing new evidence.

15 [REDACTED]: No, it's just ... it's two aspects. One is, that the rental is not been received for March.
16 Interlocutory orders were made on the 23rd of January, that payment be made on the
17 first of each month. The second aspect goes to [REDACTED] approaching the council,
18 lodging complaints about some building works to my client. And the council would like
19 to come out and inspect, but of course, there is restrictions on my client attending the
20 principle of quiet enjoyment and what have you. So it goes to that issue, which I will
21 make some further submissions about in due course, if that's fine?

22 Member [REDACTED]: Let me deal with issue one.

23 [REDACTED] Thank you.

24 Member [REDACTED] On the 23rd of January, the following order was made: Order two. Order of
25 interlocutory relief. Provided the applicant pays an amount of \$6,500 on account of rent
26 by monthly installments commencing 1 February 2018, the respondent is restrained
27 from attempting to terminate the retail lease, the subject of this application, from
28 repossessing the premises, or otherwise disturbing the applicants quiet enjoyment of
29 the premises, until this dispute is resolved at mediation or otherwise or until the
30 tribunal has made a decision pursuant to the application. In form number 17/53297.
31 Can I just get this clear, are you saying 1 of February was paid?

32 [REDACTED]: 1 of February was paid.

33 Member [REDACTED]: 1 of March has not been paid?

1 [REDACTED] Yes, that's correct, member.

2 Gurjit Singh: Ma'am, my third application deals with this matter.

3 Member [REDACTED]: It's a very easy question.

4 Gurjit Singh: Yes, I didn't pay that. Yes, that's right.

5 Member [REDACTED]: On what basis?

6 Gurjit Singh: I think the respondent asking me to pay more money than what was ordered.

7 Member [REDACTED]: No, have you paid ... don't worry about what the respondent asked you, have you paid

8 \$6,500 on the 1st of March?

9 Gurjit Singh: No, I haven't.

10 Member [REDACTED]: Well, sir, it's a bit of a worry that you're here the second time, you still haven't got

11 yourself a solicitor. We made an order.

12 Gurjit Singh: Yes.

13 Member [REDACTED]: That you pay \$6,500, or else they can take possession. It's a conditional order.

14 Gurjit Singh: Ma'am, that's-

15 Member [REDACTED]: And you're still here sitting here, without a solicitor, telling me you haven't paid.

16 Gurjit Singh: Ma'am, that's what I'm telling you. The third application, which is made, if you have

17 looked at it, that covers that.

18 Member [REDACTED]: There is no third application.

19 Gurjit Singh: We seek instructions for-

20 Member [REDACTED]: There is no third application. What third application are you talking about?

21 Gurjit Singh: We filed three applications.

22 Member [REDACTED]: Well, I haven't got them. I've got an application ... today the only thing that's before

23 me, is a substantive application and an interim application from the applicants. I've got

24 no application from you.

25 Gurjit Singh: Ma'am this is ..

26 Member [REDACTED]: And that's not what I'm dealing with today.

27 Gurjit Singh: This is three applications we filed.

28 Member [REDACTED]: Well, they're not here before me. I'll say it again.

29 Gurjit Singh: I have a received copy from tribunal.

30 Member [REDACTED]: Yeah, that's not what I'm dealing with today. Sir, I don't think you're understanding this.

31 Gurjit Singh: Ma'am.

32 Member [REDACTED]: You can not go on rent strike. Right?

33 Gurjit Singh: Okay, I'll pay tomorrow, that's fine.

1 Member [REDACTED]: Well, I'm not sure why you haven't already paid it.

2 Gurjit Singh: Ma'am, that's what I'm trying to tell you. The third application, which we filed-

3 Member [REDACTED]: But you ... it doesn't matter what you're third application is, you cannot go on rent
4 strike when there's an interlocutory order against you. You just can't do it. You need to
5 go get some legal advice.

6 Gurjit Singh: Ma'am, we're getting a termination notice.

7 Member [REDACTED]: That is enough to get you a termination notice. They could take possession right now.

8 Gurjit Singh: In February.

9 Member [REDACTED]: What you are not understanding, is you're putting yourself in a very vulnerable
10 position.

11 Gurjit Singh: I will be paying the \$6,500 tomorrow, that's not a problem. But what I'm saying is we
12 are getting a termination notice in February. That's what I'm trying to ... in February, we
13 already paid for February rent. Why we are getting the termination notice.

14 Member [REDACTED]: Even if you got a termination notice, and I don't know, I haven't even gotten into that,
15 right? It could not be based, a termination notice, based on order two. But it's very hard
16 for you to come here, and tell me about all your applications, when you haven't done
17 what the tribunal told you to do.

18 Gurjit Singh: Ma'am, that's what I'm trying to tell. But ...

19 Member [REDACTED]: I know what you're trying to tell me, and I'm telling you, it does not matter.

20 Gurjit Singh: Okay.

21 Member [REDACTED]: \$6,500 needed to go in on the 1st of March. It's very simple. That order was very
22 simple.

23 Gurjit Singh: Ma'am

24 Member [REDACTED]: It doesn't matter what they're doing.

25 Gurjit Singh: Why doesn't it matter what they're doing? That's my question.

26 Member [REDACTED]: Go get yourself a lawyer and he'll explain it to you.

27 Gurjit Singh: Okay, alright.

28 Member [REDACTED]: I explained it to you again, you cannot in the state of New South Wales, just go on a
29 rent strike.

30 Gurjit Singh: I'm not going on a rent strike.

31 Member [REDACTED]: You have. You haven't paid your \$6,500, and you're giving me all these other reasons as
32 to why you haven't. You cannot do that.

33 Gurjit Singh: I'm not ... I haven't gone on a rent strike.

1 Member ██████ Well, you haven't paid your rent. You haven't paid what we told you to pay.

2 Gurjit Singh: Ma'am, that's why I filed my papers in the tribunal. And that's why I'm here.

3 Member ██████ It does not overcome-and I'm not sure why you keep going around in circles-the order.

4 Gurjit Singh: Alright, I understood.

5 Member ██████ Well, sir, can I just say, what is it that you are proposing for me to do in light of the fact

6 that the interlocutory order has not been complied with? It's clear what you can do,

7 what do you want me to do?

8 ██████: Well, it's a breach of the order, we ask for the order to be revoked. Because it's an

9 interlocutory order, it's an equitable order, person must come with clean hands to seek

10 such orders. There's been non compliance with that order, we seek an possession

11 ██████ Well, they're suggesting that it'll be paid by tomorrow.

12 ██████: That's of course a metaphor, Ms Senior Member. He's technically, obviously, in breach

13 of the courts orders, and have granted this relief in the quiet enjoyment of the

14 property upon the compliance, we've had order of this tribunal.

15 Member ██████ Let's park that issue for a moment.

16 ██████: Yes.

17 Member ██████: Okay, just park it. But let's just say I was to not revoke the order, for instance, until two

18 days time.

19 ██████: Yes ma'am.

20 Member ██████ Right? In which case, you better get that money in pretty quickly, right?

21 Gurjit Singh: I have-

22 Member ██████ Right? What else is there left here?

23 ██████: The second issue is, Madam Member, on the 23rd of January, order five was made that

24 the parties attend a mediation. My instructions are, that mediation was arranged for

25 the 15th of February, but that was subsequently canceled. If I could take you to my

26 client's affidavit of the 27th of February 2018.

27 Member ██████ Yes.

28 ██████: Particularly if you go to the pages 17, 18, and 19.

29 Member ██████: Is this the one you gave me.

30 ██████: No, it's the one of 27th of February 2018. Filed on the 28th of February.

