VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST VCAT REFERENCE NO. BP210/2016

CATCHWORDS

Retail Lease Act 2003 – s. 57 - damage to premises – evidence – obligation to repair is to repair upon notice of a state of disrepair - failure of landlord to repair within a reasonable time – entitlement of tenant to determine the lease by notice – must give notice electing to terminate the lease – reduction of rental – reduction proportionate to loss of use through failure to repair

APPLICANT	Mina Guirguis
RESPONDENT	Casa Di Iorio Investments Pty Ltd (ACN 153 217 933)
WHERE HELD	Melbourne
BEFORE	Senior Member R. Walker
HEARING TYPE	Hearing
DATE OF HEARING	6 October 2016
DATE OF ORDER	22 December 2016
CITATION	Guirguis v Casa Di Iorio Investments Pty Ltd (Building and Property) [2016] VCAT 2209

Order

1. Declare that the Applicant is entitled to serve a notice to determine the lease of the subject Premises pursuant to section 57(1)(d) of the *Retail Leases Act* 2003.
2. Order that the rental and outgoings that would otherwise have been payable pursuant to the lease with respect to the premises from and including 25 April 2016 until the termination of the tenancy be reduced by 50% and that any amounts paid by the tenant for rent and outgoings in excess of that sum for that period be repaid to the tenant.
3. Liberty to apply
4. Costs reserved.

SENIOR MEMBER R. WALKER

Appearances:

For the Applicant	Mr D. Epstein of Counsel
For the Respondent	Mr J.D. McKay of Counsel

REASONS

Background

1. The respondent ("the Landlord") is the owner of a two-storey lock-up shop in Lygon Street, Carlton ("the Premises"). The applicant ("the Tenant") is and has been since 11 March 2011 carrying on a restaurant business in the Premises.

2. The current lease of the Premises from the Landlord to the Tenant ("the Lease") is dated 22 October 2008 and the current term expires on 1 July 2017. The rent presently payable is $102,000 per annum.

3. The agent administering the tenancy or behalf of the Landlord is a Mr Shiel.

4. The Tenant complains that the Landlord has failed to maintain the Premises and, despite being informed that they are in a state of disrepair, has failed to carry out the necessary repairs. He seeks damages and a declaration that he is entitled to terminate the Lease pursuant to section 57(1)(d) of the *Retail Leases Act* 2003 ("the Act") on the ground that the Landlord has failed to repair the damage to the Premises within a reasonable time after he requested it in writing to do so.

The hearing

5. The matter came before me for hearing on 6 October 2016. Mr D Epstein of counsel appeared for the Tenant and Mr J.D. McKay of counsel appeared for the Landlord.

6. I heard evidence from the Tenant and his witness, Mr Zekry. I was also provided with a plumber's report that he had received, dated 28 December 2015, concerning the state of some pipes and the front awning of the Premises and a report from a Mr Andrew Henshaw, an electrician, as to the state and condition of the dumb waiter in the restaurant.

7. On behalf of the Landlord I heard evidence from the agent, Mr Shiel, two plumbers, a Mr Jarvis and a Mr Makris, and a dumb waiter consultant, Mr Spalliera.

8. There was insufficient time to complete the hearing on the first day and the matter was adjourned part heard to 10 AM on 13 December 2016 with one further day allocated.

9. At the resumed hearing I heard evidence from a dumb waiter technician, Mr Augoustakis, who had carried out extensive work to the dumb waiter since the last hearing date and said that, although the dumb waiter was still not operational, it would take less than two hours to complete the work to render it so.

The issues

10. The failures of the Landlord to repair are alleged to have been:

    (a) failing to fix a leaking waste pipe at the rear of the Premises;

    (b) failing to repair a leak in the canopy at the front of the Premises; and

    (c) failing to repair the dumb waiter in the restaurant.

11. The Landlord acknowledged a want of repair in each case and said that it has attended to the first two and was in the process of repairing the dumb waiter. The Tenant claimed that in each case he suffered loss and damage as a result of the Landlord's delay. He also claimed that, since the Landlord did not effect repairs within a reasonable time, he is entitled to end the Lease and wishes to do so.

The leaking waste pipe

12. The pipe in question was a horizontal waste pipe suspended from the external wall of the Premises in the adjacent laneway. The Tenant says that he contacted Mr Shiel in November 2012 to inform him that the pipe was leaking and that a plumber was sent the following day. He produced an email dated 18 November 2012 to Mr Sheil stating that the job was not done properly and that there was a "…huge leaking of dirty water. Same as before".

