

Contents

1 Application of a court order to the Magistrates Court of Western Australia

1.1 Documents attached

1.1.1 Residential Tenancies Act 1987

1.1.2 Lease agreement

This is in the folder named `contract`.

1.1.3 Evidence of cockroach infestation

This is in the folder named `evidence-of-cockroaches`.

1.2 Terminology

Apartment: The Queens Gardens apartment (Unit 2, 60-64 Forrest Ave)

1.3 People involved

Name	Full legal name	Phone number
Neha	Parveen Bhatia	+61 444 513 647
Kit	Yuen Kit, Chui	+61 413 608 281
Shane	Shane Christopher Mulligan	+61 421 641 250

1.4 Agreed duration of my lease

11 Feb 2020 - 13 Feb 2020.

Kit demanded my key to be returned on the 14 Feb. This is confirmed by the fact that Kit arranged for her son to meet me on the 14th to collect the keys.

Therefore, I should not have to pay for rent on th 14th.

3 days of rent = $3 \times 260 / 7 = \$111.43$

1.5 Owed money

I am owed money by Kit. I'm owed at least most of the bond minus 3 days of rent, if not the full bond.

Full bond = \$950

Money paid for bond - 3 days of rent = $\$950 - \$111.43 = \$838.37$

1.5.1 Verbal amendments to the contract

- Lease start date

This was changed from the 10th Feb 2020 to the 11th Feb 2020.

See chronology of events: Monday 10 Feb, 2020

- Kit and I agreed that the rent be delayed 1 day and she refrained from giving me the keys. I agreed to this because another fumigation would take place and I did not want to stay there that night. I wanted to move in after the fumigation.

1.6 Reasons for application of a court order

1.6.1 Unable to live in the apartment. The apartment was not in a clean state when I moved in; it was only superficially clean, but there was a cockroach infestation

Yuen Kit Chui, my landlord, is trying to claim that I owe her 26 weeks worth of rent for requesting to terminate a 6 month fixed-term lease of her apartment just 3 days into the tenancy due to a cockroach infestation I was not made aware of.

Unbeknown to me when I signed the lease, the flat had a cockroach infestation.

I requested that she agree on a mutual termination of our agreement due to the fact that there had been at least 2 fumigations in the last 8 days and based on evidence that there the cockroaches were far from eradicated.

I saw dozens of cockroaches on the kitchen bench at the same time, just 3 days into the tenancy and it had been only 2 days since the last fumigation, which is a clear indication that there is a serious bug problem.

The fumigations had clearly failed to eradicate the cockroach infestation. This had prevented me from unpacking my clothes and using the kitchen to make food during the first 3 days and preventing me from living there for the first day.

In short, the place was uninhabitable before and at the point and after I moved in but I did not know the extent of the cockroach problem because the landlord had been getting fumigations on the day or the day before I inspected the property.

On the 5th February I started a senior position at Fortescue Metals Group and it's in the interest of company that I am able to quickly terminate such a tenancy agreement and find somewhere new which is safe and sanitary. Yuen Kit Chui is trying to prevent this from happening.

If I lose sleep and can't eat and if I spread disease affects many more people than just myself.

I was compelled to leave my own apartment due to how unhygienic it was and I feel like that is reason alone to terminate the agreement.

The request I made to terminate the agreement is based on hard evidence of a cockroach infestation plaguing Unit 2, 60-64 Forrest Ave. I have video footage. There is also a tax invoice from a treated cockroach infestation.

1.6.2 The landlord demonstrated misconduct multiple times

- Illegally demanding that I vacate and hand over the keys.
- By ignoring my request to obtain the apartment keys, Kit did not allow me to inspect the property for continuing infestation
- By ignoring my request to obtain the apartment keys, Kit did not allow me to take photos of the apartment to find a new tenant.
- I have evidence that Kit was acting unreasonably due to anger. See her message on "Fri 15 Feb, 2020 at 2.41 PM".
- Seeking to make a large profit by skipping the step of written agreement of lease termination.

