

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Mizzii & Anor v Ballin & Anor* [2019] QCAT 216

PARTIES: **THERESA MIZZII**
ALFRED VOLLMER
(applicants)
v
MICHELLE SIMONE BALLIN
DAVID ERIC WILLS
(respondents)

APPLICATION NO/S: RSL158-18

MATTER TYPE: Other civil dispute matters

DELIVERED ON: 10 July 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Hughes

ORDERS: **Michelle Simone Ballin and David Eric Wills pay to Theresa Mizzii and Alfred Vollmer the sum of \$9,563.00.**

CATCHWORDS: LANDLORD AND TENANT – RETAIL AND COMMERCIAL TENANCIES LEGISLATION – where tenant in default of essential terms under Lease – where rent arrears – where rates owing – where cleaning and make-good owing – where amount owing for furniture and equipment sold under Chattels Agreement – whether interest payable – where Tribunal does not have statutory discretion to award interest – where enabling provision did provide for interest

PROCEDURE – CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS – COSTS – where strong indicator against awarding of costs – where nothing to displace usual position that each party must pay own costs

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 100, s 102, s 103
Retail Shop Leases Act 1994 (Qld), s 103

Clarke v Cascade Pools (Qld) Pty Ltd [2010] QCAT 323
Glamoren Pty Ltd v Lee & Anor [2012] QCATA 176
Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No. 2) [2010] QCAT 412

REPRESENTATION:

Applicants: Self-represented

Respondents: Self-represented

APPEARANCES:

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

REASONS FOR DECISION**What is this Application about?**

- [1] Theresa Mizzii and Alfred Vollmer leased a shop to Michelle Simone Ballin and David Eric Wills¹ and sold them furniture and equipment in the shop.² Ms Ballin and Mr Wills defaulted in payments due under the lease and for the goods. Ms Mizzii and Mr Vollmer seek payment of the outstanding amounts.
- [2] Ms Ballin and Mr Wills did not file a Response to the Application. Consequently, the alleged defaults and amounts claimed are not in dispute. The Tribunal assesses the amounts owing under the below headings.³

What is the amount owing for rent arrears?

- [3] As tenants, Ms Ballin and Mr Wills must pay rent of \$1,650.00 per calendar month.⁴
- [4] Ms Mizzii and Mr Vollmer filed Invoices for rent arrears totalling \$6,150.00.⁵ This evidence is undisputed and the Tribunal finds the amount owing for rent arrears is \$6,150.00.

What is the amount owing for rates?

- [5] As tenants, Ms Ballin and Mr Wills must pay rates.⁶
- [6] Ms Mizzii and Mr Vollmer filed Invoices for outstanding rates totalling \$2,173.20.⁷ This evidence is undisputed and the Tribunal finds the amount owing for rates is \$2,173.20

¹ Lease dated 6 July 2017.

² Chattels Agreement dated 6 July 2017.

³ *Retail Shop Leases Act 1994 (Qld)*, s 103.

⁴ Lease dated 6 July 2017, clause 2.1(a), Item 2 of Reference Schedule.

⁵ Invoice 809 dated 23/11/17 for \$1,300.00, Invoice 887 dated 19/12/17 for \$1,650.00, Invoice 959 dated 23/10/18 for \$1,550.00, Invoice 1071 dated 23/02/18 for \$1,650.00.

⁶ Lease dated 6 July 2017, clause 2.1(b).

⁷ Invoice dated 05/09/17 for \$1,135.00, Invoice 1021 dated 15/02/18 for \$1,038.20.

What is the amount owing for cleaning and “make-good”?

- [7] As tenants, Ms Ballin and Mr Wills must keep the premises in good repair, fix any damage and keep the premises clean and tidy.⁸
- [8] Ms Mizzii and Mr Vollmer filed photographs they say were taken after the tenants vacated the premises showing various staining to the floor and remaining signage.⁹ The Tribunal accepts this undisputed evidence of cleaning and make-good required.

