

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## CIVIL DIVISION

### BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP887/2015

### CATCHWORDS

Retail tenancies, *Retail Leases Act 2003* s57, Landlord agreed to undertake repairs, not all repairs undertaken, whether state of premises justifies ending the lease.

<b>APPLICANT</b>	Mrs Fatime Jarrari
<b>RESPONDENT</b>	Glenvale Somerset Pty Ltd (ACN 131 286 970)
<b>WHERE HELD</b>	Melbourne and on site at 13 Somerset Place Melbourne
<b>BEFORE</b>	Senior Member M. Lothian
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	19 August 2015
<b>DATE OF ORDER</b>	7 September 2015
<b>CITATION</b>	Jarrari v Glenvale Somerset Pty Ltd (Building and Property) [2015] VCAT 1391

### ORDERS

- 1 The Respondent must pay the Applicant \$1,911.54 forthwith.
- 2 By 19 October 2015 the Respondent must:
  - a Rectify the loose wall tiling, and
  - b Rectify the floor structure in accordance with the Respondent's expert's recommendation to "insert appropriate type and number of fixings to stabilise the floor section in question and also to the adjacent floor section east of that in question", unless there is an order for work to the floor by the Melbourne City Council, which order will take precedence over this order.
- 3 The Applicant must give the Respondent reasonable access to undertake the work ordered.
- 4 There is liberty to apply with respect only to the work ordered.
- 5 The application is otherwise dismissed.

**SENIOR MEMBER M. LOTHIAN**

**APPEARANCES:**

For Applicant

Mrs F. Jarrari in person

For Respondent

Ms I. Davidovic, Agent, in person

## REASONS

- 1 The Applicant, Ms Jarrari, is the Tenant of the Respondent-Landlord at Units 7 and 8, 13 Somerset Place, Melbourne. The building in which the premises are located is at the far end of a lane off Little Bourke Street, near the corner of Elizabeth Street and Little Bourke Street, facing east.
- 2 Units 7 and 8 are two floors at the base of the building. The building is entered at ground level, then there are steps down to what appears to have been a basement and seven or eight steps up to a floor somewhat above ground level.
- 3 The lower level is a large open space. The upper level has a screen towards the rear behind which is a rudimentary kitchen. There is a single toilet and “bathroom” containing a vanity wash basin, off the kitchen. The upper level is otherwise open.
- 4 Both levels have plain white walls and hooks or cords that would be suitable for hanging pictures. There is no ceiling on either level. The lower level shows the structure and underside of the upper level wooden floor. At the upper level waste pipes are visible, draining from the floor above. The underside of the concrete floor above has been painted white.
- 5 The application before me is by the Tenant. There is no counterclaim by the Landlord. The Tenant seeks damages of \$84,541.25 and a declaration that the lease is at an end. She claims that the Landlord has not undertaken agreed repairs and that the state of the premises is so poor that the Tribunal should declare, under s57 of the *Retail Leases Act 2003* (RLA) that the lease is at an end.

- 6 Her claim is as follows:

Refund of rent paid from 1 January 2015 to the date of hearing	\$40,403.44
Fixtures and installation cost	\$12,363.00
Return of security deposit	\$11,600.25
Relocation cost	\$20,000.00
Mediation fee at the Office of the Small Business Commissioner	\$195.00

## HEARING

- 7 I heard evidence from the parties on 19 August 2015 and at the conclusion of evidence met them on site at 4:30 PM for an inspection of approximately 45 minutes. The Tenant, Mr Stephen Foster, director of the Landlord and Ms Irina Davidovic, the Landlord’s agent, gave evidence. All present also attended the site inspection.
- 8 Both parties also relied on expert reports. The Landlord relied on the report of Mr Leo Dridan of Buildspect Consulting Pty Ltd dated 9 October 2014:

before any work was done by the Landlord, Tenant or owners corporation for the building. The Tenant relied on a report by Bayan Sabetzadeh of “bay’s renovations & home maintenance”. Neither report was in accordance with PNVCAT 2 - the Tribunal practice note that sets out the obligations of expert witnesses. I gave both parties the opportunity to bring their expert witnesses in on another day and both declined the invitation.

### Credibility of Tenant’s evidence

- 9 It is a matter of grave concern that two of the invoices upon which the Tenant sought to rely regarding the cost of fixtures appeared to have been altered.