31 Member ██████ Yes.

32 ██████: Mr. Singh-arrangements were being made for the mediation-Mr. Singh refused to

33 attend, until certain matters he required to be attended to were complied with. And

- 1 that mediation's not proceeded.
- 2 Member ██████: Okay, so what do you want me to do about that?
- 3 ██████: Well, Mr. Singh in his submission that he just handed to me this morning, says it will be
4 futile having mediation. The parties are poles apart. And the problem we've got is that
5 my client's, of course, been denied the premises or position.
- 6 Member ██████: Okay, do you want mediation or not? We've got the representative from the offices of
7 small business commissioner.
- 8 Gurjit Singh: Ma'am I spoke-
- 9 Member ██████: It's a very simple question, do you want to go into mediation or not? You don't have to.
- 10 Gurjit Singh: Until the pleadings are not closed, I don't want to go to mediation.
- 11 Member ██████: No No there won't be an opportunity after the pleadings are closed. Do you want to go
12 to mediation or not? You don't have to. It's very simple what I'm going to do, you
13 understand, proceed to a formal hearing.
- 14 Gurjit Singh: Thank you.
- 15 Member ██████: But the mediator from the offices of the small commissioner is here.
- 16 Gurjit Singh: I think let's skip mediation.
- 17 Member ██████: You want to skip mediation? Well, if he doesn't want mediation he doesn't want
18 mediation, there's not much I can do about that. Can I just ask, the two young people
19 that are coming, you're just observing? It's okay, I just need to understand.
- 20 Observer: Yes.
- 21 Member ██████: Okay, that's fine. Well, what can we do about that?
- 22 ██████: We'll just move forward.
- 23 Member ██████: Okay, move forward. So how long do you need to get on your evidence?
- 24 ██████: I'm not the applicant, the applicant files first.
- 25 Member ██████: That's correct. Can I just ... How long do you need to get on your evidence? Has a point
26 of defence been filed?
- 27 ██████: Yes, it has. Madam
- 28 Gurjit Singh: We filed a reply for the defence. The defence is not complete.
- 29 Member ██████: What do you mean the defence is not complete?
- 30 Gurjit Singh: The particulars have not been provided for the defence.
- 31 Member ██████: Well, they've given you what they say is their defence. How long do you need to get
32 your evidence based on what they've given you in their defence?
- 33 Gurjit Singh: I'm not sure yet.

1 Member ██████ Right, if you're not sure I make a decision, so you better tell me.

2 Gurjit Singh: Sure, no you can make a decision. I'm not sure.

3 Member ██████ I'll give you two weeks to put on all your evidence in chief.

4 Gurjit Singh: Sure.

5 Member ██████ I'll get ... do you think you need more than two weeks to reply?

6 ██████: I think I'll need more than two weeks.

7 Member ██████ How long?

8 ██████: I think I'll need about at least four weeks.

9 Member ██████ Four weeks to reply, and then write a reply for two weeks and then you can all come

10 back here for a formal hearing, it sounds to me.

11 ██████ Thank you.

12 Member ██████ In the meantime, you don't pay that rent, I'm not going to make an order revoking, I'm

13 not even going to make one into the future.

14 ██████ Yes.

15 Member ██████ If-

16 ██████ If they haven't complied with it.

17 Member ██████ If they haven't complied. You've got your remedy today if you want it, right?

18 ██████ Yes, I appreciate that.

19 Member ██████ You've got real problems if you don't pay that rent. I don't know how else to make it

20 clearer to you. And you might want to go get yourself some legal advice.

21 Gurjit Singh: Sure.

22 Member ██████ So I'm just going to make directions.

23 Gurjit Singh: Thank you.

24 Member ██████: Sorry, there was a matter this morning, I was hoping you'd be here. Sorry, just deal with

25 me. It involves city conveniences associates.

26 Observer: I think that one had been

27 Member ██████ Yes, there is an indication that mediation has been skipped on the cross application. I've

28 made very clear directions that the respondent, ██████, is to make an application to

29 the officers of the small commissioner for urgent-I know this puts you in a bead-for

30 urgent mediation, as soon as possible. Because I want that done before we get to the

31 hearing, which is like six weeks. So just be aware of what I've done, if you can fit it in,

32 that'd be great.

33 Speaker 4: Should we contact them, or will they?

1 Member [REDACTED] They'll contact you, don't contact. But I'm just telling you that I'm not trying to make it
2 difficult for your life-

3 Speaker 4: No, it's fine. Thank you.

4 Member [REDACTED] But that's what will happen. Thanks. Alright. Now, how many witnesses are you
5 expecting?

6 Gurjit Singh: I'm not sure ma'am.

7 Member [REDACTED] Well, if you're not sure, I'm going to make, again, a decision.

8 Gurjit Singh: Yeah, sure.

9 Member [REDACTED]: What are you claiming?

10 Gurjit Singh: It's in my points of claim.

11 Member [REDACTED]: I'm asking you what you're claiming.

12 Gurjit Singh: I can read it.

13 Member [REDACTED] No no, you tell me what you're claiming yourself.

14 Gurjit Singh: Ma'am, I can read it but I don't really ... I mean I can definitely read it if you want.

15 Member [REDACTED]: No, I'm asking you.

16 Gurjit Singh: Okay, let me read it.

17 Member [REDACTED]: Take me to it. When did you provide your points of claim? Okay, is this the, on the 12th
18 of February, application for orders regarding home?

19 Gurjit Singh: That's the one ... no, not that one.

20 Member [REDACTED] Okay, so which one?

21 [REDACTED] I think it started the 10th of January.

22 Gurjit Singh: That's the one, application regarding home, is the one which I filed to be decided today.

23 Member [REDACTED]: What do you mean to be decided today? I can't decide anything today, there's not an
24 application. You don't decide when we decide things, so what's the-

25 Gurjit Singh: No, I made an application for you to decide. I don't decide.

26 Member [REDACTED] Decide what?

27 Gurjit Singh: That's in the application.

28 Member [REDACTED]: But what am I deciding? What do you want me to decide?

29 Gurjit Singh: You want me to read the application ma'am?

30 Member [REDACTED]: Which application?

31 Gurjit Singh: For home.

32 Member [REDACTED] The one that I just read to you? The applicants is to be following orders to the
33 directions and know that the order of notice of termination provided to the applicant,

1 by [REDACTED] on the 19th of December, are stayed.

2 Gurjit Singh: Yeah.

3 Member [REDACTED]: But what's home? Is this a house?

4 [REDACTED]: On top of the restaurant there's a unit, which Mr. Singh has moved into. It's a
5 residential unit.

6 Member [REDACTED]: So what jurisdiction would I have to decide in a commercial lease on a residential
7 tenancy? Is there a lease between the parties on the unit?

8 [REDACTED]: No, it's just-

9 Gurjit Singh: Yes.

10 Member [REDACTED]: Where is that lease?

11 [REDACTED]: Is there a lease

12 [REDACTED]: He had not signed ...

13 [REDACTED]: There's no written lease. There's no signed lease.

14 Member [REDACTED]: But there's an agreement between the parties for him? Some sort of
15 agreement for him-

16 [REDACTED]: There was ... he offered ...

17 Member [REDACTED]: To lease the residential?

18 Gurjit Singh: Yes.

19 Member [REDACTED]: You need to make a residential tenancy application. I don't have jurisdiction.

20 Gurjit Singh: Ma'am that's what-

21 Member [REDACTED]: Sir, you really need to get some

22 Gurjit Singh: Alright, sure.

23 Member [REDACTED]: So I don't have jurisdiction, to decide in a retail leases application, a residential tenancy
24 application. That's a separate application that you need to make, an actual application
25 under the residential tenancy's act, to be decided. Do you understand?