13. He said in his witness statement that he had been complaining about the pipe since September 2012.

14. Also exhibited is a reply email from Mr Sheil stating:

> "The pipe issue is not a five-minute fix. The plumber attempted a temporary fix and he will report/quote today on a more permanent fix.'

That does not appear to have been done.

15. On 14 December 2012 the Tenant sent the following email to Mr Shields:

> "The pipe has totally broken today. All water comes directly from kitchen sinks to street right now! The staff tried hard to tie the pipe back to wall with no luck… Neighbours not happy at all from smelling water in street for almost one month. We need to fix this pipe asap."

16. Mr Shield said that he sent a plumber to the Premises on 15 December 2012 who stopped the leak. He said that he heard nothing further and assumed that the pipe was no longer posing a problem. The "temporary repair" referred to by Mr Sheil was to wrap the pipe in duct tape. It does not appear that anything further was done until this year. The Tenant said that he was told by Mr Sheil that it was a very large job to repair the pipe properly.

17. The Tenant had the waste pipes and also the front veranda inspected by a plumber on 28 December 2015. A photograph taken by the plumber shows that the pipe is still wrapped in duct tape. It seems extraordinary that a Landlord would leave a waste pipe carrying black water in this condition for three years.

18. Mr Sheil said that he received further complaints from the Tenant concerning leaking from the pipe on 11 November 2015 but that he did not inspect it until late 2015 or early 2016 when, he said, he could see no leak coming from the pipe. The pipe was finally fixed on 20 June 2016 when the broken section was replaced by another plumber, Mr Makros.

19. In his evidence, Mr Shiels sought to blame the damage to the pipe on the alleged failure of the Tenant to clean the grease trap of the restaurant. There was some cross-examination concerning documentation relating to the regular cleaning of

the grease trap which the Tenant claimed to have had carried out. It is unclear from the evidence precisely where this grease trap is and I do not accept that the failure to clean out the grease trap can have anything to do with a cracked or broken pipe, although the plumber who replaced the section of pipe, Mr Makros, said that he found grease in the section of pipe that he replaced which he said might have been due to the failure of the Tenant to clean the grease trap.

20. The temporary repair using tape had been done by the other plumber, Mr Jarvis. He said that the leak was minor and easily stopped by fixing taped to the pipe. He said that he received no further instructions in relation to the pipe and assumed that the leak had not reappeared. The very modest plumber's bill that was received by the agent described the repair as being temporary, yet no permanent repair appears to have been ordered until 20 June 2016, well after this proceeding was commenced.

21. I think the fault in regard to this part of the complaint lies with the Landlord in failing to effect a proper repair to a waste pipe when it knew that it was leaking and causing unpleasant odours. However it is very difficult to identify any damage that was suffered by the Tenant as a result of this neglect to carry out proper repairs. Quite obviously, unpleasant smells from a leaking drain might be expected to deter patrons from visiting a restaurant but there is insufficient evidence that that occurred.

The leak in the canopy

22. The canopy is a cantilevered awning which is sheeted on the upper side with clip-lock roofing material which is graded back towards the building to a box gutter which is flashed onto the parapet wall. The internal structure is concealed by a soffit that appears to be made from pressed metal. Directly below the underside of the canopy there is a high double door that extends from the floor almost to the ceiling and opening inwards. The plaster and paint directly above the door has been degraded and it appears as though the top of the door has been catching on the plaster. The Tenant claims that water has been leaking from the canopy and wetting the plaster above the doorway and also running into the electrical box on the southern wall adjacent to the doorway. Photographs of the ceiling above the doorway show paid to have been scraped off and the plasterboard to be quite degraded.

23. The first complaint concerning the awning appears to have been by email from the Tenant to the agent on 7 August 2014 but this related to an attached fitting belonging to the Tenant and the email was a request for details of insurance. There was no complaint in the email that the awning was leaking

24. On 1 November 2015 the Tenant sent an email to the agent complaining that when it rains rainwater comes into the room and damages the Premises. He attached photographs. Mr Shiels said that on 7 November 2015, he sent a work order to a plumber to attend to the veranda roof and downpipe. He said that the work was carried out on 12 November when the veranda gutters and roof were cleared of rubbish, leaves and debris and the downpipe was checked. The work was carried out by a Mr Jarvis who said in his witness statement that the box

guttering had become blocked with leaves and rubbish and that with heavy rains this would cause it to overflow, allowing water to penetrate the roof cavity. He added that, when he reinspected the Premises in April the following year he noted that the box gutter had rusted and contained a small hole which he had not noticed earlier. Considering the extent to which the gutter was degraded this evidence is remarkable.

