VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

VCAT REFERENCE NO. BP32/2014

BUILDING & PROPERTY LIST

CATCHWORDS

LANDLORD AND TENANT – Unconscionable conduct - whether failure to disclose planning permit for building work constitutes unconscionable conduct. Claim for rent arrears and interest. Damages for breach of lease - general principles discussed.

APPLICANT	Gregory Cairns
RESPONDENT	Michelle Allen
BEFORE	Senior Member E. Riegler
HEARING TYPE	Hearing
DATE OF HEARING	2 October & 9 December 2014
DATE OF ORDER	8 January 2015
CITATION	Cairns v Allen (Building and Property) [2015] VCAT 21

ORDER

1. The Respondent must pay the Applicant $6,219.13 on the Applicant's claim.
2. The Respondent's counterclaim is dismissed.
3. Liberty to apply until 30 January 2014 on any outstanding issues.

SENIOR MEMBER E. RIEGLER

APPEARANCES:

For the Applicant	Mr G Cairns in person
For the Respondent	Ms M Allen in person

REASONS

Introduction

1. The Applicant was the owner and landlord of retail premises located in Beaumaris, Victoria (**'the Premises'**). The Respondent (**'the Tenant'**) leased the Premises from the Applicant, pursuant to a lease agreement dated 9 November 2011 (**'the Lease'**) for period of five years commencing on 13 October 2011.

2. The Lease provided for the payment of rent in the amount of $1,916.66 per month, payable in advance on or before the 13th day of each month. The Lease further provided for a fixed rental increase commencing on 13 October 2012, which increased the rental to $2,125 per month.

3. Under the Lease, the Tenant was required to provide a security deposit equivalent to three months rental, which was payable in two instalments - the first instalment being $3,833.34, payable upon signing of the Lease and the second instalment of $1,916.67, payable on or before 1 March 2012. The Tenant took possession of the Premises on or about 13 October 2012 and commenced paying rent under the Lease on and from that date. In addition, the Tenant paid the first instalment of the security deposit in the amount of $3,833.36. According to the Tenant, the total amount of rental and security deposit paid during her occupancy of the Premises is $23,006.30. This is not disputed by the Applicant.

4. In about July 2012, the Tenant fell into arrears of rent. According to the Tenant, an agreement was reached with the Applicant that the July rent would be permanently abated on condition that she made payment of the rent for August and following. Consequently, no rent was paid for July but rent was paid on 22 August 2012, which the Tenant contends related to the rent period spanning 13 August to 12 September.

5. In early September 2012, the Tenant wrote to the Applicant's leasing agent and advised that she was having difficulties in meeting rent commitments. She suggested that she needed to fall into two months arrears of rent and proposed that those arrears be paid out of the security deposit held by the leasing agent, which at that time amounted to $3,833.36.

6. That proposal was not accepted by the Applicant. Consequently, by email correspondence dated 10 September 2012, the Tenant proposed to mutually terminate the Lease. According to the Tenant, that proposal was accepted by the Applicant and as a consequence, the Tenant vacated the Premises on 12 September 2012.

7. According to the Applicant, there was no agreement to mutually end the Lease. He contends that the decision to vacate the Premises was unilateral and amounted to an abandonment of the Premises. As a result, the Applicant claims rent arrears, together with rent foregone over the period

from when the Premises were vacated to when the Premises were re-let and rent received from the new tenant, together with other expenses and interest. The total amount claimed by the Applicant is $8,022.23 made up as follows:

(a) October 2012 rent: $2,125

(b) Interest on October rent (as at 9 December 2014):.....$940.47

(c) November 2012 rent: $2,125

(d) Interest on November rent (as at 9 December 2014):.....$903.47

(e) Agents fees and advertising costs for re-letting:.....$588.50

(f) Interest on agents fees and advertising costs: $62.46

(g) Shortfall in rent between Lease and the new lease: $20

(h) Outstanding water consumption account:.....$723

(i) Interest on outstanding water consumption account: $224.14

(j) Legal costs associated with default notice:.....$220

(k) Interest on legal costs:.....$90.19

8. The Tenant disputes that the Applicant is entitled to any money. She contends that the Applicant has unlawfully terminated the Lease, depriving her of her rights under the Lease. She also contends that the Applicant has acted unconscionably by falsely disclosing or representing that he had no intention of making any alterations or renovations to the Premises, when in fact he had obtained a planning permit for the construction of an additional level to the Premises. The Tenant counterclaims against the Applicant and seeks an order that all of the rental and the security deposit paid by her be repaid by the Applicant, together with damages to be assessed.