26 Gurjit Singh: Yeah, sure.

27 Member [REDACTED]: And then you'll have to establish how, if that's a residential tenancy. Now it might not
28 be in writing, but that doesn't mean it doesn't exist, quite frankly. Right? But you'll need
29 to have to explain how a residential tenancy's come into agreement.

30 Gurjit Singh: I explained this in my points of claim.

31 Member [REDACTED]: Okay, well I'm asking you ... you can't just keep saying to me, "I explained this in my
32 points of claim". I'm asking you to explain it now. How is a residential tenancy come
33 into being?

1 Gurjit Singh: Come into what?

2 Member [REDACTED]: How has it occurred?

3 Gurjit Singh: By moving into the premises, we-

4 Member [REDACTED]: By agreement?

5 Gurjit Singh: By agreement, yes.

6 Member [REDACTED]: Yes, and how much was going to be paid each week?

7 Gurjit Singh: \$300.

8 Member [REDACTED]: And when was that agreement went into? Came into? Entered into?

9 Gurjit Singh: 2013.

10 Member [REDACTED]: After the lease agreement? After the commercial lease?

11 Gurjit Singh: Yes.

12 Member [REDACTED]: Okay, well that sounds like a residential tenancy. That's not the issue. But you've got to
13 file a separate application in relation to that. And you need to go get yourself some
14 advice.

15 Gurjit Singh: Sure.

16 Member [REDACTED]: Okay, so I can't do anything about that. So can we go back to what this one's really
17 about?

18 Gurjit Singh: We get a refusal order? Can we get any order that this is rejected or refused for this?

19 Member [REDACTED]: No, you just go make an application, I can't deal with it.

20 Gurjit Singh: So, it will not be considered as an order right here?

21 Member [REDACTED]: No it's not, sorry, sir. It's not an order that i can make, there's no actual application
22 under the residential tenancy's act here.

23 Gurjit Singh: Okay.

24 Member [REDACTED]: So there's nothing I can do, right? So can we focus on what the actual application, that
25 is the retail leases application, is for. And please don't tell me, "Look at my points of
26 claim", I don't know which ones are your points of claim. So where am I looking?

27 Gurjit Singh: I can look at the points of claim and read it.

28 Member [REDACTED]: Which one?

29 Gurjit Singh: The points of claim.

30 Member [REDACTED]: When were they provided?

31 Gurjit Singh: Ma'am it should be in your system. I'm not sure.

32 Member [REDACTED]: Sir, there's no system, there's just folders. I'm trying to figure out, sir. All you have to
33 say is, "I provided to the tribunal on which date", you tell me a date. It should be

1 stamped. If you could help me out here that would be great.

2 [REDACTED] A lot of them are not stamped. They are dated on the 10th of January, in the last post if
3 that assists you. It's for the points of claim, it starts with Order Sort.

4 Member [REDACTED] Okay, so I think I've got it now. I will provide it to the tribunal on the 10th of January. So
5 you want a declaration? Two declarations? Alright, so who are going to be the
6 witnesses?

7 Gurjit Singh: I'm not sure right now, ma'am.

8 Member [REDACTED] So you'll be a witness, yourself?

9 Gurjit Singh: Yes.

10 Member [REDACTED]: Because it'll be about conversations. Has anyone else had conversations between you,
11 because a whole lot of this relies on obviously what representations were made.

12 Gurjit Singh: Yeah, there was witnesses, like my wife.

13 Member [REDACTED] Okay.

14 Gurjit Singh: [REDACTED].

15 [REDACTED] Yes, [REDACTED], and her son-and other two sons.

16 Gurjit Singh: [REDACTED]

17 Member [REDACTED]: Alright. And do you expect that you'll have any witnesses?

18 [REDACTED] Yes, member.

19 Member [REDACTED] Okay, so what I'm trying to ask this question for is to determine the time that this is
20 going to take. And what it's sounding to me is it will probably take about a day based on
21 what I'm being told and allowing for those witnesses you've just mentioned, right?

22 [REDACTED]: It'll take more than a day.

23 Member [REDACTED]: Well, on what basis?

24 [REDACTED]: Because they're going to have at least two witnesses from what I can gather.

25 Member [REDACTED]: I'm not sure how much the witnesses are going to make a difference to this whole case,
26 quite frankly.

27 [REDACTED]: Yes, they're going to acknowledge conversations between my client, his
28 wife and his children. I counted about five people in what I've just been
29 told. So, we'd have to call all five I think, if their conversations are ...

30 Member [REDACTED] Okay, and who's going to be on your end?

31 [REDACTED] On our end?

32 Member [REDACTED]: Witnesses.

33 [REDACTED] It'll be [REDACTED], his wife [REDACTED], their two sons and their daughter. If they're

1 alleging that their conversations with them, they'll have to do affidavits.

2 Member [REDACTED]: Okay, there will be affidavits, but how long will this cross examination? I put it to you
3 that what you're saying is not true. What else is it going to be?

4 [REDACTED]: I agree. The issues could be ... the difficulty here we have is that some of the
5 declaratory rules, relief being sought, is for a lease, a declaration for a lease that was
6 only 2006, by a company that's been placed in liquidation. That company no longer in
7 existence.

8 Member [REDACTED]: The lessor or the lessee?

9 [REDACTED]: The lessee. So one wonders what the relevance of all that is in terms of the issue by the
10 tribunal. From what I understand, the real issue is an agreement made, a cause of
11 renovation agreement October 2015, where Mr. Singh says there was an arrangement,
12 where if he renovated.

13 Member [REDACTED]: So you originally, just bear with me, you entered into the lease with the respondent in
14 the name of a company?

15 Gurjit Singh: Yes.

16 Member [REDACTED]: And that company is in liquidation?

17 Gurjit Singh: Yes.

18 Member [REDACTED]: So on what basis can you bring me the application in your individual name?

19 Gurjit Singh: Again ma'am, this is, as I explained, in my points of claim.

20 Member [REDACTED]: Yeah, but on what basis ... again I'm going to ask you to explain it to me. On what basis
21 do you get to bring the application in your individual name?

22 Gurjit Singh: I think ... okay, let me go to the points of claim.

23 [REDACTED]: If I could help ma'am, he's asserting in 2009, he had another conversation with my
24 client, where my client said, supposedly to him, talking about exercising the lease, as
25 long as you remain in the business.

26 Member [REDACTED]: And that gave rise to an implied lease between the individual? Is that what you're
27 saying?

28 Gurjit Singh: Yes.

29 Member [REDACTED]: Okay.

30 [REDACTED]: Then from that, he remained in occupation. There was a dispute in 2010 about some
31 money, and he seeks a refund of 85,000, we say that statute barred in 2010. We say it's
32 out of the loop altogether. The second aspect is that it then goes to a renovation

1 agreement, where Mr. Singh says if he renovated the shop he'd be granted a new three
2 year lease. Which is where we're at. But he wants to lease the place in the name of
3 another company to which he's not related to.

4 Member ██████: Do you have legal advice?

5 Gurjit Singh: Yes.

6 Member ██████: Legal advice on this case?

7 Gurjit Singh: Yes.

8 Member ██████: I suggest you get yourself some legal advice, now. Even now if not done previously.

9 Gurjit Singh: Sure.

10 Member ██████: How long were you thinking that it would take?

11 ██████: I thought a day plus, just to be safe. That was all,

12 Member ██████: Yeah, a day plus ... I was thinking a day, but not more than a day.

13 ██████: You're right, we may be ... some of the issues may be able to be resolved really quickly
14 because they're really irrelevant. I mean, the real issue is whether or not he's entitled
15 to a new lease.