25. Mr Mackay invited me to infer that the complaints of the Tenant in regard to this and the other items on that date were contrived because, at that time the Tenant had agreed to lease other premises nearby. Mr Mackay suggested that the Tenant was attempting to get out of the Lease in order that he might move his business to these other premises.

26. The Tenant denied that he was attempting to get out of the Lease. He said that he was renting the other premises because he proposed to establish three similar businesses in the area. The complaint about the leak and the resulting damage appears from the photographs to be genuine. I do not think I can infer that the complaints about the leaking canopy and the other matters were contrived. I must deal with each complaint on its merits.

27. When the Tenant had the roof inspected on 28 December, the report contained photographs that showed that the box gutter was severely corroded, that it was not properly flashed and that water was leaking into the power box below. The photographs also show the extent of the resultant damage above the door.

28. On 6 November the Tenant emailed the agent to say that the problem was getting worse and the staff could not open the front door of the shop. A further email was sent on 11 November relating to all defects, including the balcony.

29. It appears to be common ground that the canopy has leaked in the past. The issue is the cause of the leak. It is apparent from the photographs and admitted in evidence led on behalf of the Landlord that the box gutter draining the parapet had rusted out, had a hole in it and required replacement. In addition, there was a quantity of rubbish on the roof, including leaves and smoking paraphernalia which were removed by the Landlord's plumber.

30. I think on the balance of the evidence I have to find that the cause of the leaking canopy was a combination of the hole in the gutter and the rubbish obstructing the downpipe. The Tenant blamed the presence of the rubbish on the roof on the Landlord but I think that it is lack of maintenance on the part of the Tenant. Cleaning gutters and removing rubbish was not the responsibility of the Landlord.

31. I am unable to say how much of the water penetration was due to one cause and how much to the other. I find that the agent sent a plumber to the Premises promptly upon being advised by the Tenant that there was a problem. I am not satisfied that the Tenant's claim in regard to water penetration through the canopy has been established.

The dumb waiter

32. The bulk of the seating in the restaurant is on the ground floor at the front of the building. There is a stairway to a mezzanine floor where the toilets are situated and a further stairway up to the upper floor where the kitchen is situated and there is a private dining area overlooking Lygon Street.

33. The purpose of the dumb waiter is to carry meals prepared in the kitchen on the upper floor down to the eating area on the ground floor. In the absence of the dumb waiter it was necessary for staff to carry the meals down two flights of stairs, past the toilets to the dining area at the front of the restaurant. Photographs tendered show the stairways to be fairly narrow. Waiting staff carrying meals downstairs would be required to negotiate past anyone coming up the staircase in the opposite direction to visit the toilets. In addition, there would be a practical limit on how much a waiter could carry at a time. Consequently, to bring meals to a table containing a number of patrons would probably require several trips between the eating area and the kitchen. The operation of the dumb waiter was therefore a matter of considerable practical importance to the Tenant.

34. The Tenant said that, on 13 February 2014, the dumb waiter broke down. He said that he contacted the company that serviced the dumb waiter, which was Independent Lifting Services Ltd ("ILS"), but was told by the company that they were not prepared to further service the dumb waiter and that it was not safe to use.

35. Thereafter, the Tenant says that the dumb waiter worked intermittently, sometimes working and sometimes not and occasionally causing the power to the whole of the Premises to fail. He said that meals had to be carried down the stairs which caused difficulty and delay and extra expense because additional staff was required.

36. On 24 December 2015 the Tenant obtained a quotation from a dumb waiter company for a new dumb waiter. In this document, the author of the quotation pointed out that the manufacturer of the dumb waiter had ceased operation in the early to mid 1980s, that no spare parts exist, that it was in a very bad state and that it would continue to be a hazard and troublesome due to its age and design. The recommendation was for the replacement of the dumb waiter. A number of problems with the dumb waiter were also noted, to the effect that it was currently difficult to use and unsafe and that it exposed people to the risk of electrocution. Although I have no reason to suppose that comments expressed in this quotation were not made bona fide, I must bear in mind that it is a document prepared by someone seeking to sell a new dumb waiter.