1.7 Claims

1.7.1 I have the right to terminate the agreement with 2 days notice

I am seeking a court order to be sent to Yuen Kit Chui which states my right to give notice to my landlord for the termination of the fixed term residential tenancy agreement made between myself (Shane Mulligan) and my landlord (Yuen Kit Chui).

I'm claiming my right under Section 69.1 of the Residential Tenancy Act 1987 under the fact that the landlord, Kit, breached her contract when she failed to hand over the residential premises in a reasonable state of cleanliness. The apartment was unsuccessfully fumigated.

I would like my tenancy agreement to have ended after 2 days, which is the 16 Feb 2020, considering that on 14th Feb 2020, at 12.40 AM, Yuen Kit Chui read and responded to the email sent the previous day at 10.37 PM, which was my request to terminate the tenancy.

I'm claiming my right under Section 69.3 of the Residential Tenancy Act 1987.
I would like my bond to be returned to me. In full or for a maximum of 3 days worth of rent.

1.8 Breaches made by the Landlord

1.8.1 Section 3 of our residential agreement*

1 The OWNER shall hand over the residential premises in a reasonable state
2 of cleanliness and maintain the residential premises in a reasonable
3 state of repair having regard to their age, character and expected life
4 and shall comply with all requirements in respect of buildings, health
5 and safety in respect of residential premises.

This was breached because the apartment was deeply infested with cockroaches before I signed the least to the apartment, on the day my least started, which was the 11th February 2020, before I began living there and during the time I lived there.

The apartment was unfit for my own habitation.

I had signed the contract without knowing how deeply entrenched the infestation of cockroaches was.

1.9 Additional breaches made by Landlord

1.9.1 Section 62.2 of the Residential Tenancies Act 1987

1 Where a lessor gives notice of termination under this section,
2 the period of notice shall be not less than 7 days before the day
3 on which the tenant is required under the notice to give the
4 lessor possession of the premises.

- Kit asked for possession of the premises when she said "You can move out by tomorrow" on the 14th February 2020.

This is only a breach if Kit's dialogue with me on the 14th February constitutes an agreement to termination, but I'm unsure if either of us can legally terminate the agreement without signed written consent.

1.9.2 Section 62.1 of the Residential Tenancies Act 1987

1 A lessor may give notice of termination of a residential tenancy
2 agreement to the tenant upon the ground that the tenant has
3 breached a term of the agreement and the breach has not been
4 remedied.

- If I, Shane, have breached the agreement in any way (which I believe I haven't) then Kit, the landlord has not given any time for me to remedy the situation.
- In fact, Kit was not open to discussing our options when she said "I have no interest to talk to you." on the 14th February 2020.

1.10 Chronology of events

1.10.1 Monday 3 Feb, 2020

A fumigation of the apartment had taken place either that day or earlier.

- **11.30 AM**

- I inspected the flat along with Neha and Kit. The pest control man who had operated on the apartment was also outside, though I don't know what time he sprayed the apartment.

- Both Kit, myself and Neha spotted cockroaches scuttling on the kitchen bench and on the floor.
- After I had spotted a cockroach on the kitchen bench, Kit told us that the apartment had been sprayed recently by pest control and gave her assurance that there would be very few, if any cockroaches over the next few days and by then they would be gone.
- Kit told us that cockroaches will be gone by the time we move in. Neha recalls this. I, Shane, confirm Kit told us this.

- 5.20 PM

- I signed the lease to the flat for a 6 month fixed term.

1.10.2 Monday 4 Feb, 2020

- 12.22 PM

- I received a photocopy of the agreement over the bond and first 2 weeks' rent, a tax invoice of the treatment of a German cockroach infestation which happened earlier that day, the contract for fixed term tenancy and a list of additional conditions (items which furnished the house).
- This was the first time I was made aware of the fact that the apartment was officially infested and by German cockroaches (after I had already signed the contract).