16 Member ██████: Yes.

17 ██████: That's what we say, it's going to boil down to it. All the rest is really irrelevant, it doesn't
18 go anywhere. And if we're concentrating on that, we will have that done in a day. But if
19 we're going to traverse back and start going through the history of the matter, and the
20 allegations in dealing with issues on that, it could take awhile. But, you're right. I'll put it
21 to you in the good cross examination, yes.

22 Member ██████: Do you have a view on how long this will take?

23 Gurjit Singh: I'm not sure.

24 Member ██████: Okay. I'm going to set it down for a day.

25 ██████: Thank you madam.

26 Member ██████: I would encourage you very strongly to go get some legal advice.

27 Gurjit Singh: Yes, sure ma'am.

28 Member ██████: Especially in relation to the retail lease, sorry, the residential lease that
29 you are alleging

30 Gurjit Singh: Sure.

31 Member ██████: So, if you, today's the 6th, if you have two weeks that's the 20th of

1 March. And then four weeks is the 17th of April and then a further two weeks for a
2 reply is the 1st of May. So this will be set down for after the 1st of May for one day.

3 Does anyone expect to be unavailable after the 1st of May.

4 [REDACTED]: I won't be available from the 24th of June until the 20th of July.

5 Member [REDACTED]: That's a long time for me to take-

6 [REDACTED]: If I have to I'll brief it.

7 Member [REDACTED]: Okay. I'm not taking out a month.

8 [REDACTED]: No, no, appreciate that. I'm just not going to be here.

9 Member [REDACTED]: Okay, that's fine. I'm happy to take out days here and there.

10 [REDACTED]: Sure.

11 Member [REDACTED]: But to take

12 [REDACTED]: No, I can brief counsel.

13 Member [REDACTED]: Any other times?

14 Gurjit Singh: We are available, yeah.

15 Member [REDACTED]: Okay, great. By determination of the member on the 6th of March, the hearing was
16 adjourned to a date to be picked by the registrar. The applicant shall provide to the
17 respondent and the tribunal, either in person or by post, a copy of all documents on
18 which the applicant tends to rely on at the hearing by the 20th of March 2018. The
19 respondent is to provide all the documents that they intend to rely on in relation to the
20 matter by the 17th of April 2018. The applicant shall provide to the respondent and the
21 tribunal, either in person or by post, any documents in reply by 1 May 2018. The
22 documents are to include all relevant lease agreements. If there is alleged, no written
23 lease, then a statement about how the agreement is alleged to have arrived, arisen,
24 sorry. Statements of the parties and their witnesses: statements should be by way of
25 such declarational affidavit and must be provided with the documents. If a party or
26 their witness seeks to give evidence at the hearing. Witnesses must attend the hearing
27 unless a party's advised by the other side that a witness is not replied for cross
28 examination. Cross examination is the opportunity to ask a witness questions so as to
29 challenge the statements they have given. And any other documents that the parties
30 tend to rely on. The documents provided by each party must be placed in a folder, each
31 page must be numbered to provide easy identification for all at the hearing. Folders

1 provided-you'll get a copy of this.

2 Gurjit Singh: Yeah, sure.

3 Member [REDACTED] Folders provided to the tribunal and the other party must be identical and in the same
4 order. Include a chronology of significant events, an index, and all pages numbered.
5 Identical copies for both. If a party requires an extension of time, they need to write to
6 the tribunal before the documents are due, asking for that extension of time, together
7 with any supporting evidence. And the tribunal will advise the parties of the upcoming
8 due course. Failure by a party to provide documents in accordance with the tribunal
9 directions, may result in a party not being able to rely on them, unless leave is granted
10 to do so. Leave is granted for either party to request a relisting of the matter for further
11 directions, including for noncompliance by the other side. No point in coming here and
12 telling us the other side didn't give us anything on the day of the hearing. If they don't
13 comply, you might want to ask them what's happened. But after that, if there's
14 noncompliance, write to the tribunal advising, and we'll either relist or have a look at
15 what we're going to do. The matter will be listed for final hearing on the next occasion.
16 The applicant is encouraged to seek legal advice. I mean, it's clear the respondent has
17 legal advice at this point. A separate written notice of the new hearing date will be sent
18 to you all in the future. Any comments or questions?

19 [REDACTED] No.

20 Gurjit Singh: No ma'am.

21 Member [REDACTED]: Okay. Those orders are made. Like I said, you probably need to get yourself some
22 advice, sir. But you can expect that on the next occasion this will be set down to a
23 formal hearing.

24 Gurjit Singh: Thank you.

25 Member [REDACTED] Thank you all for your time.

26 [REDACTED] Thank you madam.

27 Member [REDACTED]: And the interlocutories are staying the same, as I said

28 [REDACTED] We'll see what happens.

29 Member [REDACTED] Okay, sure.

30 [REDACTED]: Thank you madam. Can I be excused?

31 Member [REDACTED]: Yes, you're all excused.

COPY



NCAT
NSW Civil &
Administrative Tribunal

Please complete this sheet and attach to any documents you are forwarding to the Tribunal in relation to your matter

Send your documents in relation to NCAT proceedings via post or in person to an NCAT Registry.

Note: In accordance with NCAT Procedural Direction 7 of the Consumer & Commercial Division – ‘Use of Electronic Evidence in Tribunal proceedings.’

- Clause 5 - Where parties are, as a result of procedural directions, required to provide the Tribunal and other party/s with documents, these are to be provided to the Tribunal in hard copy only.
- Clause 6 - The Tribunal and Divisional Registrar will not accept service to the Tribunal of such documents via email, facsimile or other electronic means.



The attached documents are provided by the APPLICANT / RESPONDENT, in compliance with procedural directions made on 23/1/2018 (insert date).

Name : GURJIT SINGH

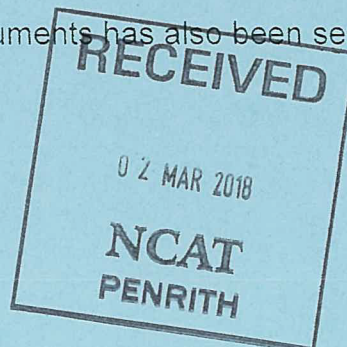
File No : 17/53291

[] I confirm that a duplicate copy of the attached documents has also been sent to all other party/s as directed by the Tribunal.

Signature [Redacted]

Day time telephone no. [Redacted]

Date 2/3/18



NSW CIVIL & ADMINISTRATIVE TRIBUNAL

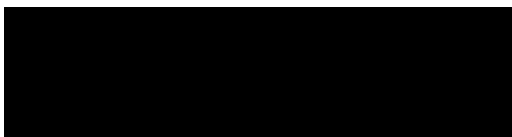


File No. COM 17/53291

Division: Consumer and Commercial

GURJIT SINGH

Applicant



Respondents

REPLY TO DEFENCE

1. In reply to paragraph 1 of the response to the orders sought by the applicant (on page 12 of defence):
 - 1a This ground of defence is denied. [REDACTED] ceased to be in the tenant in about August of 2010 which the respondent knows;
 - 1b The applicant joins issue with the respondent. The applicant will rely on the evidence to establish that the variations occurred and that the details of the variations were as the applicant has pleaded;
 - 1c This statement is factually incorrect. [REDACTED] was incorporated on the 13th of January 2017;
 - 1d. After [REDACTED] was replaced as tenant, it was deregistered. The respondents were informed of the replacement as pleaded;
 - 1e. Renewal term extensions were requested verbally and approved verbally. There has never been a monthly tenancy. New tenants have replaced [REDACTED] and been accepted by the respondents and there is a lease term applicable to the current tenant which is binding upon the respondent.