### Vanity

- 10 The first was invoice number 158800 from Drills Swan Street Sales. It was for replacement of the cracked vanity unit and when the original was provided to me by the Tenant the amount shown for the vanity was \$1,404.
- 11 Ms Davidovic drew my attention to the copy of the invoice in the folder of documents provided by the Tenant to the Tribunal and to the Landlord. It shows the amount for the vanity was \$404.
- 12 The Tenant filed and served the folder of documents on 24 July 2015. When I asked her how she explained the discrepancy, she said that the item had been obtained and paid for by a previous employee of hers whom I identify as X<sup>1</sup>. She said that she had paid X in cash and that he must have changed the invoice. She said that he left her employment in late February or early March 2015.
- 13 I asked the Tenant how she could explain that the copy of the invoice appeared to be correct when filed on 24 July 2015, but the original had been changed by X at the latest in early March. She replied:
- I asked [X] to photocopy things when I sent them to Irina in January. These were photocopied in January.
- 14 She said she did not photocopy the invoices at any stage. Her explanation is not entirely satisfactory in circumstances where it does not explain how two unchanged copies of the changed invoice could have been created in order to be filed and served on 24 July 2015.

### Kitchen counter

- 15 The second altered invoice was number 159216 from Drills Swan Street Sales. It appears that this item was invoiced at \$100 but an extra “0” has been added to the unit price and the GST inclusive total, and extra “1” has been added to the total for the invoice to increase the amount of this invoice by \$1000. The suggestion that this sum is incorrect is supported by the fact

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<sup>1</sup> X was not present at the hearing and there is no reason to believe he knew what was being said about him.

that when the individual items are added, the total is not \$1645, but \$1,545. Adding “0” to \$100 increases the total by \$900; not \$1,000.

- 16 Ms Davidovic said she would accept \$100 plus GST for this item. The counter is now black, although the one claimed by the Tenant was white. It is a plain top that supports the sink; about 1500mm long by 600mm wide. I find \$100 is consistent with the item I saw and note the Tenant’s evidence that she “gave the white counter to the plumber who replaced the sink”.
- 17 Tenant said that X gave her this invoice as well. The inference I was invited to make was the X changed this invoice.

#### Advertisement

- 18 Ms Davidovic asked the Tenant in cross-examination why she had advertised the premises in the online website "Creative Hub" as a good property. The Tenant said she advertised it because she no longer wanted to be there. On close examination of her advertisement I see that she has described it as a "renovated two-storey building in the city" but has not suggested that it is in good condition. I accept her explanation that she wished to demonstrate its potential to possible tenants.

#### Conclusion regarding evidence

- 19 The Tenant has been, at least, careless in the written evidence she has presented. I treat her evidence with some caution.

### **SECTION 57 OF THE *RETAIL LEASES ACT***

- 20 The parts of s57 of the *Retail Leases Act* 2003 (RLA) which are relevant to the Tenant’s application are 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
  - ...
  - (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; ...

## **HISTORY**

### **Lease**

- 21 The parties entered a lease commencing on 1 February 2012 for a period of five years. The use of the premises shown in the lease is *“As a gallery and retail concept store, including hair and beauty collections.”*

### **Earlier Proceeding**

- 22 There was an earlier proceeding between the parties, R268/2013, which was commenced on 14 November 2013. The proceeding was eventually dismissed without adjudication, but the parties agree that it was settled.

### **Terms of settlement**

- 23 Terms of settlement dated 23 September 2014 were signed by the parties and by another party to the previous proceeding. Among other things it was agreed that the Landlord would pay the Tenant \$21,500. This was done.
- 24 Clauses 12 and 13 of the terms of settlement are relevant to this proceeding. They provide as follows:
12. [The Landlord] will engage a building consultant to prepare a report on any repairs required to the premises, such report to be prepared at [the Landlord's] cost.
  13. If the building consultant's report recommends works to be done [the Landlord] will engage suitable tradesman to perform such works within a reasonable time at its cost.

### **Expert report**

- 25 Mr Dridan's report to the Landlord of 9 October 2014 appears to have been prepared in accordance with clause 12 and made recommendations concerning the following items:

#### Replace cracked vanity basin in powder room

- 26 Mr Dridan's recommendation under paragraph 1.13 was:

Replace the cracked vanity basin in powder room to eliminate any moisture contribution to the affected floor area.

- 27 The parties agree that the Tenant replaced the cracked vanity unit that was discussed above under “Evidence”. On behalf of the Landlord, Ms Davidovic said that she considered \$404 was a reasonable price for the vanity, with a further \$400 for its installation. In the absence of better evidence I accept her submission.
- 28 The Landlord must allow the Tenant \$804 for supply and installation of the vanity.

### Refurbish toilet room tap

29 Mr Dridan recommended at paragraph 1.14:

Engage a plumber knowledgeable in maintenance and repair of taps to refurbish the toilet room tap; including disassembly, replacement and resetting of washer, replacement of spindle O ring and re-lubrication and replacement of fibrous spindle washer upon reassembly.

30 Ms Davidovic gave evidence that the tap has been rectified by the plumber arranged by the Owners Corporation.

31 Mr Sabatzadeh's report states:

There is a leak in the copper work from the back of the toilet, which has caused an array of unsatisfactory issues. There is also a leak in the toilet waste to toilet waste outlet junction, which leaks human waste within the wall cavity.