1.10.3 Sunday 9 Feb, 2020

- 12.48 PM

- Kit sent me this message:

```

1  Shane, tomorrow is the day you move in, what time do you want me to wait
2  for you at the property? I know you may be needed time to bring your
3  baggage, just let me know what time I can see you at the property.
```

1.10.4 Monday 10 Feb, 2020

- 6.07 PM

- I met Kit at the flat. We were the only people present.
- When I inspected the flat I saw cockroaches on the kitchen and the floor.
- We then agreed that the exterminator would come around again to remove cockroaches from the apartment.
- I had two more nights left at the hotel Ibis Styles.
- Kit and I agreed that the rent be delayed 1 day and she refrained from giving me the keys. I agreed to this because another fumigation would take place and I did not want to stay there that night. I wanted to move in after the fumigation.
- I agreed to this because the apartment needed to be fumigated to remove the cockroaches.

1.10.5 Tuesday 11 Feb, 2020

A fumigation took place earlier that day.

- 6.00 PM

- I met Kit to collect the keys. We were the only people present.
- The apartment had been fumigated that day but I still saw cockroaches quickly scuttling the floor of the apartment.

- I was told that the exterminator had been around that day to deal with the cockroaches and Kit reassured me that they would most likely be gone.
- I collected the keys that day and moved my belongings into the Queens Gardens apartment later that night.
- I told Kit that I would stay at the Hotel that night, but would take the keys off her immediately as I intended to move my things into the Forrest Ave apartment later that night and it seemed like a fair compromise to pay the rent that day given Kit had shown good faith to me the day before by allowing my rent payments to be delayed for one day. This was a verbal contract, but Kit had made her assurance me that she would honour it.

1.10.6 Wednesday 12 Feb, 2020

- 7.30 AM

- I woke up from the Ibis Styles apartment and walked to the Forrest Street apartment where my clothes for work were. I would be staying there that night

- 8.00 AM

- I spent the day at work.

- 6.00 PM

- I spent the night unpacking my things. I noticed immediately that there were still cockroaches in the apartment. I was unable to cook food for myself at home so I went back to work to cook my noodles at work. This was because I could not risk myself becoming sick due contamination from the apartment, nor risk leaving crumbs which could potentially exacerbate the situation.
- This was the first night I slept at the apartment.

1.10.7 Thursday 13 Feb, 2020

This was my 2nd day living in the apartment and my third day of having received the keys. Keep in mind the apartment had been fumigated at least twice within the previous week.

- 6.00 PM

- I brought a pizza with me home, assuming the kitchen would be safe to cook in but I was unable to eat it due to cockroaches being prevalent all over the apartment and there being no surface that I could hygienically place my food.
- The cockroaches were constantly appearing on the kitchen bench as I killed them.
- I used a sticker to kill 20 cockroaches on the kitchen bench alone before I began recording videos of the cockroaches, which were on the floor near my bed, under my bags of clothes, and all over the bench.
- The sticker with 20 cockroaches plastered to it is documented in the videos I have provided.
- I killed another 5 or so cockroaches which were scuttling over the floor before giving up and laying on the bed.
- I took the videos shown in the **evidence-of-cockroaches** folder provided.

–

- Text from Shane to Kit at 9.48 PM

```
1 Hey Kit. There are cockroaches everywhere. I
2 have killed about 20 small ones today. Could
3 you please send the exterminator again?
```

- Email from Shane to Kit at 10.37 PM

My thoughts on my message: I had not abandoned the property. I simply requested that the tenancy should end.

```
1 Dear Kit,
2
3 I'm very sorry Kit, but I can't live at this
4 apartment due to the cockroach infestation,
5 which I was not made aware of. I would like
6 to move out immediately.
7
8 I'm unable to use the kitchen. I'm also
9 worried about damage to my personal
10 belongings.
11
12 The apartment is not actually habitable for
13 me right now as I'm unable to eat at home
14 due to the kitchen being full of
15 cockroaches, but I can't afford to eat
16 anywhere else so I have to leave.
17
18 Please would you accept the termination of
19 my tenancy?
20
21 Shane Mulligan
```