2. In reply to paragraph 2 of the response to the orders sought by the applicant, the applicant repeats the reply to paragraph 1, in reply to paragraph 2 and further, by way of clarification, confirms that the specific period of residence in the home unit is from 30th March 2013 to date.
3. In reply to paragraph 3 of the response to the orders sought by the applicant:
 - 3a. there was no agreement that rent would not be sought and rent was paid as pleaded and specifically set out in the payments spreadsheet;
 - 3b. This contention is denied and the applicant repeats and affirms its allegation contained and set out in paragraph 3 of its Points of Claim
 - 3c. This pleading is correct, ██████ did not pay any rent ██████ had been deregistered and was not involved. The rent was paid by the applicant and the applicant's, then trading company.
 - 3d. Shop 2 was occupied and used by the Applicant and never vacant since 2006. Shop 2 is part of the premises in the lease. Payments were made for shop 2 in the cash rental payments from 2006. Cheque payments of part of the rent commenced in 2013, not 2015 as this defence pleading suggests. The applicant commenced paying portion by cheque to produce evidence of rent payment. The respondents demanded that \$750 be the maximum paid by cheque. Outgoings accounts for shop 2 have been paid since 2006.
4. In reply to paragraph 4 of the response to the orders sought by the applicant:
 - 4a. That amount of monthly rental has never been paid, has never been agreed to be paid and the respondents have accepted a much lower rent for the premises including a much lower rent as part of the renovation agreement;
 - 4b. The applicant's occupation of the residential premises were part of the October 2015 agreement and are applicable considerations in these proceedings;
 - 4c. This pleading is rejected in its entirety. The pleading relates to an allegation of a matter of law and is an inappropriate pleading.
5. In reply to paragraph 5 of the response to the orders sought by the applicant, the applicant repeats its reply contained in paragraph 4.

6. In reply to paragraph 6 of the response to the orders sought by the applicant, the applicant pleads the security deposit was paid in cash as set out in the payments spreadsheet.
7. In reply to paragraph 7 of the response to the orders sought by the applicant, the applicant repeats and affirms its allegation contained and set out in paragraph 7 of its Points of Claim.
8. In reply to paragraph 8 of the response to the orders sought by the applicant, the applicant repeats and affirms its allegation and claim for relief contained and set out in paragraph 8 of its Points of Claim
9. In reply to paragraph 9 of the response to the orders sought by the applicant, the applicant repeats and affirms its allegation and claim for relief contained and set out in paragraph 9 of its Points of Claim and further pleads:
 - 9a. This pleading is a misconception and error of law;
 - 9b. The application for immediate position has no legal foundation and is resisted by the applicant.
10. In reply to paragraph 10 of the response to the orders sought by the applicant, the applicant pleads:
 - 10a. This pleading is not sustainable as it relies upon the respondent's false assertion that [REDACTED] is still a tenant or the tenant, which position has been varied by express verbal agreement between the parties and [REDACTED] is no longer involved and has not been involved since August of 2010;
 - 10b. The application for immediate position has no legal foundation and is resisted by the applicant.
11. In reply to paragraph 11 of the response to the orders sought by the applicant, the applicant pleads:
 - 11a. This pleading is not sustainable as it relies upon the respondent's false assertion that [REDACTED] is still a tenant or the tenant which position has been varied by express verbal agreement between the parties and [REDACTED] is no longer involved and has not been involved since August of 2010;

- 11b. The application for immediate position has no legal foundation and is resisted by the applicant.
12. In reply to paragraph 12 of the response to the orders sought by the applicant, the applicant pleads the interim order generates the result sought in this prayer for relief and further:
- 12a This pleading is not sustainable as it relies upon the respondent's false assertion that [REDACTED] is still a tenant or the tenant, which position has been varied by express verbal agreement between the parties and [REDACTED] is no longer involved and has not been involved since August of 2010;
- 12b. This pleading relates to an allegation of a matter of law and is an inappropriate pleading.
13. In reply to paragraph 13 of the response to the orders sought by the applicant, the applicant rejects the respondents' pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 13 of the Points of Claim.
14. In reply to paragraph 14 of the response to the orders sought by the applicant, the applicant persists with the claim which will abide the event of trial in this matter. The respondents mere denial does not require a reply.

Background

15. The applicant denies the allegations contained in this pleading and pleads:
1. A document was produced and signed in October 2006 and the applicant paid in the order of \$55,000 in initial payments to the respondent based upon, relying upon and accepting in good faith as accurate and true, the representations, statements, warranties and covenants of the respondents.
 2. Across the subsequent months between October 2006 and February 2007, the applicant identified that the warranties and information from the respondents were not accurate and reliable in various and numerous respects. A series of negotiations proceeded with a series of variations to the tenancy terms.
 3. A document provided by the respondent's lawyers dated the 18th December 2006 contains and records some of those variations. Particularly, and without limiting the

generality of this pleading, that document records that rent review is varied with no rent review for three years and then to CPI.

4. This document was the product of identified inaccurate and unreliable statements by the respondents and negotiations arising from those misstatements.
5. This document contained details about council approval for shop 2. This was the first time the applicant had received notice that shop 2 was not approved. This information was a variation and inconsistent with earlier statements and warranties by the respondents. As a result of this notification, the applicant informed the respondent the applicant wished to abandon the tenancy for misleading and deceptive conduct.
6. This led to further negotiations.
7. The final conclusion of the negotiations were:
 - a. The premises as per title, 3/33084
 - b. Commencement Date: 1 November 2006;
 - b. Terminating Date: 31 October 2009;
 - c. Term: Three (3) years;
 - d. Option to Renew: Two (2) Option to Renew Periods of Five (5) years;
 - e. Rent: monthly \$6,500.00;
 - f. Outgoings: Applicant pay only, electricity, phone and water usage.
 - g. Rent Review: none for three years, then CPI
 - h. Permitted Use: Restaurant;
 - i. Bank Guarantee: Three (3) months rent plus GST (\$21 ,450.00); and
 - j. Sale of Fixtures and Fitting: the Lessor agreed to sell the Lessee all plant, equipment, fixtures and fittings in the Premises excluding all decorations, crockery, glassware, cutlery, unfixed Bain-Marie, pizza oven, fixed wooden partitions, leather I wooden table and seating arrangements for \$120,000.00 (exclusive of GST) (Purchase Price). Purchase price to the paid
 - i. \$25,000 paid on verbal agreement (non refundable);
 - ii. \$35,000 upon executing the lease;

iii. \$3,500 paid quarterly with the first quarterly payment due on the 1st of April 2007.

