



Civil and Administrative Tribunal New South Wales

Medium Neutral Citation:	Lin v Cornish [2015] NSWCATCD 134
Hearing dates:	10 September 2015
Decision date:	27 October 2015
Jurisdiction:	Consumer and Commercial Division
Before:	C R Xuereb, General Member
Decision:	The respondents must pay \$1,237.00 to the applicant immediately. Rental Bond Services is directed to pay the landlord, Lin Tao, \$1,237.00 from Rental Bond Number E727494-1. Any amount received is to be credited against the money order. Any balance of the bond is to be paid to the tenants, Lindsay Cornish and Louise Coe.
Catchwords:	Outgoing condition report completed in absence of tenants, photographic evidence to establish state and condition of premises.
Legislation Cited:	Evidence Act 1995 Residential Tenancies Act 2010
Cases Cited:	Hall v Hawkins [2015] NSWCATAP 197
Category:	Principal judgment
Parties:	Tao Lin (applicant) Lindsay Cornish and Louise Coe (respondents)
Representation:	Ms Gail Preston (Applicant) In person (Respondents)
File Number(s):	RT 15/38833
Publication restriction:	Nil

REASONS FOR DECISION

APPLICATION

1 On 17 June 2015 application was made to the Tribunal on behalf of Tao Lin seeking an

- order regarding the payment of a rental bond. The respondents were the former tenants of the premises at Castle Hill under a Residential Tenancy Agreement (“lease”). The applicant was the landlord. The lease was dated 9 November 2012. The lease provided that the term of the tenancy was 52 weeks starting on 9 November 2012 and ending on 7 November 2013. The lease continued in force as a periodic agreement until the tenants vacated the premises on 1 June 2015.
- 2 The applicant claims that when the tenant vacated the premises the premises were left in a state which required further cleaning, the yard needed further cleaning, the premises had to be sprayed for pests, four keys were not returned, external light globes had to be replaced and there were repairs necessary to a letterbox.
 - 3 The monetary claims made in respect of each of the items were:
 - cleaning of premises – \$1,551
 - yard cleaning – \$150
 - pest spray – \$265
 - replacement of 4 keys – \$12
 - external global replacements – \$200 (approximately)
 - repairs to letterbox – \$75
 - 4 The application sought an order that the monetary claims be paid to the applicant out of the rental bond and any surplus be paid to the respondents.
 - 5 The matter came before the Tribunal for a conciliation hearing in a group list on 8 July 2015. The parties were unable to resolve the dispute at the conciliation hearing and the Tribunal gave directions in the form of orders about the future conduct of the proceedings.
 - 6 The orders required the applicant to provide the respondents and to the Tribunal all documents on which the applicant intended to rely at the hearing by 22 July 2015. The orders also required the respondents to provide to the applicant and to the Tribunal all documents on which they intended to rely by 5 August 2015. The applicant lodged the applicant’s documents on 21 July 2015 and the respondents lodged their documents on 6 August 2015. Both parties were ready to proceed when the matter came before the Tribunal for hearing on 10 September 2015.
 - 7 At the hearing, the applicant’s claim was amended. Further claims were made for pool repair and cleaning at a cost of \$420.00 and for the replacement of a top bedroom blind at a cost of \$575.00. However, the claim for the bedroom blind replacement was not pressed by the applicant at the hearing.
 - 8 The claim for cleaning was reduced from \$1,551.00 to \$1,410.00, the cost of the external global replacements was increased from \$200.00 (approximately) to \$330.00 and the letterbox repair was increased from \$75.00 to \$90.00. It appears that the discrepancy in the amounts claimed for cleaning was due to a miscalculation of the GST component.

JURISDICTION

9 The dispute between the applicant and the respondents arises from their relationship as landlord and tenants under a Residential Tenancy Agreement governed by the Residential Tenancies Act 2010. Part 9 of the Residential Tenancies Act confers jurisdiction on the Tribunal to hear and determine disputes.

EVIDENCE

10 The applicant was represented by Ms Gail Preston, Senior Property Manager, of Century 21 Castle Hill. Ms Preston gave evidence on oath.