The issues

9. The following issues arise for consideration and determination:

(a) How did the Lease come to an end?

(b) Did the Applicant engage in unconscionable conduct and if so, is the Tenant entitled to be repaid all of the rent and security deposit previously paid to the Applicant?

(c) Is the Applicant entitled to claim rent arrears, rent foregone, expenses relating to re-letting the Premises and interest on those amounts?

(d) Is the Tenant obliged to pay for the outstanding water consumption account?

How did the lease come to an end?

10. The Tenant contends that the Applicant wrongfully terminated the Lease. It is unclear to me what grounds are relied upon by the Tenant to substantiate that submission. In particular, the chain of correspondence tendered in evidence does not indicate that the Applicant sought to end the Lease prior to the Tenant vacating the Premises. As indicated above, the proposal to *break the lease* came from the Tenant via an email dated 10 September 2012. That email stated:

> Dear Lucy,
>
> I would like to resolve the issue surrounding the shop amicably and feel that after having my proposal rejected that it would be in the best interest of all parties to break the lease. This has been done previously. This will free up the bond and allow for a new tenant.
>
> Please advise the Landlord's view and if agreeable I would need to discuss with JP Dixon the options available for advertising so that this is achieved quickly and efficiently.

11. The response from the Landlord's leasing agent was immediate and indicated that the Applicant would consider the proposal. By email dated 10 September 2012, the leasing agent stated:

> Michelle,
>
> I am responding to the email below that you sent to Lucy of this office today.
>
> We sent you an e-mail, text message and tried to contact you by telephone on Friday morning last week to have a meeting to discuss the situation but you did not reply.
>
> We urgently need to have a face to face meeting in the office to discuss this and move forward as amicably as possible.
>
> You are currently in arrears on the rent as well as the balance of the Security Deposit.
>
> Please contact Geoff at the office as a matter of urgency to arrange a suitable meeting time.

12. In addition, solicitors acting on behalf of the Applicant wrote to the Tenant by letter dated 11 September 2012 and stated:

> You are in breach of the terms of the lease commencing 13 October 2011, in that you have failed to pay rent for more than 14 days.
>
> We enclose herewith Notice to Remedy Breach of Lease by way of service.
>
> Our client instructs that he will consider your proposal to break the lease, but reserves his rights under the lease and such consideration does not amount to a waiver of those rights against you for the above breach.

> You are required to make urgent and immediate contact with our client's property agent, JP Dixon, in order to confirm when you will vacate the property.
>
> Should there be no contact from you, our client will exercise his right of re-entry 14 days after service of the Notice upon you.

13. According to Geoff Stephan, the company manager of the leasing agent and Lucinda Condon, property manager of the leasing agent, no further contact was made with the Tenant following the 11 September 2012 letter, apart from the keys to the Premises being left in the leasing agent's letter box on 12 September 2012.

14. In my view, the Tenant wrongly assumed that her proposal to mutually break the Lease had been accepted by the Applicant. As the correspondence indicates, her proposal was being considered but there is no evidence indicating acceptance of that proposal. Indeed, the letter from the Applicant's solicitors dated 11 September 2012 unequivocally states that her proposal to mutually break the Lease was under consideration and this was not to be taken as a waiver of the Applicant's rights.

15. Having regard to the correspondence tendered in evidence and the oral evidence given by representatives of the leasing agent, I find that there was no agreement to mutually break the Lease. I further find that, at the time when the Tenant surrendered the keys and vacated the Premises, rent for the month of July and September 2012 had not been paid.

16. In that respect, I do not accept the Tenant's submission that there was an agreement to permanently abate rent for the month of July. The email correspondence passing between the parties in or around that time is inconsistent with that conclusion. In particular, by email correspondence to 17 July 2012, the Tenant stated:

> Dear Lucy,
>
> I am unable to pay this months rent on time. I will continue to make monthly payments in August and will make a concerted effort to pay July asap.
>
> I apologise for any inconvenience.

17. In response, the leasing agent forwarded an email to the Tenant dated 17 July 2012, which stated:

> Hi Michelle,
>
> Thanks for your email. I have spoken with Greg and he is fine with that. If you could keep us posted that would be great!

18. According to the Applicant, there was no agreement to discard rent for July, despite some indulgence being given to the Tenant to make that payment belatedly. The email correspondence tendered in evidence is consistent with the Applicant's evidence, which I accept.