37. This quotation was attached to the letter of 8 February that was sent to the agent by the Tenant's solicitors. The letter refers to the unsafe condition of the dumbwaiter and states that the Tenant would not permit the staff to use it.

38. At a directions hearing on 15 April 2016 I directed the Tenant to grant reasonable access to the Landlord and its tradesmen for the purpose of assessing the claimed defects in the Premises. On 24 April 2016 the Tenant, Mr Shiels and

a technician, Mr Spalliera, inspected the dumb waiter. During this inspection, according to the Tenant, Mr Spalliera forced it to move in order to make it work. The Tenant said that, after they left, the dumb waiter would not move at all and when he had it inspected by an electrician, it was found that the motor of the dumb waiter had fused. Mr Shiel denied the Tenant's account and said that when the dumb waiter was inspected on that occasion it would not work because a fuse had been removed. He was supported in this account by Mr Spalliera who said that the fuse had been removed and that the dumb waiter could not run without it.

39. On 4 May 2016 the Tenant obtained a report from an electrician to the effect that he had tested and assessed the condition of the dumb waiter the previous day. He said that he tested the motor and the installation resistance of the motor windings which "gave a poor result". He said that after further inspection he noticed that the live 240 V contacts were easily accessible to anyone who could reach them and that this was highly dangerous. He said that he had ordered the circuit to be turned off and the main switchboard so that this danger could be avoided. He said that all the control gear is very old and faulty. He concluded that the motor and/or control gear should be replaced.

40. When the dumb waiter was ultimately inspected by Mr Augoustakis, he found that it was not operational because the motor had at least one winding that had failed and it was an open circuit. He said that the fuse for the door lock circuit was missing. He listed a number of other faults and it appears from his report that the problems with the dumb waiter were manifold and serious. During his investigation he discovered that one of the wires had been cut and pushed back into a conduit. I accept his evidence in this regard. The Tenant denies having cut the wire and since a number of persons have inspected and possibly dealt with this dumb waiter I am unable to make any finding on who cut it or find that this contributed to any of the problems that necessitated its replacement.

41. At a further directions hearing on 2 September 2016, the Tribunal noted that the Landlord had agreed to repair the dumb waiter at its own cost without admission as to liability.

42. By the time the matter came on for hearing before me on 6 October 2016 the dumb waiter had still not been repaired. At the conclusion of evidence on that day I was informed by Mr Mackay that it had been expected that the dumb waiter would have been repaired already. He said that a new motor had been obtained but that the controller had not yet been delivered. It appears that the controller had to come from overseas.

43. According to the Tenant's evidence, it was not until 5 December that is, eight days before the resumed hearing, that he was contacted by Mr Sheill on behalf of the Landlord and told that repairs to the dumb waiter would commence at 8 o'clock the following morning. Arrangements were made for access to the technicians between 8 AM and 3 PM every day. Work continued until 4 PM on Monday 11 December when the restaurant was due to open the business and work then ceased. Since the hearing was to resume the following morning, the

suggestion was made by Mr Augoustakis that work would resume on the Wednesday at which time he expected that it would be completed.

44. Consequently, by the time the hearing resumed at 12 December the dumb waiter was still operational.

The claim for termination

45. The claim for a rebate of rent and for an order for early termination are made pursuant to Clause 8 of the Lease and also section 57 of the *Retail Leases Act* 2003. There is also an alternate claim under the *Building Act* 1993

46. Clause 8 of the Lease (where relevant) provides as follows:

> "8.1 if the Premises are damaged so that they cannot be used for the permitted use
>
> > 8.1.1 a fair proportion of the rent and outgoings is to be suspended until the Premises are again wholly fit for the permitted use,
> >
> > 8.1.2 the suspended portion of the rent and outgoings must be proportional to the nature and extent of the damage.
>
> 8.2 if the Premises are partly destroyed, but not substantially destroyed, the Landlord must reinstate the Premises as soon as reasonably practicable.
>
> 8.3 if the Premises are wholly or substantially destroyed
>
> > 8.3.1 the Landlord is not obliged to reinstate the Premises and
> >
> > 8.3.2 if the reinstatement does not start within three months, or is not complete within six months, the Landlord or the Tenant may end this Lease by giving the other written notice."