11 The respondents appeared in person and both gave evidence on oath.

12 The applicant's documents included:

- an undated statement by Gail Preston
- a statement dated 20 July 2015 by Violet Hilton
- an ingoing and outgoing condition report
- 63 photographs taken at the commencement of the tenancy in November 2012
- an undated three-page document (prepared by the respondents at about the commencement of the tenancy in November 2012) comprising 19 headings, detailing various defects noticed by the respondents at the commencement of the tenancy
- 292 photographs taken at the end of the tenancy in June 2015
- a copy of an email dated 4 June 2015 sent by or on behalf of Gail Preston to Mr Lindsay Cornish, one of the respondents, forwarding an email received by the applicant's property manager in respect of internal cleaning, window cleaning and pool fence cleaning and internal glass cleaning, and other cleaning
- a "without prejudice" letter dated 5 June 2015 from Mr Lindsay Cornish to Jane Booty, Principal, Century 21 Castle Hill
- a copy of an email dated 19 July 2015 from United Home Services to Senior Property Management at Century 21 Castle Hill
- tax invoice dated 17 June 2015 from United Home Services, claiming \$830.00 (including GST) for a full vacate clean at the premises on 9 June 2015, claiming \$470.00 (including GST) for window cleaning, including the pool fence and internal glass doors and \$110.00 (including GST) for an oven clean on 9 June 2015 [the total claimed, including GST, is \$1,410.00]
- 5 photographs taken by Gina Kolotas
- a tax invoice/statement dated 18 June 2015 from Neil's Mowing & Garden Care Pty Ltd claiming \$150.00 (inclusive of GST) cleaning up the backyard and surrounds
- a tax invoice dated 17 June 2015 from VNJ Pest Management Services Pty Ltd claiming \$265.00 (inclusive of GST) for internal and external flea spray
- a tax invoice dated 22 June 2015 from MJ Handyman Services claiming \$90.00 (inclusive of GST) for the installation of a new lock to the mailbox
- a tax invoice dated 3 July 2015 from PoolWerx claiming \$420.00 (inclusive of GST) for unblocking an in-floor cleaning system in the swimming pool

- a copy of an email dated 3 July 2015 from PoolWerx to Matt Towns (of Century 21 Castle Hill)
 - a quote dated 1 July 2015 from Wynstan Baulkham Hills quoting \$575.00 for the replacement of a venetian blind
 - a tax invoice dated 23 June 2015 from All Climates Air Conditioning & Electrical Pty Ltd for \$330.00 the replacement of 2 porch lights and 2 garage sensor lights
 - the front page of the lease, together with 4 special conditions
- 13 The respondents' documents included:
- a chronology
 - affidavit of Lindsay Andrew Cornish sworn 5 August 2015 (attaching Annexures A, B (which includes 34 photographs), C, D, E, F, G, H which includes 5 photographs), I, J, and K)
 - affidavit of Louise Bernadette Coe sworn 5 August 2015
- 14 There is no dispute that the respondents were not present during the outgoing inspection. There is also no dispute that the premises were in need of some further cleaning after the respondent vacated the premises. The challenge to the applicant's claim made by the respondents is that the cleaning claim is excessive.
- 15 The respondents also contended that little weight should be given to the outgoing condition report as they were not present during the inspection from which the outgoing condition report was formulated. Furthermore, they contended that the information provided in the email dated 4 June 2015 from the applicant's managing agent to the respondents in relation to the outline of the major cleaning to be done was not particularised.
- 16 The tax invoice for \$1,410 from United Home Services distributed the cost incurred as follows:
- full vacate clean – \$830.00, including GST
 - window cleaning including the pool fence and internal glass doors – \$470.00 including GST
 - oven clean – \$110.00, including GST

The United Home Services Tax Invoice

- 17 The email from United Home Services detailing the work necessary had some general references that also contain some descriptive comments. These included:
- all built-in wardrobes in four bedrooms to be cleaned
 - all skirtings to be cleaned
 - all wood railings to be cleaned
 - cobwebs throughout to be removed
 - separate toilet to be cleaned and sanitised
 - kitchen with the eat in area and sitting area – inside and out of all kitchen cupboards very dirty
 - kitchen bench area extremely dirty