19. In my view, the Tenant's conduct in failing to pay rent for the month of July and September 2012, together with surrendering the keys and then vacating the Premises indicates an intention on her part that she no longer intended to comply with her obligations under the Lease. In that regard, I find that the Tenant repudiated her obligations under the Lease. I further find that by his conduct, the Applicant accepted that repudiation and elected to terminate the Lease. In particular, upon being notified that the Tenant had surrendered the keys and vacated the Premises, he instructed the leasing agent to re-advertise the Premises with a view of securing a new tenant. That conduct clearly indicates his election to accept the Tenant's repudiation of the Lease.

20. Accordingly, I find that the Applicant lawfully terminated the Lease upon the Tenant's breach.

Did the Applicant engage in unconscionable conduct?

21. The Tenant contends that the Landlord engaged in unconscionable conduct in contravention of s 77 of the *Retail Leases Act 2003* (**'the RLA'**). The relevant parts of that provision state:

> **77. Unconscionable conduct of a landlord**
>
> (1) A landlord under a retail premises lease or a proposed retail premises lease must not, in connection with the lease or proposed lease, engage in conduct that is, in all the circumstances, unconscionable.
>
> (2) Without limiting the matters to which the Tribunal may have regard for the purpose of determining whether a landlord has contravened sub-section (1), the Tribunal may have regard to –
>
> …
>
> (i) the extent to which the landlord unreasonably failed to disclose to the tenant –
>
> (i) any intended conduct of the landlord that might affect the tenant's interests; and
>
> (ii) any risks to the tenant arising from the landlord's intended conduct that are risks that the landlord should have foreseen and would not be apparent to the tenant.
>
> **80. Recovery of amount for loss or damage**
>
> (1) A landlord or tenant, or former landlord or tenant, who suffers loss or damage because of unconscionable conduct of another person that contravenes section 77 or 78 may recover the amount of the loss or damage by lodging a claim with the Tribunal against the other person.

22. The Tenant contends that the Applicant engaged in unconscionable conduct because he misrepresented his intention to undertake substantial renovation works to the building in which the Premises are located. In that regard, the Premises form part of a larger building, which comprises a retail shop front, being the Premises and a residential dwelling located at the rear of the building. The Tenant also leases the residential dwelling, pursuant to a separate residential tenancy lease. She continues to occupy that residential dwelling, notwithstanding the fact that she has vacated the Premises. According to the Tenant, prior to entering into the Lease, the Applicant obtained a planning permit for the construction of an additional storey to the building – in order to increase the size of the residence. Planning drawings were tendered in evidence and are dated November 2008. These drawings detail the proposed building work. However, the *Disclosure Statement* executed by the Applicant and given to the Tenant prior to entering into the Lease expressly stated that no alteration work was proposed:

> **17 Alteration Works**
>
> 17.1 **Are there any alteration works, planned or known to the landlord at this point in time, to the premises or building/centre, including surrounding roads, during the term or any further term or terms?**
>
> [ ] Yes (insert details of the proposed works) [**X**] No

23. The Tenant gave evidence that she would not have entered into the Lease, had she been aware of the proposed building work. She said that she only became aware of the proposed building work and the planning approval in March 2014, after making enquiries with the responsible authority.

24. By contrast, the Applicant gave evidence that he had no intention of actually undertaking alterations or building work to the Premises or the building in which the Premises are located. He said that the obtaining of planning approval for an additional level to the building was done to enhance the capital value of the freehold, as his intention was to sell the building. He gave evidence that no building work, apart from necessary maintenance, was undertaken during the period that the Tenant occupied the Premises or any time thereafter. He further stated that the planning permit eventually lapsed.

25. It is common ground that no renovation work was undertaken during the period that the Tenant occupied the Premises. It is also common ground that the building, in which the Premises are located, was sold in December 2013 and no alteration or renovation work has been undertaken by the current owner.

26. In my view, the Tenant's claim under this head of damage cannot succeed, principally because she has failed to establish that she suffered any loss or damage. In particular, by her own admission, she only became aware of

the *proposed* building works in March 2014, well after she had vacated the Premises. Moreover, it is common ground that no alteration or building work was undertaken during the period that she occupied the Premises. In those circumstances, I fail to understand how the Tenant has altered her position in any way by reason of the *proposed* building works. This is not a situation where the Tenant's business was disrupted because of building works or where her business plan was unable to be brought to fruition because of proposed building works. She was oblivious to the planning permit during the time that she occupied the Premises. Therefore, whether or not the Applicant misrepresented any intention to renovate or extend the building in which the Premises formed part is beside the point because there were no adverse consequences falling upon the Tenant's shoulders by reason of that factor.