Canopy and filters not cleaned

- [9] Ms Mizzii and Mr Vollmer filed a quote to clean and replace the canopy and filters in the amount of \$288.20.¹⁰ Although this evidence is undisputed, no evidence was provided on the number of filters requiring replacement. In the absence of this evidence, the Tribunal finds the amount owing to clean and replace canopy and filters at \$288.20.

Grease trap not cleaned and pumped

- [10] Ms Mizzii and Mr Vollmer filed a quote to clean and pump the grease trap in the amount of \$250.80.¹¹ This evidence is undisputed and the Tribunal finds the amount owing to clean and pump the grease trap is \$250.80.

Cleaning and shop signage and removing fittings including gas pipework

- [11] Ms Mizzii and Mr Vollmer did not file any quantum evidence to support these claims. The Tribunal cannot award an amount for these items without evidence of quantum:

In the face of poorly prepared material, the tribunal cannot make assumptions or guess at facts and events or the meaning or importance of material. The tribunal cannot make findings of fact where there is no evidence. It cannot award damages if there is no material that points to the quantum of the damage suffered. Parties must take responsibility for the preparation of their own case.¹²

What is the amount owing for furniture and equipment?

- [12] Ms Mizzii and Mr Vollmer filed a list of items they say remain unpaid totalling \$700.80.¹³ This evidence is undisputed and the Tribunal finds the amount owing for furniture and equipment is \$700.80.

⁸ Lease dated 6 July 2017, clauses 5.1, 5.2.

⁹ Seven black and white photographs, undated.

¹⁰ Email Gregory Higgins, dated 9 April 2018.

¹¹ Quote of Keith Paap Cleansing Services, undated.

¹² *Clarke v Cascade Pools (Qld) Pty Ltd* [2010] QCAT 323, [3].

¹³ Exhibit D entitled ‘Cooking Equipment and Drinks’.

What is the amount owing for interest?

[13] Unlike the Courts, the Tribunal does not have a statutory discretion to award interest.¹⁴ The enabling provision in the *Retail Shop Leases Act 1994* (Qld) does not provide for the Tribunal to award interest.¹⁵

[14] The Tribunal does not award any amount for interest.

What is the amount owing for costs?

[15] Costs in the Tribunal are not awarded as a matter of course. Each party must pay their own costs,¹⁶ unless the interests of justice require the Tribunal to order a party to pay the costs of another party.¹⁷

[16] There is therefore a strong indicator against costs:

Under the QCAT Act the question will usually arise in each case in which costs are sought is whether the circumstances relevant to the discretion inherent in the phrase “the interests of justice” point so compellingly to a costs award that they overcome the strong contra-indication against costs orders in s 100.¹⁸

[17] Nothing has been put forward to the Tribunal to displace the usual position that each party must pay their own costs.

[18] The Tribunal does not award costs.

What is the appropriate order?

[19] The tenants have breached essential terms of the lease.¹⁹ The tenants are jointly and severally liable for their breaches.²⁰ The total amount owing for their breaches is \$9,563.00.

[20] The appropriate order is that Michelle Simone Ballin and David Eric Wills pay to Theresa Mizzii and the Alfred Vollmer the sum of \$9,563.00.

¹⁴ *Glamoren Pty Ltd v Lee & Anor* [2012] QCATA 176, [18] (Wilson J).

¹⁵ Section 103.

¹⁶ *Queensland Civil and Administrative Tribunal Act 2009* (Qld), s 100.

¹⁷ QCAT Act, s 102.

¹⁸ *Ralacom Pty Ltd v Body Corporate for Paradise Island Apartments (No. 2)* [2010] QCAT 412, [29] (Wilson J).

¹⁹ Lease dated 6 July 2017, clause 9.1.

²⁰ Lease dated 6 July 2017, clause 14.7.