- internal oven clean – oven racks and baking tray very dirty
- range hood clean – filter and external extremely dirty
- air conditioning ducts x 2 to be cleaned in kitchen area
- air-conditioning return to be cleaned and filter removed and cleaned
- light fittings downstairs to be dusted – oyster light fittings with bugs to be removed and cleaned
- dishwasher to be cleaned – filters and arms removed, internal door to be cleaned
- stainless steel pole in kitchen to be cleaned
- internal of all laundry cupboards to be cleaned
- powder room to be cleaned and sanitised
- cobwebs to be removed from garage and garage swept
- window cleaning inside and out (downstairs), inside only of upstairs and inside and out of the upstairs balcony
- all window sills and tracks extremely dirty
- internal glass doors to be cleaned
- glass pool fence to be cleaned
- wall washing and spot cleaning required throughout
- cleaning of paved areas
- timber blinds and Venetians to be feather dusted only
- bannister cast-iron to be cleaned
- all internal cupboards to be cleaned throughout
- all doors washed to remove dirty hand marks

Yard cleaning invoice

18 An invoice dated 18 June 2015 from Neil's Mowing and Garden Care Pty Ltd indicates that on 11 June 2015 the garden was cleaned under the pine trees and also down the passage near the hot water tank for a cost of \$150.00.

Pool service invoice

19 An invoice dated 3 July 2015 from Baulkham Brook Pools t/a PoolWerx indicates a charge of \$420.00 for labour to unblock an in floor cleaning system in the swimming pool.

Electrician's invoice

20 An invoice dated 23 June 2015 for \$330.00 has been raised for the cost to replace four downlight globes and two screw in globes. The materials were \$30.00, the service call was \$90.00 and labour charges were \$180.00 (for two hours' work).

The respondents' case

21 Mr Cornish was adamant in his evidence that much of the work referred to in the email and subsequent tax invoice of United Home Services was unnecessary.

22 In his affidavit sworn on 5 August 2015 Mr Cornish deposes that on 9 May 2015, the respondents gave a notice of termination of the lease to the landlord's agent which provided for a termination date of 1 June 2015.

23 Mr Cornish then states in paragraph 33 of his affidavit:

"Over the next several weeks the second respondent, her daughter, my sister and I made genuine efforts to ensure the property was cleaned prior to vacating. I had recently purchased a quality pressure washer that I used to wash down all pavers at the front, side and rear of the property and these were as clean as I could make them, and cleaner than they were at the commencement of the tenancy".

24 Mr Cornish continues in paragraph 34 of his affidavit:

"Prior to 2 June 2015, I cleaned the outside of all kitchen cupboards and these were very clean. I was in the kitchen watching as the second respondent wiped out the inside of the kitchen cupboards including the pantry. I concede that it is possible that some cupboard may have been missed, however this was never specifically brought to my attention during the outgoing inspection."

25 In relation to the oven, Mr Cornish states in paragraph 35 of his affidavit:

"Prior to vacating, I removed all removable racks and trays from the oven and cleaned them thoroughly. I also used oven cleaner to clean the inside of the oven cabinet. Apart from some corrosion and marks that I was unable to remove, the oven was very clean."

26 Regarding the range hood, Mr Cornish states in paragraph 36 of his affidavit:

"I also removed the filters in the range hood and washed these in soapy water. They were very clean and did not require any additional cleaning. The kitchen bench tops were all wiped down, however I concede there were some streak marks left from the cleaning product used."

27 Mr Cornish's evidence in relation to the cleaning of the upstairs air-conditioning return air grill and filter appears in paragraph 37 of his affidavit where he deposes:

"I removed the filter from the upstairs return of the air-conditioning unit and washed in accordance with the manufacturer's instructions before allowing it to dry and replacing it."

28 In his oral evidence, Mr Cornish amplified his description of the manner in which he cleaned the upstairs air-conditioning grill and filter. He stated that he physically removed the grill as well as the filter and cleaned both with the high pressure washer he had recently purchased.

29 As to the bathrooms, Mr Cornish states in paragraph 38 of his affidavit:

"I personally check (sic) all bathrooms in the property and saw they were clean and free from any mould (unlike when we moved in)."

30 In paragraph 39 of his affidavit, Mr Cornish concedes some issues:

"I concede that some additional cleaning could have been carried out including dusting of some of the window sills and skirting boards that had been missed, cleaning some of the internal glass surfaces and cleaning the insides of any cupboards that had been inadvertently left unclean. I refute that cleaning was required to the value of \$1410."

31 In paragraph 42 of Mr Cornish's affidavit, Mr Cornish recounts the following conversation between himself and Ms Preston at the time appointed for the outgoing inspection:

Ms Preston: "Look, there's quite a few things that need doing here."

Mr Cornish: "Can you just write down what you think needs doing so we can look at them?"

Ms Preston: "Oh no, there's too much to write down it would take me a while.