27. In any event, I do not accept that the mere presence of a planning permit necessarily leads to the conclusion that the Applicant intended to extend or renovate the building in which the Premises formed part during the term of the Lease. In that regard, I accept the evidence of the Applicant that his intention in obtaining planning approval for the construction of an additional storey was to increase the capital value of the freehold for purpose of sale only. That being the case, I do not find that the *Disclosure Statement* was false or that the Applicant engaged in unconscionable conduct.

The Tenant's counterclaim

28. As indicated above, the Tenant's counterclaim primarily rests on recovering loss and damage under s 80 of the RLA (unconscionable conduct) and damages on the ground that the Applicant unlawfully terminated the Lease. However, as I have found, the Applicant did not unlawfully terminate the Lease and did not engage in unconscionable conduct. Moreover, even if I had found that the Applicant engaged in unconscionable conduct, the Tenant has failed to prove that she suffered loss and damage by reason of that conduct.

29. Although not vigorously pressed during the course of the hearing, the Tenant also claims damages on the ground that she had suffered loss of income, together with stress and inconvenience by reason of the Applicant's conduct. In that regard, the Tenant submits that the Applicant's conduct in initially filing proceedings in the Magistrates' Court of Victoria and making demands for rent in arrears and other damages constitutes conduct that *went beyond the level of robustness that might be expected in commercial dealings*.[1]

30. According to the Tenant, the Applicant's conduct *impeded the Tenant's ability to operate her business, and was calculated to wear down the*

[1] The Tenant's written submission at page 7.

Tenant and exhaust resources.[2] However, there is no evidence as to what conduct on the part of the Applicant impeded the Tenant's ability to operate her business, apart from the litigation which was initiated after the Tenant had vacated the Premises.

31. It is common ground that the Applicant commenced proceedings in the Magistrates' Court of Victoria, which were subsequently stayed to allow the retail tenancy dispute to be heard in this Tribunal. However, I do not consider that factor to be relevant to the matters under consideration in this proceeding. In particular, it is unclear to me how that conduct gives rise to any legal cause of action justiciable in this Tribunal.

32. Moreover, that conduct post-dates the Tenant's occupation of the Premises and as I have already stated, there is no evidence before me of any financial loss to the Tenant's business either during or after the tenancy came to an end. In addition, there is no medical evidence before me corroborating that the Tenant suffered stress or psychological harm as a result of the Applicant's conduct.

33. Having regard to my findings set out above, I find that the grounds upon which the Tenant's counterclaim rest have not been made out. Therefore, I have no option but to dismiss that counterclaim.

The Applicant's claim

34. Damages for breach of a lease are recoverable under the general law of contract,[3] and are to be assessed on the basis of putting an innocent party in a position had the contract been properly performed. In the case of a lease agreement, which provides for the payment of rent for a fixed term, a landlord may sue for breach of that term and recover the total rent for the full term, less any amount it receives or is likely to receive from the use of the land during the residue of the term.[4] In addition, the landlord may also claim damages for consequential losses, such as advertising costs and agent's fees associated with re-letting the premises.

Rent foregone

35. As I have already found, rent for the month of July and September was never paid. However, the Applicant has applied the security deposit held by the leasing agent against those rental arrears. Clause 1(v) of the Lease states, in part:

> … If in the reasonable opinion of the Lessor or the Agent, the Premises are in a clean and tenantable condition on the date the Lessee vacates the Premises and the Lessee has fully complied with the lessee's covenants contained in this Lease, the Security Deposit must be repaid to the Lessee within 14 working days of the date on which the Lessee vacates the

[2] Ibid.
[3] *Progressive Mailing House Pty Ltd v Tabali Pty Ltd* (1985) 157 CLR 17.
[4] *Lamson Store Service Co Ltd v Russell Wilkins & Sons Ltd* (1906) 4 CLR 672 at 684.

> Premises, otherwise the Agent may, at their discretion, pay to the Lessor such amount as may be necessary to rectify any breach of any covenant or to restore the Premises and account to the Lessee for the balance. If the Security Deposit is insufficient to rectify the breach or to meet the cost of restoration, the Lessee must pay any additional amount to the Lessor on demand.