47. By its terms, the clause applies where the Premises are either damaged or wholly or partly destroyed. The right to terminate under clause 8.3.3 does not arise unless the Premises are wholly or partially destroyed. The evidence in the present case does not demonstrate that and so the only remedy available under this clause is an abatement of rent if the Premises can be said to be damaged.

48. Reliance is also placed upon s of the *Retail Leases Act* 2003 which provides (where relevant) as follows:

> "57. Damaged Premises
>
> (1) A retail premises lease is taken to provide the following if the retail premises, or the building in which the premises are located, is damaged-
>
> > (a) except where the tenant caused the damage, the tenant is not liable to pay rent, or any amount in respect of outgoings or other charges, that is attributable to any period during which the premises cannot be used under the lease or are inaccessible due to that damage; and
> >
> > (b) except where the tenant caused the damage, if the premises can be used under the lease but that use is reduced to some extent by the damage, the tenant's liability for rent, and any amount in respect of outgoings or other

charges, that is attributable to any period during which the use is reduced is decreased to the same extent; and

(c) if the landlord reasonably considers that the extent of damage makes its repair impracticable or undesirable and notifies the tenant in writing of that, the landlord or tenant may terminate the lease by giving not less than 7 days' written notice of termination to the other party; and

(d) if the landlord fails to repair the damage within a reasonable time after the tenant asks the landlord in writing to do so, the tenant may terminate the lease by giving not less than 7 days' written notice of termination to the landlord; and

.....

(2) A provision of a retail premises lease is void to the extent that it has the effect of limiting the liability of a party to the lease to pay compensation to another party to the lease in respect of damage to the retail premises or the building in which the premises are located.

....."

49. The word "damaged" is not defined in either the Lease or the Act and so it would have its ordinary meaning. The primary meanings given for the word in the Oxford Dictionary are:

> "1. Loss or detriment caused by hurt or injury affecting estate condition or circumstances; 2.Injury, harm esp injury to a thing such as impairs its value or usefulness".

50. I have previously held that the word will apply to a want of repair of leased premises (see *Cooley's Pty Ltd v Z & R Holdings Pty Ltd* [2013] VCAT 1005; *Sun & Anor v Younan* [2010] VCAT 254). In the latter case I said concerning the word "damage" (at para. 35):

> "In normal parlance it is used to refer to accidental damage but it seems to me that the section envisages any state of disrepair which renders the premises unable to be used or inaccessible. If rented premises should fall into such a degree of disrepair then I think the section applies. For example if a landlord so neglected his obligation to make structural repairs that the premises fell down it could not sensibly be said to be said that the premises were not damaged. Where the consequences of disrepair were less serious the premises are nonetheless damaged. It is a matter of degree. The want of the repair is the cause. The damage is the effect."

I am still of that opinion.

51. Mr Epstein submitted that the Premises were damaged in three respects namely, the broken waste pipe, the leaking canopy and also the dumb waiter breaking down.

52. Although there had been some earlier communications, it was in the email of 11 November 2015 to the agent that the Tenant set out in detail all three complaints and demanded confirmation by 18 November 2015 that the Landlord was willing

to fix the problems. On 18 November he made what he said was a last request to fix all damage, claiming that the Landlord had been ignoring all his calls, faxes and emails. He said that the Landlord had 14 days and if he did not fix the damage in the building he would go to the Tribunal to cancel the Lease agreement and stop paying rent until the Premises were repaired.

53. By a letter dated 8 February 2016 addressed to the agent, the Tenant's solicitors repeated the history of all three complaints and asserted that the Landlord was in breach of Clause 8 of the Lease and asserted a right to determine the Lease.

Termination of the Lease

54. It seems to me that the right to terminate the Lease under Clause 8.3 only applies if the Premises are wholly or substantially destroyed. However the same limitation does not appear to be present in section 57. The right to determine the Lease under the section arises where the Premises are damaged and the Landlord fails to repair the damage within a reasonable time after the Tenant asks the Landlord in writing to do so. The Tenant may then terminate the Lease by giving not less than 7 days' written notice of termination to the Landlord.

55. The Tenant gave evidence that he gave a notice in writing to the Landlord on 22 November 2016 that he was leaving if the repairs were not completed within seven days. He said that the Landlord requested one week to affect the repairs but they were not completed within that time. He informed me at the hearing that he was moving out of the Premises on 15 December.