8. It was the responsibility of the Lessor to provide the final written lease containing all agreed terms at the Lessor's cost. The Lessor has never provided the final written lease containing all agreed terms at the Lessor's cost.
16. In reply to paragraph 16 of the defence, the applicant pleads that in terms of any subsequent tenancy after November 2009, there are no alternate written terms and no new disclosure statement. The terms of new tenancies were created by oral conversations between the applicant and [REDACTED]
17. No issue.
18. No issue.
19. The applicant will rely on the evidence to establish the applicant's payment of the security fund occurred and that the recipient of those funds were as the applicant has pleaded;. After the initial lease, guarantor arrangements were not discussed.
20. The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 20 of the Points of Claim.
21. The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 21 of the Points of Claim.
22. The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 22 of the Points of Claim. Further, in response to specific pleadings of the respondent in their defence, the applicant pleads:
- 22a. i. The respondents and particularly [REDACTED] knew from August 2010 that another company had replaced [REDACTED] as the operating company;
- ii. Further, [REDACTED] knew of all subsequent replacements of the trading company with the older trading company going out and new trading company commencing to operate the Indian restaurant business;

iii. Cheque payments were made which provided further notice to [REDACTED] that a new company was present and involved and operating the restaurant business. [REDACTED] paid attention to who the payee on cheques was as his pleading in paragraph 49 of his defence shows. Particulars of the cheques are:

- [REDACTED] Aug 2010 to March 2015 ([REDACTED] numbers provided)

- [REDACTED] April 2015 to April 2017 ([REDACTED] provided)

- [REDACTED] : May 2017 to date ([REDACTED])

22b. [REDACTED] knew before, November 2017 that [REDACTED] was de-registered and not involved;

22c. Denied and entirely rejected;

22d. This pleading is not sustainable as it relies upon the respondent's false assertion that [REDACTED] is still a tenant or the tenant which position has been varied by express verbal agreement between the parties and [REDACTED] is no longer involved and has not been involved since August 2010;

22e The application for immediate possession has no legal foundation and is resisted by the applicant.

First renewal and alterations to terms

23. In reply to paragraph 23 of the defence, The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 23 of the Points of Claim. The applicant pleads that:

23a There is an extensive history of informality during and after the initial lease term. The applicant will rely on the evidence to establish that the conversations occurred and that the terms of the conversations were as the applicant has pleaded;

- 23bi. That the tenancy which occurred after 2009 was an exercise of the renewal and a renewal and extension of the initial tenancy term or a 5 year extension, subject to variations that were agreed between the parties orally;
- 23bii. The applicant will rely on the evidence to establish that the substitution of the applicant's trading company from time to time occurred and that the respondents were aware, accepted the new corporate entity each time and did not raise any objection, due to their agreement as the applicant has pleaded;
- 23c. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.
24. In reply to paragraph 24 of the defence, The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained and set out in paragraph 24 of the Points of Claim. The applicant further pleads:
- 24a. The applicant will rely on the evidence to establish the respondent's knowledge of the applicant's corporate trading entities occurred and that the terms of the acceptance by the respondents of those entities were as the applicant has pleaded;
- 24b. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out;
- 24c. Rent was paid for this period of time in full. The applicant rejects the respondent's pleadings in its entirety and repeats and affirms the allegation and claim for relief contained as to cash payments set out in the Points of Claim and the payments spreadsheet. The applicant will rely on the evidence to establish that the payments occurred and that the details of payments were as the applicant has pleaded;
- 24d. Not required to pay any as per disclosure statement. Not required to pay under terms as finally agreed and set out in paragraph 15. Water payments were made as the

respondents threatened not to pay exposing the applicant to water disconnection to the restaurant.

- 24e. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.
25. In reply to paragraph 25 of the defence, This pleading is admitted. Consequences flow from the failure to provide written notice of the breach, failure to provide any opportunity to remedy the breach, and threatening termination of the lease and tenancy and lock out in the context of those contended omissions and failings. The applicant further pleads:-
- 25a. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.
- 25b. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.
- 25c. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out. In the alternative, the applicant pleads that \$102,500 was paid. The applicant will rely on the evidence to establish that the payments occurred and that the details of payments were as the applicant has pleaded. The applicant contends this default, if there was a default, does not justify termination and re-entry.
- 25d. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. The applicant has pleaded that there was no agreement to pay outgoings in the final terms of agreement. This pleading in its present form is flawed and defective and should be struck out.

25e. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out. The applicant persists with the contention that the security deposit was paid as set out in the pleadings and spreadsheet;

25f. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.

Subtext - Denied.

26. This pleading is an abuse of process. [REDACTED] knows whether he communicated with [REDACTED], solicitor or not regarding this matter and in this context. This pleading in its present form is flawed and defective and should be struck out.

27. The allegation that no written documentation dealing with the breach or opportunity for remedy was provided is admitted in paragraph 25 of the defence and denied here. The pleadings are duplicitous and misleading.

28. In reply to paragraph 28 of the defence, The applicant will rely on the evidence to establish that the payments occurred and that the details of payments were as the applicant has pleaded.

Further, the applicant pleads:

28a. Denied. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.

28b. Denied. Oral agreements between the parties involving cash payments do produce a lower rent.

28c. Denied. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy any breach was provided. This pleading in its present form is flawed and defective and should be struck out.

29. In reply to paragraph 29 of the defence, The applicant will rely on the evidence to establish that the demand for payment occurred and that the details of the demand and payments were as the applicant has pleaded. Further, the applicant pleads:

29a. Denied;

29b. Denied;

29c. Denied. This pleading and the information it is based upon is an intentional false pleading.

30. In reply to paragraph 30 of the defence, The applicant will rely on the evidence to establish that the demand for payment occurred and that the details of the demand and payments were as the applicant has pleaded.

31. The signed receipt provided by [REDACTED] for instalment payment appropriated towards the plant and equipment contributes this pleading. The balance of payments were made in cash making a total paid on the plant and equipment, the amount of \$102,500. The respondents' pleading is false.

32. The applicant joins issue with the respondent that, in all the circumstances, the applicant now contends that any breach pending at the time would not have justified lock out.

33. In reply to paragraph 33 of the defence, The applicant will rely on the evidence to establish that the demand for payment occurred and that the details of the demand and payments were as the applicant has pleaded. The applicant will further present legal argument that termination and lock out were not available in the circumstances Further, the applicant pleads:

33a The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out.

33b The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever

been provided. No opportunity to remedy a defined breach has been provided. The applicant alleges the final agreement imposed no obligation to pay outgoings. This pleading in its present form is flawed and defective and should be struck out.

33c The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out.

33d The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out.

34. This pleading and the information it is based upon is an intentional false pleading.

35. In reply to paragraph 35 of the defence, The arrangement to negotiate for an instalment arrangement was instigated by the applicant's wife, direct to [REDACTED] and subsequently occurred with the applicant's wife meeting [REDACTED] and [REDACTED] and an instalment arrangement being approved for payment of the \$85,000 in cash. Further:

35a. Denied. The applicant will rely on the evidence to establish that the meeting occurred and that the details of the meeting and payment arrangement agreed were as the applicant has pleaded.

35b. This pleading in the defence does not address any issue or relevant material in relation to the pleading in the Points of Claim. It is irrelevant.

35c This pleading and the information it is based upon is an intentional false pleading.

36. This pleading and the information it is based upon is an intentional false pleading.

37. In reply to paragraph 37 of the defence, The applicant will rely on the evidence to establish that the demand for payment occurred and that the details of the demand and payments were as the applicant has pleaded. Further, the applicant pleads:

- 37a. The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out;
- 37b. This pleading does not make sense and seems to be irrelevant.
38. In reply to paragraph 38 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. The tenancy continued for a further 3 years after this contended conversation.
39. In reply to paragraph 39 of the defence, The applicant will rely on the evidence to establish what the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. The tenancy continued for a further 3 years after this contended conversation. The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy the breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out;
- 39a. The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy breach. The applicant denies default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out.
- 39b. This pleading and the information it is based upon is an intentional false pleading. For the respondents to suggest that they would agree to a rent free period when they deny cash payments in the order of \$0.8 million at that time, which is the result of removing any credit for cash payments is unbelievable and a complete nonsense;
- 39c. The respondents admit in paragraph 25 that there was no notice of breach, no particulars of default and no opportunity to remedy breach. The applicant denies

default. No notice of default has ever been served. No particulars of default have ever been provided. No opportunity to remedy a defined breach has been provided. This pleading in its present form is flawed and defective and should be struck out.