36. I find that the terms of the Lease permit the leasing agent to release the security deposit to the Applicant in payment of outstanding rent. Therefore, I find that the Applicant was within his contractual rights to retain the security deposit in payment of the July and September rental.

37. As I have found that the Lease came to an end as a result of the Tenant repudiating her obligations under it, the Applicant is entitled to claim damages in respect of any rent foregone. In the present case, the Applicant and the representatives of the leasing agent gave evidence that the Premises were re-let within a short period of time after the Tenant vacated. They said that the new tenant was given a rent free period of two weeks as an incentive to lease the Premises, and that the rent under the new lease commenced in December 2012. Therefore, the Applicant claims rent forgone of $2,125 per month for the months of October and November 2012, together with interest to the date of hearing (9 December 2014). The Applicant also claims an additional $20 being the shortfall in rent between the annual rent under the Lease ($25,500 per annum) and the annual rent under the new lease ($25,480 per annum).

38. In my view, the Applicant is entitled to compensation for rent foregone by reason of the Tenant's repudiation of her obligations under the Lease. In that respect, I accept the evidence of the Applicant and the representatives of the leasing agent that a fresh tenancy came into existence in December 2013, which resulted in a shortfall in rent under the Lease equal to two months rent plus $20.

39. In the present case, damages are to be assessed by reference to the difference between what the Tenant was required to pay under the Lease for the remainder of the term (or until the Premises were sold) and what the Applicant receives or is likely to receive from the use of the land over that same period. Given the fact that the Premises were re-let in December 2012 and subsequently sold in December 2013, the difference in rent receipts equates to the rent foregone for the months of October and November, together with the $20 shortfall in the annual rent over the 12 month period. Therefore, I find that the Applicant is entitled to two months rent of $2,125 per month together with the $20 shortfall in annual rent.

Interest on rent foregone

40. The Applicant claims interest pursuant to Special Condition SC-09, which forms part of *Annexure A* to the Lease. It states:

SC09 INTEREST

10% per annum more than the rate from time to time fixed by the Penalty Interest Rates Act 1983 or any statutory re-enactment thereof.

41. SC 09, read in isolation is meaningless. It is not tied to any general clause in the Lease and therefore does not impose any obligation on the Tenant to pay interest.

42. By contrast, Clause 1(w) of the Lease states:

> Without prejudice to any other rights of the Lessor, the Lessee must pay to the Lessor on demand interest at the rate being the aggregate of two percent and the rate for the time being fixed under Section 2 of the Penalty Interest Rates Act 1983 on any rental or other monies which are due and payable under the covenants of this Lease provided that, except in the case of rental or other monies which it has been agreed will be paid on a particular date or monies which have been expended by the Lessor to remedy any default by the Lessee under the covenants of this Lease, interest must not be demanded until 14 days after the date on which the Lessor has made demand.

43. In my view, Clause 1(w) clearly sets out the Applicant's right to interest on monies outstanding under the Lease. It imposes an obligation to pay interest calculated in accordance with the *Penalty Interest Rates Act 1983* plus two per cent. Accordingly, I find that Clause 1(w) is the operative provision under the Lease and the interest on any outstanding monies is governed by that clause, rather than SC 09.

44. That being the case I find that the Applicant is entitled to interest under the Lease from the date that the rent was due to the date claimed; namely, 9 December 2014, in the amount of $1,140.63 calculated as follows:

<u>October 2012 rent</u>

Start Date	End Date	Days	Rate	Amount Per Day	Total
12/Oct/2012	06/Oct/2013	360	12.5%	$0.7273	$261.83
07/Oct/2013	02/Feb/2014	119	12%	$0.6986	$83.14
03/Feb/2014	10/Aug/2014	189	13.5%	$0.7860	$148.55
11/Aug/2014	09/Dec/2014	121	12.5%	$0.7277	$88.06
Total		**789**			**$581.56**

<u>November 2012 rent</u>

Start Date	End Date	Days	Rate	Amount Per Day	Total
12/Nov/2012	06/Oct/2013	329	12.5%	$0.7274	$239.33
07/Oct/2013	02/Feb/2014	119	12%	$0.6986	$83.14

03/Feb/2014	10/Aug/2014	189	13.5%	$0.7860	$148.55
11/Aug/2014	09/Dec/2014	121	12.5%	$0.7277	$88.06
Total		**758**			**$559.07**

Agents' fees and advertising costs

45. The Applicant claims $588.50, being the cost of the leasing agent's fees and advertising or pre-letting the Premises. He gave evidence that this amount has been paid. In my view, this expense arises as a direct consequence of the Tenant's breach of the Lease. Moreover, Clause 1(x)(iii) of the Lease expressly imposes an obligation on the Tenant to pay all reasonable costs and expenses which the Applicant may expend as a consequence of any default by the Tenant in the performance of her obligations under the Lease. Accordingly, I find that the Applicant is entitled to damages commensurate with that expenditure.