- Text from Kit to Shane at 11.29 PM

My thoughts on her text: I believe this was in response to my request for an exterminator.

```
1 No problem,.will contact you when I booked the time.
```

1.10.8 Friday 14 Feb, 2020

- Email from Kit to Shane at 12.40 AM (2 hours later. Still that night)

- I was told to vacate immediately. I didn't know what my rights were, so I went along with it.
- I had to leave the apartment due to health concerns but did not intend to give up the flat on the basis that I would be paying 26 weeks worth of rent.

```
1 You can move out by tomorrow, because I have
2 to work, it will be my son come to meeting
3 you, I can not tell you what time he can come
4 as he already sleep.will let you know
5 tomorrow.
```

- Kit did not advise me on the consequences of leaving.

- Text from Kit to Shane at 12.03 PM

```
1 My son will see you at the property 6pm, Please confirm.
```

- Text from Shane to Kit (immediate response)

1 Thank you kit. I'll see you there

- Email from Shane to Kit at 12.54 PM (The following day, during work hours)

1 Hi Kit.
2
3 That is very kind of you to agree.
4 Can we come up with a compromise with the
5 bond? I'd like you to keep it for your
6 troubles.
7
8 Shane Mulligan

– I received no response.

- Text from Kit's son to Shane at 5.56 PM

1 Hey Shane
2 It's kits son. I'm heading to the property now, just stuck in a bitta traffic.

– I met with Kit's son at 6.10 PM at the apartment gates.
– He asked for the keys and I handed them to him through the gate. He was outside.
– I vacated the property.

- Text from Kit to Shane at 7.00 PM

1 People are allowed to break their leases if
2 the owner agree, However it is based upon
3 situation to situation. If the owner allow you
4 to break the lease, then you must find someone
5 to cover or continue your lease. The other
6 option being you have to pay off the signed
7 contract duration (in your case its 26 weeks \$ 260 = \$ 6760).
8
9 I did speak to my pest control guy, he feels
10 strange about what you describe about the
11 cockroach, he did two times spray for the
12 place and find no cockroach eggs around the
13 unit, he suggested that I should go to check
14 my self tonight to see how bad the situation
15 is. I will reserve all rights to investigate
16 your breach.

- Text from Shane to Kit at 8.43 PM

1 Hi kit. Sure no worries.If the sutation has
2 been resolved then I would consider moving
3 back in and the situation is not resolved then
4 I will have to take it to court. But this is
5 nothing personal. The apartment was just not
6 ready to be lived in.

- Text from Kit to Shane (immediate response)

1 I am more than welcome you're take it to court
2 with you have no chance to move back. I am
3 waiting for you to get the court order.

By doing this Kit has denied me the choice to move back in and has denied access to take further evidence of the cockroaches.

- Text from Shane to Kit (immediate response)

1 That seems very unreasonable. Do you mind if
2 I call you to discuss?

- Text from Kit to Shane (immediate response)

1 I have no interest to talk to you.

Kit was not able to willing to resolve our problem diplomatically.

- Text from Shane to Kit (immediate response)

1 Very well then. I will present my evidence to court

- Text from Kit to Shane (immediate response)

1 Go ahead, don't just say that, DO IT.

1.10.9 Saturday 15 Feb, 2020

- Text from Kit to Shane at 2.41 PM

1 People are allowed to break their lease bur it
2 depends on the situation, normally to break
3 lease you have two choices.
4 1. Let someone take over your rental period
5 2. Pay off the remaining contract you owe (in
6 your case 26 weeks × \$260 so \$6,760)
7
8 So last night i stayed here for 3 hours at
9 night. Yes, there was a couple cockroaches in
10 the kitchen, however I had already gotten a
11 pest control to come here twice to spray the
12 whole property. Before you moved in, i already
13 told you that the remaining cockroaches would
14 be present for a while as the last of them
15 were being weeded out. Aside from the kitchen,
16 there is not a single cockroach in any of the
17 other bedroom areas etc.
18
19 People lie all time to get what they want,
20 they change their minds all the time. You even
21 talked to my son, saying that "the place just
22 didn't click with you" yet you never mentioned
23 the cockroach problem to him.