What it needs is a full vacate clean. I can call the company we use and get a quote from them if you'd like."

Mr Cornish: Alright, why don't you can call (sic) them with what needs to be done and see how much it would be."

- 32 Mr Cornish contends that he did not see a copy of the condition report completed by Ms Preston on 2 June 2015 until the commencement of the Tribunal proceedings. This does not appear to be in issue between the parties. Mr Cornish also contends that he was not given reasonable notice to attend the premises while the condition report was completed. He states that, except to the extent that he has conceded matters in his affidavit, he disputes the contents of the outgoing condition report.
- 33 Mr Cornish also disputes the claim in relation to cleaning of the yard, stating that gardening is the responsibility of the landlord, not a tenant.
- 34 In relation to the external globe replacements claim, Mr Cornish, states in his affidavit that at the commencement of the tenancy there were a number of globes which were blown, including downlights on the front porch, the lights adjacent to the garage door, pool lights and rear garden lights. On page 22 of the respondents' documents, a contemporaneous report prepared by the respondents at about the time the tenancy commenced confirms that there were at least four globes blown when the lease commenced. That document appears not to be disputed by the applicant as the applicant has also included that report in the applicant's documents. Mr Cornish also points out that the electrical repair work was not carried until 23 June 2015, some three weeks after the respondent vacated the premises.
- 35 As to the claim for the pool repairs, Mr Cornish, both in his affidavit and in oral evidence, indicated that the pool was to be serviced weekly at the expense of the landlord. Mr Cornish disputes any liability on the part of the respondents in relation to the pool maintenance.
- 36 Ms Coe, the other respondent, also swore an affidavit on 5 August 2015.
- 37 After confirming that on 9 May 2015, the respondents gave notice to terminate the lease on 1 June 2015, Ms Coe in paragraph 15 of her affidavit deposes that:

"Over the next several weeks the first respondent, my daughter, my sister-in-law and I prior to 2 June 2015, cleaned the house extensively. My daughter and I, in particular spent 2.5 hours cleaning the property on Friday, 29 May 2015. On Saturday 30 May, myself, the first respondent and his sister cleaned for five hours. I had already vacuumed and mopped all floors and my sister-in-law brought over a steam mop and power head vacuum cleaner and redid all floor areas. I commenced wiping all blinds. There were approximately 21 very large windows/glass doors in the property which had white wooden venetian blinds. There were also 7 internal French pane glass doors which were individually cleaned. I cleaned all glass doors and I started to clean the white wooden venetian blinds, however when I wiped the individual venetians, flakes of white paint were starting to peel. I decided to use the vacuum cleaner attachment to remove the dust as I could see the blinds were damaged by the sun and aged and I did not want to remove any more paint. I recall that when we moved into the property the blinds had not been recently cleaned and I believe my efforts to remove surface dust would return the blinds the same condition as when we moved in."

38 In paragraph 17 of Ms Coe's affidavit she states:

"Along with the first respondent we wiped around the skirting boards in the house and attended to any visible marks on the walls. We also wiped the windowsills, however the first respondent informed me that we had missed a couple of windowsills downstairs."

39 Regarding the bathrooms, Ms Coe in paragraph 18 of her affidavit states:

"I cleaned all bathrooms with Domestos and Windex to ensure that they were clean and hygienic. This was a normal weekly practice during the tenancy to maintain a hygienic environment for my family."

40 In the respondents' documents, they provide a chronology which refers to an offer to settle on 5 June 2015. The terms of the offer are set out in a document marked "without prejudice". The Tribunal notes that the substance of the evidence referred to in that letter has been disclosed with either the express or implied consent of all persons in dispute (See s 131(2)(b) of the Evidence Act 1995).

41 In that letter, Mr Cornish refers to what he describes as an outrageous quote for a massive cleaning bill of over \$1,400. He suggests that the quote appears to be an itemised list of what could be cleaned as part of a thorough vacate clean but bears no relevance to the actual condition of the property. He then sets out a table which provides the following perspective of the respondents' position regarding the cleaning:

- the kitchen cupboards were thoroughly cleaned inside and out, including kick boards, and required no further cleaning.
- the oven was thoroughly cleaned prior to vacating and was exceptionally clean, both inside and out.
- the range hood was cleaned both inside and out. Filters were removed and cleaned and do not require additional cleaning.
- The air conditioning filter had been removed and cleaned along with the vent and required no additional cleaning.
- The kitchen bench had been thoroughly cleaned. There may have been streak marks from the cleaning product but the term "extremely dirty" is simply false.
- All paved areas, both front and back, were thoroughly cleaned with a pressure cleaner prior to vacating and required no additional cleaning.
- All bathrooms were cleaned and sanitised using "Domestos" type products.