56. The obligation to repair is an obligation to repair on notice that there is a want to repair (see *SCI Steel Mill Pty Ltd v Wool International* Supreme Court of Victoria 15 July 1994 (unreported)). Once the want of repair is brought to the notice of a landlord the landlord must affect the repairs within a reasonable time or face the possibility of a notice terminating the lease pursuant to the section.

57. What is a reasonable time will depend upon the surrounding circumstances. The landlord must investigate the problem and have time to set it right. Often there will be considerable urgency. In the present case the Landlord was aware of the importance of the dumb waiter to the effective operation of the restaurant. The problems faced by the Tenant were clearly articulated in the emails of 11 and 18 November 2015 and in the subsequent letter from the Tenant's solicitors of 8 February 2016. An agreement was made at the directions hearing in September 2016 to repair the dumb waiter and it was inferred at the hearing in October that its repair was imminent yet it was still not repaired by the time of the resumed hearing.

58. I am satisfied that the Landlord, being aware of the want of repair of the dumb waiter and the importance of acting quickly to repair it, has failed to do so and that consequently, the Tenant is entitled to determine the Lease. However the notice given by the Tenant was that he would leave if the repairs were not affected within seven days. He then extended that period by another week. The implication of that notice was that, if the repairs were affected in that period of seven days he would not leave. It does not seem to me that he has given the

notice required by the section in order to effect a termination. If he wishes to determine the Lease in accordance with the section he must make a final election to do so and give a notice that is unequivocal. In this regard, one of the orders sought by Mr Epstein is a declaration that he is entitled to determine the Lease and I intend to make that order.

Reduction in rent

59. By section 57(1)(b), if the damaged Premises can be used under the Lease but that use is reduced to some extent by the damage, the Tenant's liability for rent, and any amount in respect of outgoings or other charges, that is attributable to any period during which the use is reduced is decreased to the same extent.

60. I am not satisfied that it has been demonstrated that the use of the Premises was reduced to any measurable extent by the hole in the box gutter at the front of the building or the unpleasant odours from the drainpipe at the rear. However the loss of the use of the dumb waiter appears to have had a very severe effect on the viability of the Tenant's business. The extent to which the operation of the restaurant was limited without the dumb waiter was described by the Tenant in his evidence and also by his customer Mr Zekry.

61. While the dumb waiter was able to be operated the Tenant complained that it would often cause the power in the restaurant to fail which was potentially dangerous to both staff and patrons considering that the toilets were accessed up a flight of stairs. There was also a risk of electrocution. When it was not able to be used at all, which appears to have been no later than 24 April 2016, it became very difficult to operate the restaurant business without it. The layout of the Premises and the nature of the stairs was such that the absence of the dumb waiter was going to prevent the delivery of meals from the kitchen on the upper floor down three flights of stairs to the restaurant area on the ground floor. The Tenant complained of having to engage additional staff but the evidence of the cost of that was less than satisfactory.

62. Possibly the best demonstration of the effect that the absence of the dumb waiter had on the business was what happened to the menu. The original menu of eight pages offered a range of meals and banquets at restaurant prices. The reduced menu which is now displayed on the front door of the restaurant is a single page snack and desert menu at greatly reduced prices.

63. Any reduction that is ordered in the rent must be equivalent to a reduction in the usability of the Premises. The permitted and contemplated use of the Premises was that of a restaurant not a snack bar. I think that the extent of the reduction in the usability of the Premises was no less than 50% as from 24 April 2016. Before that date the evidence is unclear.

64. It is therefore appropriate to order that the rent and outgoings that would otherwise be payable pursuant to the Lease with respect to the Premises from and including 25 April 2016 until the termination of the tenancy be reduced by 50% and that any amounts paid by the Tenant for rent and outgoings in excess of that sum for that period be repaid to the Tenant.

Other orders

65. In his submissions Mr Epstein sought an order for damages and costs totalling $266,684.73, which included lost wages, lost rent and loss in goodwill. However no accounting evidence was called in support of these claims. All that I had were assertions from the Tenant which are quite inadequate to justify the relief sought.

66. An order was also sought for the refund of the bond the Tenant has paid. The Tenant's entitlement to recover the bond cannot be ascertained until vacant possession is delivered up to the Landlord. If there is any dispute as to what if any deduction there is to be made by the Landlord from the bond then that can be dealt with. I will reserve liberty to apply in the event of any further dispute.

67. Costs will be reserved but the parties will be aware of the limited circumstances in which costs can be ordered in proceedings of this nature.

SENIOR MEMBER R. WALKER