24
25 I can offer you an options. You can either pay
26 1/3 of what you owe for the whole contract
27 that you signed; which is \$2,253.
28 I have a son myself, one day he might also go
29 travelling for work like yourself, thus i dont
30 want to be too harsh and make you pay \$6,760+
31 for the contract. But as a 31 year old adult,
32 you have a responsibility to uphold, when you
33 sign the contract in the first place.
34 Right now the thing that angers me the most is
35 you saying "i have evidence" and saying you
36 will take me to court etc.
37
38 The offer i made to you is valid until Sunday.
39 Monday If you dont respond by then. I will
40 goto court and get a court order to get you to
41 pay up.

- Text from Shane to Kit (immediate response)

1 I'm sorry you are angry and it is kind of you
2 to consider a compromise. But I do have
3 evidence of many more cockroaches than you say
4 and I will submit my court order on Monday
5 along with the video footage. there is no need
6 to be angry. Your 2nd hand quote of what I
7 said to your son is taken out of context
8
9 Thank you for coming up with a reasonable
10 compromise. I will note your good will in my
11 application
12
13 I have turned 32 today.

- Text from Kit to Shane (immediate response)

1 Happy birthday to you.

- Text from Shane to Kit (immediate response)

1 As I said earlier, if the cockroaches are
2 eradicated, I would consider moving back in. I
3 believe im still the legal tenant unless you
4 have ended the agreement by submitting an
5 application to the magistrate court. I have
6 made two suggestions, one that I move back in
7 once the cockroach infestation is under
8 control. The other is that we agree on a
9 mutual termination where you keep the bond and
10 2 weeks rent. You told me that I have no
11 chance of moving back in which is

12 unreasonable. The offer still stands but in
13 the form of a court order when I submit on
14 monday. We need a signed written contract to
15 terminate the lease in the cleanest way. But
16 the apartment is not fit for a person to live
17 there under the observations I have made while
18 staying there. This is why I had to move out.

- Text from Shane to Kit (immediate response)

1 Thank you for your birthday wishes

- Text from Kit to Shane (immediate response)

1 You want to convince me with the legal
2 justification, that is good, but ask your
3 self, you signed the contract but didn't meet
4 the condition required by the contract, I
5 don't intend to continue to argue with you
6 because my time is precious. You even didn't
7 pay enough for the upfront, how you can take
8 it to the court?
9 But do what you believe ok.

- Text from Shane to Kit (immediate response)

1 Can we arrange a time for me to pick up my
2 keys? I would like to have the keys in case I
3 need to do another inspection

– I did not receive a reply to this question.

- Text from Kit to Shane (immediate response)

1 What keys?

- Text from Shane to Kit (immediate response)

1 The unit 2 apartment keys
2
3 I would like this answer in text or email form
4 thank you.

– I did not get a reponse for my request.

- Text from Kit to Shane (immediate response)

1 I run out the battery.

- Text from Shane to Kit (immediate response)

1 Please email me then. This will all be
2 recorded for the court order.

– I received no response.

• Email from Shane to Kit at 6.28 PM

1 Dear Kit,
2
3 I require the keys to the apartment again
4 because I will need to check the apartment
5 again for contamination before lodging the
6 application for a court order. I believe I am
7 still the legal tenant. Your cooperation is
8 vital to your defense. Please respond as soon
9 as possible. The court order will be lodged on
10 Monday and there is adequate time.
11
12 Thank you,
13
14 Shane Mulligan

– I received no response.