42 In that letter Mr Cornish disputes the allegation that further cleaning was required with the exception of some minor work in areas that the respondents may have missed "such as some blinds and windowsills being dusty and some glass requiring cleaning".

43 The ingoing condition report records a number of deficiencies in the state of cleanliness of the property. The Tribunal will note those deficiencies which have relevance to the current proceedings. The laundry is noted as having very dusty/dirty walls. The ensuite bathroom had mould in the shower recess and some missing grout. The blinds in bedrooms 3 and 4 were dusty. A small amount of grout was missing in the main bathroom. The entertainment area in the exterior part of the premises were dirty.

44 The document created by Mr Cornish and delivered to the landlord's agent on 16 November 2012 which elaborated on the ingoing condition report also records a number of defects in the property. The deficiencies which have relevance to the current

proceedings indicate that a down light was not working in the stairs area. In the front exterior of the premises, one globe next to the garage door was blown and a halogen light in the garden next to the driveway was also inoperable. A light on the porch did not work. At least two garden lights were not working.

- 45 Photograph LC 22 annexed to Mr Cornish's affidavit shows household rubbish, including cardboard scraps, an aerosol can, a shampoo bottle, some building debris and a tennis ball on the left hand side of the house. Mr Cornish deposes that the photograph was taken at about the time that the ingoing condition report was completed.
- 46 Photographs LC 35 to LC 42 depict the state of dishevelment in which Mr Cornish deposes that the side yard was left after the landlord arranged the replacement of a dividing fence. The fence was replaced in or about September 2014.
- 47 Apart from asserting that the premises were left in a substantially clean state, the respondents contended that because the respondents were not present when the inspection was carried out for the purposes of the outgoing condition report little or no weight should be given to the outgoing condition report.
- 48 The respondents did not seek to reinspect the premises after Mr Cornish received the email from the landlord's agent on the afternoon of Thursday, 4 June 2015 providing the quoted figures for the various aspects cleaning which were stated to be necessary by United Home Services. Rather, the tenants sent a letter dated 5 June 2015 marked "without prejudice" to the landlord's agent providing the landlord's agent with two options:
- acceptance of a cash settlement "to attend to the minor cleaning work required in the areas of the property that we may have inadvertently missed"; or
 - if the cash offer was not acceptable and the landlord's agent persisted "with its false claims as to the cleaning required at the property", the tenants would take action against the landlord's agent and make claims against the landlord for previous breaches of the lease.
- 49 One of the breaches referred to related to the the lack of water efficiency devices being installed in the premises. This issue is dealt with in paragraphs 28, 29, 30 and 31 of Mr Cornish's affidavit sworn on 5 August 2015. Mr Cornish deposes to an agreement, as a show of good faith, to pay half water usage charges during the period when the water efficiency devices were not installed.
- 50 The other breaches referred to related to inoperable spa over the summer of 2014/2015 through period of three months and the removal of bamboo screening at the front of the home that reduced privacy. The breaches are referred to in paragraphs 17, 21, 22, 23 and 24 of Mr Cornish's affidavit. Each of the issues which the tenants contend are breaches appear to have been within the tenants' awareness for more than three months as at the date the "without prejudice" letter was written and therefore outside of the prescribed period for making a claim.