40. In reply to paragraph 40 of the defence, the applicant joins issue with the respondents and further pleads:

40a. [REDACTED] was incorporated on the 13th of January 2017 and paid rent to the respondents before the 1st of November 2017 as well as the payments alleged in this paragraph of the Points of Claim;

40b. Agreed, other than the payment was full payment of November rent for shop 1;

40c. Agreed;

40d. Denied.

41. In reply to paragraph 41 of the defence, the applicant joins issue with the respondents and further pleads:

41a. This pleading and the information it is based upon is an intentional false pleading. No receipts were ever offered and declined. Some receipts were offered and taken which will be confirmed in lists of documents and verified on exchange in inspection;

41b. From September to December 2017, requests for tax invoices and receipts were made to [REDACTED] persistently. The requests were ignored. After this pleading in reply to paragraph 41, three requests were made to the respondents' solicitors which have been ignored. The applicant commenced to make requests for tax invoices and receipts after the applicant was informed that without them, the applicant could be liable for tax in the order of \$240,000. This issue was discussed by the applicant and [REDACTED] on several occasions between September and December 2017.

The renovation and extension of time agreement

42. In reply to paragraph 42 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. The renovation commenced and continued over two years after this contended conversation. The renovation has now been completed at a cost the applicant will itemise with

particularity but which is in the order of \$150,000 together with work performed by the applicant and associates which involved no charged cost. Further, the applicant pleads:

- 42a It is difficult to understand this pleading and reply to it. The respondent's case is that in consideration of the applicant (whoever that is finally determined to be) agreeing to do this renovation work, the respondents agreed to rent-free during the work. Now the respondents contend they were very upset about something without saying what. Further particulars will be required pertaining to this pleading. Clearly, in 2015 Anmol had been de-registered for 3 years and another company was involved as the respondents knew.
- 42b. Denied. The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded.
- 42c. Shop 2 had been part of the tenancy since 2006 with tables and chairs and other furniture in the shop for daily use. Cheque payments of \$750 per month commenced in 2013 and did not vary in 2015. The cheque payments had nothing to do with this alleged agreement. The alleged agreement is false and a recent invention of the respondents.
- 43d The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s and agreements were as the applicant has pleaded.
- 43e No issue.
- 43f Building plans were requested in writing in 2015 by email. The request was verbally refused. The respondents attended for rent collection and for religious meetings and there were discussions about the work and progress which the respondents looked at while it was underway. This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading;
- 42g This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading. The applicant paid rent as set out in the spreadsheet;

- 42h This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading;
- 42i. The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s and agreements were as the applicant has pleaded.
43. In reply to paragraph 43 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. Further:
- 43a. This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading;
- 43b. This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading;
- 43c. This pleading is denied in every respect and in relation to every contention or allegation. This pleading and the information it is based upon is an intentional false pleading.
44. In reply to paragraph 44 of the defence, The applicant contends the respondents' pleading is misconceived and wrong in law. The applicant's pleading that the terms of the residence tenancy were part of the renovation agreement is a proper and lawful pleading and requires a response in the respondents' defence. The applicant contends this pleading should be struck out or repleaded.
45. Agreed as to completion date and otherwise denied.
46. In reply to paragraph 46 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. Further:
- 46a. Paragraphs 9 to 11 of the Points of Claim and the respondents' pleaded defence to those paragraphs together with the allegations of the applicant and the response pleaded by the respondents to paragraphs 46 to 62 of the Points of Claim set out the basis and

background of the applicant's position on this issue. There is no variation to the appellant's position as made out.

- 46b. Repeat 46a.
- 46c. The applicant does not admit and puts the respondents to proof.
47. In reply to paragraph 47 of the defence, The applicant will rely on the evidence to establish that the payment history and methods and that the details of the payment history and methods were as the applicant has pleaded. Further:
- 47a. There are numerous instances of the respondents accepting cheques from the applicant's trading company in place from time to time over many years. Full details will be confirmed in lists of documents and verified on exchange in inspection. The implication that this is a one off instance is false;
- 47b. This pleading and the information it is based upon is an intentional false pleading in the context of this pleading.
48. In reply to paragraph 48 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded.
49. In reply to paragraph 49 of the defence, The applicant will rely on the evidence to establish that the events occurred and that the details of the events were as the applicant has pleaded.
50. No issue.
51. Confirm bank details were provided but contend the correct and full December shop rent was paid by EFT.
52. Confirm but contend the correct and full November shop rent was paid by this cheque.
53. In reply to paragraph 53 of the defence, The applicant contends the respondents' pleading is misconceived and wrong in law. The applicant's pleading that the terms of the residence tenancy were part of the renovation agreement is a proper and lawful pleading and requires a response in the respondents' defence. The applicant contends this pleading should be struck out or repleaded.

54. In reply to paragraph 54 of the defence, The applicant contends the respondents' pleading is misconceived and wrong in law. The applicant's pleading that the terms of the residence tenancy were part of the renovation agreement is a proper and lawful pleading and requires a response in the respondents' defence. The applicant contends this pleading should be struck out and repleaded. The applicant persists with the pleading and persists with the contention that it is a proper pleading in this matter. In the absence of a proper defence pleading, this applicant pleading should be taken as admitted.
55. Repeat paragraphs 54.

Proposed subdivision of shops 1 and 2

56. In reply to paragraph 56 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. Further:
- 56a. The shop was vacated by that date;
- 56b. Denied;
- 56c. Denied;
- 56d. Admitted and no use is being made of shop 2.
57. In reply to paragraph 57 of the defence, The applicant will rely on the evidence to establish that the conversation/s occurred and that the details of the conversation/s were as the applicant has pleaded. Further particulars will be sought from the respondents as to the purpose for which Valid sought access. Further:
- 57a. At the commencement of the tenancy in 2006 there were three openings between shop 1 and shop 2. The applicant has closed off two of them with timber frame and gyprock. The third remains open and will need to be closed off for the purposes of the proposed subdivision.
- 57b. The respondents have keys to shop 2 and the applicant denies that he has the only keys. The applicant further pleads that this issue of subdivision and a method of dealing with it is presently the subject of an application to the Tribunal for orders to address this matter.

58. No issue.

59. In reply to paragraph 59 of the defence, given the denial of the absence of mention of the relevant sections of the Retail Leases Act, the applicant contends it was incumbent on the respondents to plead the dealings with the relevant sections of the Retail Leases Act. Particulars will be pursued if not volunteered. This pleading with no particulars should be struck out.

Further:

59a This pleading is a misconception and error of law

59b The application for immediate position has no legal foundation and is resisted by the applicant.

60. In reply to paragraph 60 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions are as the applicant has pleaded. Further:

60a. This pleading is a misconception and error of law;

60b. The application for immediate position has no legal foundation and is resisted by the applicant.

61. In reply to paragraph 61 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions were as the applicant has pleaded. Further, the interim injunction order had been made when the defence was filed and served. Further:

61a. Repeat reply contained in paragraph 57a;

61b. This pleading is a misconception and error of law;

61c. The application for immediate position has no legal foundation and is resisted by the applicant.

62. In reply to paragraph 62 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions were as the applicant has pleaded. Further:

62a. This pleading is a misconception and error of law

62b. The application for immediate position has no legal foundation and is resisted by the applicant.

