

AUSTRALIAN CAPITAL TERRITORY RESIDENTIAL TENANCIES TRIBUNAL

CITATION: ABDEL-MASSIH V STEELE & HARTLEY [2008] ACTRTT (12)

RT 250 of 2008

Catchwords: Tenants' obligation under clause 64 (b)
Compensation

Issues: Evidence of condition of premises

Legislation: *Residential Tenancies Act 1997 (ACT)*
Sections 104;
Prescribed terms: 64

Tribunal: Jann Lennard, Member

Date: 17th September 2008

AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES TRIBUNAL

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) NO: RT 250 of 2008

RE: **Mary ABDEL-MASSIH**
(Lessor)

AND: **Brendan STEELE & Sharon
HARTLEY**
(Tenants)

DECISION

Tribunal: **J Lennard**, Member

Date: **6 May 2008**

Decision:

1. **That the Office of Rental Bonds is directed to release \$1409.05 to the tenants forthwith.**

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Jann Lennard - Member
17th September 2008

AUSTRALIAN CAPITAL TERRITORY
RESIDENTIAL TENANCIES TRIBUNAL

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) NO: RT 250 of 2008

RE: **Mary ABDEL-MASSIH**
(Lessor)

AND: **Brendan STEELE & Sharon
HARTLEY**
(Tenants)

REASONS FOR DECISION

Jann Lennard, Member

Re: Premises at 30 Walton Street, ISAACS. ACT 2607

1. The lessor and the tenants entered into a Residential Tenancy Agreement in relation to premises at 30 Walton Street Isaacs on 23 March 2007. The agreement was for a fixed term from 1 April 2007 to 1 April 2010 at a rent of \$490 per week. A bond of \$1960 was paid by the tenant and lodged by the lessor.
2. On or about 22 January 2008 the tenants gave notice to the lessor of an intention to breach the agreement and vacate the premises. The lessor accepted this notice. The new tenants moved into the premises on the day the respondents moved out.
3. The lessor lodged a Refund of Bond Form on 12 March 2008. The lessor claimed an amount of \$1619.05. The tenant disputed the claim. The dispute was conferenced before a senior registrar of the Residential Tenancies Tribunal on 15 April 2008. The tenants agreed to pay an amount of \$210 for the cost of cleaning the carpets, but denied that they were liable for any other amount. The lessor claimed an amount of approximately \$1300 relating to general repairs and painting. The lessor did not provide quotes or invoices in support of her claim.
4. The Residential Tenancies Tribunal heard the matter on 6 May 2008. The Residential Tenancies Tribunal heard the following evidence:
 - a. Un-contradicted evidence from the tenants that the lessor had not supplied a condition report or inventory at the commencement of the tenancy. The tenants had prepared an inventory report on 1 April 2008 and provided a copy to the lessor. The original was in evidence before the tribunal. It describes premises in an average condition, showing considerable signs of wear and tear. The lessor gave evidence that the premises had been rented for a period of about 20 years.
 - b. No final inspection report had been complied. The lessor had conducted a 'final' inspection on 11 February 2008; one week after the new tenants had taken up occupation. No written report of this inspection was ever made and no formal demand for repair was made upon the tenants. The tenants gave evidence that the lessor's son had contacted them by phone and informed them that the lessor would be claiming \$1600 from the bond.
 - c. The lessors provided a quote for the costs of repainting the premises and undertaking minor repairs. The quote was for an amount of \$1200. The quote was dated 19 February 2008 and was from Max Souter.

- d. The respondent tenants informed the tribunal that Max Souter was the new tenant of the premises and that the work was to be done in return for a rebate of rent.
 - e. The lessor stated that at the date of the hearing none of the repair or painting work had been undertaken.
5. Taking into account the above evidence the Tribunal concluded that there was insufficient evidence to establish a breach of clause 64 (b) by the tenant. It appears from the evidence available as to the condition of the premises at the commencement and termination of the tenancy that the tenant had returned the premises to the lessor in substantially the same condition as at the commencement of the tenancy.
6. Therefore the lessor had failed to make out her claim for compensation and the tenant had no further liability to the lessor. The Tribunal ordered that the balance of the Bond being held by the Office of Rental Bonds should be released to the tenant.

JANN LENNARD

MEMBER

17 SEPTEMBER 2008