The applicant's case

- 51 The landlord relies on the outgoing condition report. It is common ground that the inspection for the outgoing condition report was carried out in the absence of the tenant. Ms Preston gave evidence that the inspection was carried out some time after Mr Cornish left the premises on 2 June 2015. Without repeating each outgoing comment contained in the report, the landlord's agent noted many aspects of the premises as being "dirty", "dusty" and "needs cleaning".
- 52 Ms Preston's evidence is corroborated by a written statement dated 20 July 2015 from Violet Hilton who described the house as at 2 June 2015 as "quite dirty".
- 53 The landlord's case is supported by some 292 photographs purportedly depicting the state of the premises immediately following the tenants' vacation of the property.
- 54 Without dealing with each photograph individually, the 292 photographs taken by the landlord show that the premises were in need of an extensive clean.
- 55 Taking some examples, the landlord's photographs show that the kitchen area and the appliances in that area were in need of significant additional cleaning. The oven racks and trays were covered in grease, the hinged door of the oven was greasy. The base of the oven was dirty. The range hood was greasy. The cook tops were in need of a substantial clean.
- 56 The landlord's photographs also show dirt to the interior floor and track to the patio, dirty skirtings, dirty windows, un-vacuumed areas, particularly in the internal storage areas, unclean light fittings, dirty windowsills, an unclean shower door frame, an unclean bathroom floor, an unswept laundry floor, some heavily marked exterior tiles and streaky pool safety fence glass.
- 57 Party decorations and party lights are shown in the landlord's photographs as not having been removed. Photographs of the garage floor show an accumulation of dirt. Cobwebs are shown on the garage window and the garage window tracks are shown to be in a dirty state. The floor of the powder room needed additional cleaning.
- 58 The photographs indicate that the cleanup that was necessary would have been significant and time-consuming.
- 59 In an email dated 19 July 2015 from United Home Services to the landlord's agent provides a detailed list of what was alleged to have been required by way of cleaning. The email report indicates that the author, Gina Kolotas, was of the opinion that a vacate clean had not been carried out, and further, that no attempts had been made to clean the property. She states that there was not one surface which didn't need some attention. She also asserted that the glass of the French doors also need cleaning.
- 60 Ms Kolotas recorded in her email that windows, tracks and sills had not been cleaned for some time.
- 61 The email states that the cleanup took two cleaners two working days to complete. It was asserted that the cleanup took a total of 13 hours for two people.

LEGISLATION

62

The legislation relevant to these proceedings is:

Residential Tenancies Act 2010

29 Condition reports

- (1) A condition report relating to the condition of residential premises on a day specified in the report must be completed by or on behalf of a landlord before or when the residential tenancy agreement is given to the tenant for signing.
- (2) Two copies of the condition report must be given by the landlord or landlord's agent to the tenant before or when the tenant signs the residential tenancy agreement.
- (3) The tenant must complete and give one copy of the condition report to the landlord or landlord's agent not later than 7 days after receiving it and both the landlord and the tenant must retain a copy of the report.
- (4) At, or as soon as reasonably practicable after, the termination of a residential tenancy agreement, the landlord or landlord's agent and the tenant must complete the copy of the condition report retained by the landlord or the tenant under this section, in the presence of the other party.
- (5) It is not a breach of subsection (4) for the condition report to be completed in the absence of the other party if the party completing the report has given the other party a reasonable opportunity to be present when it is completed.
- (6) A condition report is to be in the form prescribed by the regulations and may be included in a prescribed standard form of residential tenancy agreement.

30 Condition report evidence of condition of premises

- (1) A condition report that is signed by both the landlord and the tenant is presumed to be a correct statement, in the absence of evidence to the contrary, of the state of repair or general condition of the residential premises on the day specified in the report.
- (2) This section does not apply:
 - (a) to any matter that could not have reasonably been discovered on a reasonable inspection of the premises, or
 - (b) to any statement in the report about which the tenant makes a written dissenting comment on the copy of the report completed by the tenant and retained by the landlord.

51 Use of premises by tenant

- (3) On giving vacant possession of the residential premises, the tenant must do the following:
 - (a) remove all the tenant's goods from the residential premises,
 - (b) leave the residential premises as nearly as possible in the same condition, fair wear and tear excepted, and, if there is a condition report, as set out in the condition report applicable to the premises when the agreement was entered into,
 - (c) leave the residential premises in a reasonable state of cleanliness, having regard to the condition of the premises at the commencement of the tenancy,
 - (d) remove or arrange for the removal from the residential premises of all rubbish, having regard to the condition of the premises at the commencement of the tenancy,
 - (e) return to the landlord all keys, and other opening devices or similar devices, provided by the landlord to the tenant.
- (4) In this section:
residential premises includes everything provided with the residential premises (whether under the residential tenancy agreement or not) for use by the tenant.
- (5) This section is a term of every residential tenancy agreement.

DETERMINATION

63 The respondents' case was argued on two principal bases:

- that little or no weight should be given to the outgoing condition report because the respondents were not present when the inspection giving rise to the outgoing condition report occurred; and
- that the premises were left in a substantially clean state.