46. The Applicant also claims interest on that expenditure. For the reasons set out above, the Applicant's claim for interest is governed by Clause 1(w) of the Lease. That clause states that, except in case of rental or monies which have been expended by the Lessor to remedy any default by the Lessee under the covenants of the Lease, interest must not be demanded until 14 days after the date on which the Lessor has made demand.

47. In the present case, the claim for interest on the cost of advertising and agent's fees was made as part of the Applicant's amended claim filed with the Tribunal on 9 December 2014. Therefore, interest does not accrue on the amount until 14 days after 9 December 2014, being 23 December 2014. Accordingly, as the claim for interest is up to 9 December 2014, no interest has accrued under the terms of the Lease. Consequently, the claim for interest on the cost of advertising and agent's fees will be dismissed.

Outstanding water usage

48. According to the Applicant, South East Water issued an account in the amount of $1,794.65, which relates to water usage and rates for the whole of the building, in which the Premises form part. The Applicant gave evidence that he negotiated with South East Water and eventually settled that account for a reduced amount of $723, which he has paid. He seeks reimbursement of that amount.

49. The Tenant contends that the Disclosure Statement given to her and executed by the Applicant expressly stated that there was no outgoings payable in respect of the Premises. She submits that in those circumstances, it is not open for the Applicant to now claim water consumption in respect of the Premises.

50. Under Clause 1(b) of the Lease, all *gas, electricity, telephone, sewerage disposal and water consumption charges* fall within the definition of *Outgoings*. Item 10 of the Schedule to the Lease lists *Outgoings* to include

all services and consumption if connected to the premises including … water. That clause is inconsistent with the *Disclosure Statement* because it requires the Tenant to pay or reimburse the Applicant for outgoings.

51. The claim for water consumption is difficult to justify on the basis that it constitutes a payment due under the Lease. In particular, the Premises were not separately metered and it is difficult to know how much of the water usage relates to the Premises and how much relates to the residential dwelling also forming part of the building. Indeed, the Tenant gave evidence that the only plumbing fixtures within the Premises were a water closet and handbasin. On the other hand, the residential part of the building comprised all plumbing fixtures that are ordinarily found in a domestic dwelling. Without any evidence as to what proportion of the water usage relates to the Premises, I am unable to determine what amount, if any, of the South East Water account is attributable to the Premises. Moreover, in circumstances where the *Disclosure Statement* expressly stated that no outgoings were payable in respect of the Lease, I find that it would be unconscionable to allow the Applicant to now make that claim.

52. In the absence of any evidence as to how water usage should be apportioned, I find that this aspect of the Applicant's claim has not been proved and I have no option but to dismiss the water consumption claim.

Legal costs

53. The Applicant claims $220 plus interest in respect of a default notice dated 11 September 2012, prepared by his solicitor and served on the Tenant prior to her vacating the Premises. As indicated above, the Lease provides that the Applicant is entitled to be reimbursed in respect of expenditure as a consequence of any default by the Tenant. In my view, the amount charged is reasonable and payable under the terms of the Lease.

54. However, the amount did not form part of the original claim made by the Applicant and appears to have first surfaced in the Applicant's *Amended Monetary Claim* dated 17 October 2014, filed with the Tribunal on 9 December 2014. For the reasons set out above, I do not consider that any interest under the terms of the Lease has accrued given that the Lease requires that a demand needs to be first made before interest starts to accrue. Therefore, the Applicant's claim for interest on the $220 is also dismissed.

Reconciliation of Applicant's claim

55. Having regard my findings set out above, I determine that the Applicant is entitled to damages in the amount of $6,219.13, calculated as follows:

Item	Amount
Rent foregone	$4,270
Interest on rent foregone	$1,140.63
Agents fees and advertising costs	$588.50
Legal costs of default notice	$220
TOTAL	**$6,219.13**

56. Accordingly, I will order that the Tenant pay the Applicant $6,219.13. I will further order that the Tenant's counterclaim be dismissed.

SENIOR MEMBER E RIEGLER