1.10.10 Sunday 16 Feb, 2020

• Email from Shane to Kit at 2.47 PM

1 Dear Kit,
2
3 I texted and emailed you yesterday to ask to
4 arrange a time to collect the keys to the
5 apartment. Your reply suggests that you read
6 the message. I believe I'm still the legal
7 tenant and want to be able to inspect the
8 apartment again before I lodge my request for
9 a court order tomorrow.
10
11 Thanks,
12
13 Shane Mulligan

– I received no response.

• Email from Shane to Kit at 4.09 PM

1 Dear Kit,
2
3 I need the keys to the apartment because I
4 need to take photos of the unit. I also may
5 need to live there if I have nowhere else to
6 say. This is unless you have terminated the
7 lease unilaterally. I need to know this soon
8 as possible where I stand. Please be
9 reasonable.
10
11 Here is the ad I have made:

12 <https://www.gumtree.com.au/s-ad/perth/property-for-rent/prime-location-super-accessible-east->
13
14 Cheers,
15
16 Shane Mulligan

- <https://www.gumtree.com.au/s-ad/perth/property-for-rent/prime-location-super-accessible-east-1241504716>
- I received no response.

• Email from Shane to Kit at 4.45 PM

1 Dear Kit,
2
3 Somebody has replied to my advertisement on
4 Gumtree and I have forwarded them your phone
5 number as I do not have the ability to provide
6 them with an inspection date.
7
8 Their gumtree username is Bouba.
9
10 Cheers,
11
12 Shane Mulligan

- I received no response.

1.11 Video footage of cockroaches

NEWPAGE

Unfortunately, as I was recording these videos I was not certain that I would be leaving the flat, otherwise I would've recorded more. They were everywhere and there was no way I could stay at the apartment that night.

1.11.1 IMG-0864.MOV - Thursday 13 Feb 11.13 PM

Large and small cockroaches alike are seen here in the first half of the video on the kitchen bench.

There are actually 3 living cockroaches in this one shot 1 large size, 1 medium, 1 small.

Keen in mind I had already killed around 20 of them on the same kitchen bench in the last 10 or so minutes.

The white sticker contains the 20 cockroaches which I used my bare hands to squash, trying to clear the kitchen so I could cook.

Please refer to the videos. I have placed screenshots of the video here to clarify where the cockroaches are in the videos.

- Large cockroach



- 20 smaller cockroaches, which I squashed



1.11.2 IMG-0866.MOV - Friday 14 Feb 7.54 AM

One or 2 cockroaches can be seen here in the kitchen sink.

1.11.3 video-1581686846.mp4 Friday 14 Feb 7.54 AM

5 or 6 cockroaches can be seen here in the kitchen sink.

1.11.4 IMG-0868.MOV - Friday 14 Feb 8.05 AM

3 can be seen here scuttling on the floorboards.

1.11.5 IMG-0865.jpeg

This is a photo of a cockroach in the kitchen sink.

1.12 Current lease state

I made multiple attempts to reacquire the keys due to there being no signed written agreement that the lease should end, and I have tried up until the 16th February, the point at which I assumed I was the legal tenant.

However, Kit has denied me the right to my keys. So I think Kit has unilaterally and unlawfully terminated the lease agreement. I am of the mind that is a breach. The landlord must give 7 days notice under Section 69.2 of the Residential Tenancies Act 1987.

1.13 Attempts to find a new tenant

Please see the folder called **new-tenant- search** for evidence of searching for a new tenant.

I've had a bunch of interested people contact me and have forwarded them all on to Kit.

1.14 Acceptable resolutions

- Nullification of the Fixed term lease and the bond money given (\$950) returned to me in its entirety.
- Termination of the Fixed term lease after 2 days, ending on the 16th Feb 2020. \$838.57 of the bond money must be returned to me, Kit retaining \$111.43 for 3 days of rent.