64 Dealing with the respondents' first argument, the Appeal Panel of this Tribunal has recently made a determination on the effect of section 30 (1) of the Residential Tenancies Act 2010. In *Hall v Hawkins [2015] NSWCATAP 197*, at paragraphs 60 – 64, the Appeal Panel has stated:

60 It can be seen that s 29 of the RT Act establishes a regime for the preparation of reports on the condition of premises the subject of residential tenancy agreements under the RT Act. These are known as "condition reports" and, as provided in subs (6), their form is prescribed by cl 6 and Sch 2 of the Residential Tenancies Regulation 2010 (NSW). The first part of the report is to be completed by both parties at the beginning of the tenancy: subs (1), (2) and (3). Copies of the report are to be kept by both the landlord and the tenant: subs (3). The second part of the report is to be completed at the end of the tenancy by each party on the other party's copy in the presence of the other party: subs (4). To take account of the situation where, on termination, one party fails to fulfil its obligations to complete the condition report in the presence of the other party, subs (5) provides it is not a breach of the subs (4) if the party who is present has given the other party a reasonable opportunity to be present when the condition report is completed.

61 Section 30(1) contains a rebuttable evidentiary presumption concerning condition reports. If a condition report is signed by both landlord and tenant it is presumed to be a correct statement of the state of repair or general condition of the residential premises on the day specified in the report, in the absence of evidence to the contrary.

62 At least three significant features of this presumption flow from the terms of s 30(1). First, the presumption only arises if the condition report "is signed by both the landlord and the tenant". If it is not signed by both parties, the fact that the other party was given a reasonable opportunity to be present when the report was completed under s 29(5) is irrelevant. In other words, giving the other party a reasonable opportunity, in accordance with s 29(5), to be present at a termination inspection and the completion of the condition report you are limited to variants at about does not attract the operation of the presumption in respect of that report. For this reason, the discussion by the Tribunal below of whether the tenant was given a reasonable opportunity to be present at the inspection on 6 January 2015 was not relevant to the question of whether the condition report was presumed to be correct.

63 Secondly, s 30(1) establishes only a rebuttable evidentiary presumption that certain information is correct. This follows from the inclusion of the qualifying words "in the absence of evidence to the contrary" in the subsection. Section 30(1) does not render a condition report completed by only one party and not signed by the other party inadmissible, or unable to be relied upon, to establish the condition of the premises at the relevant time. In so far as a party uses a form similar to a condition report to record that party's observations as to the state of the premises at the relevant time, it can be relied upon and the Tribunal should treat it as it would any other record of observations by a witness.

64 Thirdly, s 30(1) does not deprive evidence, other than a condition report signed by both parties, of cogency or reliability. The statement made by the Tribunal below that "[a]lthough photos can be useful evidence, the most cogent evidence is a compliant condition report" may be true in a particular case, but that will depend on all of the evidence considered in the particular circumstances of the case. Such a statement is not correct as a proposition to be applied in all cases or even as a general rule to be applied without regard to all of the evidence. Section 30(1) does not provide a basis for

rejecting or ignoring photographic or other evidence as to the state of the premises at the relevant time, where that evidence happens not to be contained in a condition report signed by both the landlord and the tenant.

- 65 On the basis of this decision, the validity of the respondents' first argument is diminished. The decision makes it clear that the provisions of section 30 (1) do not preclude the admission of other evidence to establish the state of the premises at or about the time of a tenant vacating the premises..
- 66 Dealing with the respondents' second argument that the premises were left in a substantially clean state, the email dated 19 July 2015 from Gina Kolotas to the landlord's agent, together with the large number of photographs produced by the applicant, support the applicant's case that the premises were in need of a major cleanup. This is so despite, no doubt, the many hours which may have been spent by the respondents and their family members in trying to present the large residence in as good a state of cleanliness as was possible when they vacated.
- 67 The applicant's evidence was that the work carried out by United Home Services which was detailed in the invoice dated 17 June 2015 at a cost of \$1,410.00 engaged two persons for 26 hours. This equates to a labour cost of about \$54.00 per hour (not taking into account any allowance for cleaning products and other consumables, the cost of which were presumably built into the total of the invoice).
- 68 The deficiencies in relation to the state of the premises at the commencement of the lease were the subject of Mr Cornish's evidence. The laundry had very dusty/dirty walls. The ensuite bathroom had mould in the shower recess and some missing grout. The blinds in bedrooms 3 and 4 were dusty. A small amount of grout was missing in the main bathroom. The entertainment area in the exterior part of the premises were dirty. If the premises were in that state at the commencement of the lease, the landlord should not be entitled to the cost of cleaning those areas at the end of the lease. The time to undertake the work necessary to make good those matters is assessed by the Tribunal is two hours. Accordingly, \$108.00 is deducted from the applicant's claim.
- 69 The Tribunal accepts Ms Coe's evidence that the attempts made to clean the blinds were causing damage to them due to their age and state of repair. No evidence has been adduced that the state of repair was other than the result of fair wear and tear. The email from Gina Kolotas tends to confirm the poor state of the blinds as Ms Kolotas indicates the timber blinds and venetians were feather dusted only. Although neither party gave any evidence about how many blinds were located in the premises, the ingoing inspection report records at least 31 blinds. Assuming that the cleaners spent 10 minutes feather dusting each blind, ensuring that the dust was carefully removed without further damaging the blind, the total time expended would have been about five hours. The Tribunal finds that the cleaning of the blinds by Ms Coe was satisfactory in the circumstances of both the condition in which they were at the commencement of the lease and the state of repair which prevailed at the end of the lease. Accordingly, \$270.00 will be deducted from the applicant's claim in relation to blind cleaning.