Renovation and Breach of Lease

63. In reply to paragraph 63 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions were as the applicant has pleaded. Further,

63a. Confirm the storm damage is admitted. The distinction pertaining to the premises is irrelevant as the damage was in shop 1.

63b. The applicant persists with the precise allegation of the date.

63c. The applicant will rely on the evidence to establish the extent of damage and that the details of the damage is as the applicant has pleaded.

63d. The emergency repairs were inadequate, incomplete and ineffective as to making the damaged premises usable by the applicant in the business. The premises we're not restored to the appropriate standard required for a retail shop. The respondents were pursuing an insurance claim;

63e. Denied. Arrangements were made on a Sunday (date) for the respondent to attend with his builder. He did not turn up for the appointment. The applicant will rely on the evidence to establish the extent of damage and that the details of the damage is as the applicant has pleaded and still unrepaired.

64. In reply to paragraph 64 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions were as the applicant has pleaded. Further,

64a. The applicant rejects this bare denial;

64b. This pleading and the information it is based upon is an intentional false pleading. The respondents are repeatedly neglectful, incomplete and slow as to maintenance and upkeep.

65. In reply to paragraph 65 of the defence, the applicant will rely on the evidence to establish that these contentions and that the details of the basis of the contentions were as the applicant has pleaded. Further,
- 65a. the applicant will rely on the evidence to establish that the contentions and the details of the basis of the contentions were as the applicant has pleaded and that the respondents pleadings are false.
- 65b. Denied.
66. The applicant relies on the respondents' admission. Further, without limiting the generality of the admission contained in paragraph 66:
- 66a. Agreed.
- 66b. Agreed.
- 66c. Agreed.
- 66d. Agreed.
- 66e. Denied.
- 66f. Denied.
- 66g. This is a serious and prejudicial failure by the respondent. This pleading is fundamentally defective in the context of allegations of cash payments. The respondent declines to provide details of cash rent payments confirmed as paid. In the absence of a full and complete pleading, the applicant seeks and the applicant respectfully suggests the Tribunal should grant default judgment. This is a premeditated and deliberate omission by this respondent to suit their own purposes. Pleadings cannot close and this case is inevitably delayed by this omission.
67. The applicant notes the defence repeats the paragraphs 65, including a and b in defence to this paragraph. The applicant repeats its reply to paragraph 65 in full by way of reply.
68. The applicant joins issue with the respondents' bare denial.

Demand

69. The applicant relies on the respondents' admission. Further, the applicant pleads that it is the respondents' case that there has been no rent for two years and there is presently no

agreement as to rent other than that put forward by the applicant. The respondents' pleading qualifying the rent is misleading and vague. Further:

69a. These contentions have been advanced by the respondent and rejected repeatedly with specific pleadings in this reply. The rejecting pleadings are repleaded;

69b. This pleading has no clear meaning and no relevance.

Reasons

70. The applicant joins issue with the respondents' mere denial.

71. The applicant joins issue with the respondents' mere denial.

72. The applicant joins issue with the respondents' mere denial.

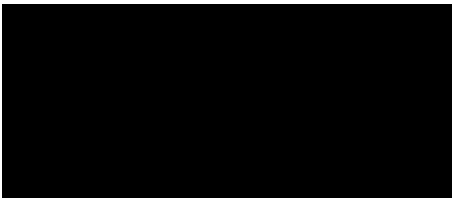
Damages

73. The applicant repeats the objection to the mere denials contained in paragraphs 73 to 79 and joins issue with the respondents. Grounds raised earlier in the defence are responded to with grounds earlier set out in this reply in response to the respondents' pleading in the defence.

Costs

The applicant persists with its claim for costs.

Dated: 2 March 2018

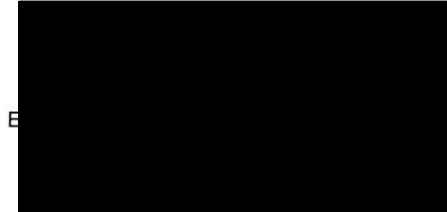


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Signed by Gurjit Singh
Applicant



NCAT
NSW Civil &
Administrative Tribunal



Mr Guriit Singh



Complaint No: C18/155
File no: COM 17/53291
COM 17/53297
RT 18/10018
RT 18/16723
AP 18/15303

Dear Mr Singh

I refer to your email of 4 April 2018 addressed to the President of NCAT, the Hon Justice [REDACTED] and to your email and webform of 16 April 2018 to the Attorney General about your concerns with the conduct of NCAT proceedings. The President has noted your comments and requested a response is prepared on his behalf. Accordingly, I respond to you in my capacity as NCAT's Principal Registrar and Executive Director.

You raise a number of matters about the listing of applications and about the directions made by Tribunal members. The issues raised have largely been overtaken by decisions and procedural directions made by the Tribunal in the retail lease applications and the residential tenancy applications before the Tribunal.

On 18 April 2018, the Appeal Panel dismissed your appeal of the interlocutory orders made on 6 March 2018 in the retail lease applications. That decision is final subject to any appeal to the Supreme Court of NSW.

The decision of 19 April 2018, which I note you did not appear at the hearing, to terminate your residential tenancy lease, is final subject to limited appeal or review avenues. They include an application to set aside or vary the decision under clause 9 of the *Civil and Administrative Tribunal Regulation 2013*, an appeal to the NCAT Internal Appeal Panel or an application for judicial review to the Supreme Court of NSW. An application to set aside or vary a decision must be made within 7 days of the decision and an appeal to the Appeal Panel must be made within 14 days of the decision. Both can be extended with leave of the Tribunal under section 41 of the *Civil and Administrative Tribunal Act 2013*. If you intend seeking judicial review, you should discuss the time limits with the Registry of the Supreme Court. Their contact number is 1300 679 272.

I note that the date of vacant possession, that is the date that you are to return possession of the residential tenancy to your landlord, will be determined by the Tribunal shortly, after the Tribunal considers the submissions of the parties.

If you intend pursuing any of the above options, you should seek your own advice. To assist with this, please find attached NCAT's Getting Help fact sheet which lists a number of organisations which may be able to provide you with information and, in some cases, advice.

On 30 April 2018, the Deputy President and Division Head of the Consumer and Commercial Division of the Tribunal made directions about the retail lease applications filed by your landlord and set the applications for hearing on 19 and 20 July 2018.

I note the other issues you raise and address them below:

Listing requests

You state that your requests made on 12 February 2018, 26 February 2018 and 6 April 2018 to list the applications were ignored by the Registry. The file record does not support this as the requests were considered and the applications relevant to your requests were listed accordingly on 6 March 2018 and 17 April 2018.

Stamping of documents

I note your comments about this issue, particularly about the lack of uniformity in how the Registries conduct this process.

There is no requirement, unless the Tribunal directs otherwise, for a party to attend a Registry to have the documents for another party stamped. The Tribunal will usually make a standard direction for a party to provide their document to the Registry and to the other party or parties. This means that you can mail your documents to both the Tribunal and to the other side, without needing to have the other side's copy stamped by the Registry.

Vary orders of tribunal members by team leaders

NCAT staff cannot vary Tribunal orders without direction from the Tribunal.

Transfer of your files from Sydney to Penrith

Your files, as you state, which are the applications about the Retail Lease, are case managed and listed in the Sydney Registry. The applications were transferred to the Penrith Registry for the listing of your return of summons, as a convenience to the parties, who reside in the area. The hearing of the applications on 19 and 20 July 2018 will take place in Sydney.

I trust this clarifies the issues for you.

Yours sincerely,



11/5/2018,