- 70 Another part of the applicant's claim is made for cleaning of paved areas. The evidence is that the external paved areas were cleaned by United Home Services on either 9 June 2015 or 10 June 2015. The photographs produced by both parties show that the external paved areas were extensive. External paved areas are exposed to the elements. At least one week had elapsed from the date when the respondents vacated the premises until the work was carried out by United Home Services. In any urban environment, there will always be some accumulation of leaves and debris to external areas. This is a natural phenomenon. Based on the photographic evidence about the extent of the paved areas, the Tribunal assesses that the time expended in cleaning the paved areas would have been three hours. Accordingly, there will be a reduction of \$162.00 from the applicant's claim in respect of this aspect.
- 71 Although the Tribunal does not accept Ms Kolotas' assertion that "no attempts had been made to clean the property" by the respondents, the Tribunal finds, on the evidence before it, on the balance of probabilities, that the rest of the cleaning work detailed in the email dated 19 July 2015 and in the tax invoice dated 17 June 2015 was necessary.
- 72 On the claim for the work carried out by United Home Services, the Tribunal finds that the respondents are liable to pay \$870.00.
- 73 The evidence given by Mr Cornish about the yard cleaning invoice persuades the Tribunal that the state of the yards at the end of the lease was no worse than the state of the yards at the commencement date of the lease. Accordingly, the claim made by the applicant for an order that the respondents be reimbursed the invoice cost of Neil's Mowing and Garden Care Pty Ltd is rejected.
- 74 The lease provided that the cost of the pool maintenance was included in the rent and was the landlord's responsibility. The pool repair claim was necessary because "The debris in the suction point sucked a pool toy cord into the plates bonding the debris into a solid mass needing total disassembly of the suction point and plates to allow full flow once again." The landlord assumed liability for weekly pool maintenance. Any clogging of the suction point should have been noticed by the regular maintenance provider well before the pool toy cord bonded the debris into a solid mass. The claim for the cost of the pool repairs is rejected.
- 75 The evidence given by Mr Cornish about the state of repair of the light globes also persuades the Tribunal that the condition of the electrical fittings at the end of the tenancy was no worse than the condition in which the respondents found the premises at the beginning of the tenancy. Accordingly, the applicant's claim in respect of the electrician's account is rejected.
- 76 During the hearing, the respondents conceded that they were liable to pay for the following items:
- pest spray – \$265.00
 - replacement of 4 keys – \$12.00
 - repairs to letterbox – \$90.00

- 77 In addition to the above agreed items, the Tribunal has found that the respondents are liable to pay \$870.00 for the cleaning of the premises.
- 78 There will be an order that the respondents are to pay \$1,237.00 to the applicant forthwith.

ORDERS

- (1) The respondents must pay \$1,237.00 to the applicant immediately.
- (2) Rental Bond Services is directed to pay the landlord, Lin Tao, \$1,237.00 from Rental Bond Number E727494-1. Any amount received is to be credited against the money order. Any balance of the bond is to be paid to the tenants, Lindsay Cornish and Louise Coe.

C R Xuereb**General Member****Civil and Administrative Tribunal of New South Wales****27 October 2015**

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.
Registrar

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Decision last updated: 07 January 2016