32 Mr Sabatzadeh did not say what led him to conclude there was human waste.

33 Someone has removed a section of tiled wall, approximately 250 mm wide, immediately to the north of the toilet. This was not explained. There is no evidence of current leaking in that area and I accept Ms Davadovic's evidence that the Owners Corporation had the tap fixed.

34 I make no allowance for the tap.

### Rectify loose tiling

35 Mr Dridan recommended at paragraph 1.17 of his report:

Rectify the loose wall tiling.

36 Under clause 13 of the terms of settlement, the Landlord was therefore obliged to rectify the loose wall tiling.

37 This recommendation follows from Mr Dridan's observation at paragraph 1.7 that:

The partition wall structure appeared sound, although some of the wall tiles at its lower area were loose and cracked.

These tiles have not been rectified.

38 Mr Sabatzadeh said in his report that the bottom course of tiles has cracked, there is bacterial infiltration in the wall cavity and there is swelling of the doorstep, jamb and architraves. He recommended:

Remove toilet and vanity, remove all tiles and plaster on affected walls, address and repair the plumbing issue, re-plaster, waterproof, re-tile, grout, seal bathroom and toilet, re-install toilet and vanity.

39 Mr Sabatzadeh's recommendation is for a renovation of the bathroom and toilet, not mere repair of the tiles.

40 I note that under clause 3.2.5 of the lease the Tenant is obliged to:

maintain in working order all plumbing, drainage, gas, electric, solar and sewage installations.

Under clause 3.3.2 the Tenant is not obliged to carry out structural or capital repairs, and under clause 6.4:

The landlord must keep the structure... of the building and the landlords installations in a condition consistent with their condition at the start of the lease but is not responsible for repairs which are the responsibility of the tenant under clauses 3.1, 3.2 and 3.3.2.

- 41 Notwithstanding the provisions of the lease, under the terms of settlement the Landlord undertook to rectify in accordance with the building consultant's recommendations. I find that the Landlord must rectify the loose wall tiling by 19 October 2015 but is not obliged to strip out the bathroom and toilet and replace the wall tiling.

#### Alleged leak over south end of galley Kitchen

- 42 Mr Dridan's report concerning the alleged leak included:

- 2.4. The alleged location of the water leak is associated with a watermark present upon a pipe junction fitting at the south (left of the exhibition space) end of the pipework.
- 2.5. Close inspection of the watermark at the southern location found that the pipe had previously been painted.
- 2.6. An isolated spot of moisture affected paint had peeled and curled from a previous leak event.
- 2.7. At the time of inspection, watermarked and curled flakes of paint were crispy dry suggesting that no water had affected that spot for some time.
- 2.8. Directly above the watermarked pipe is another drainage pipe with blue remedial putty retro-fitted around the fitting joint.
- 2.9. It appears that the remedial application of the putty product has stemmed any leak that was once present.

- 43 Mr Dridan recommended that the area be monitored and that "real time evidence" of any future leaking in that location be "captured".

- 44 Mr Sabatzadeh's report states:

There is a leak in the 100 mm PVC plumbing pipe junction that is leaking human waste into the kitchen area. This is a major hygiene hazards and needs to be addressed immediately.

The leak in waste pipe in kitchen has caused the following;

- Major hygiene hazards
- Inconvenience to staff and guests.

- 45 Again Mr Sabatzadeh failed to say how he identified leaks as human waste.

- 46 On the third page of Mr Sabatzadeh's report there are three photographs of the area where the alleged leak has occurred. The photographs also show a glass bowl with liquid in it, on top of the refrigerator, beneath the alleged leak.
- 47 The same bowl was present when I visited the site, with somewhat more liquid in it – about 250 mls of discoloured water. The area was not dripping at the site inspection.
- 48 Photographs 5 and 6 in Mr Dridan's report show the area where he says that retro-fitted putty has been used to repair a leak and the waste pipe with the water marks. The photographs are closer to the pipe and therefore more detailed than those in Mr Sabatzadeh's report.
- 49 Photograph 6 is consistent with something dripping onto the pipe, running around the pipe, and then dripping off. Further, the area of the drip is not close to a joint in the sewage pipe.
- 50 It is for the Tenant to prove every element of her claim. In the absence of Mr Sabatzadeh in person, and without evidence such as a video recording of the alleged leak, I am not satisfied that she has proved this part of her claim. I make no order as to this alleged leak.

#### Alleged leak over north end of galley Kitchen

- 51 The parties agree that this leak has been rectified.

#### Floor structure

- 52 At paragraph 5.10 of his report Mr Dridan described the floor of the upper level and recommended:

Insert appropriate type and number of fixings to stabilise the floor section in question and also to the adjacent floors section east of that in question.

- 53 The problem is that it is not clear which areas of floor Mr Dridan refers to. At paragraph 5.1 he said:

The upper ground level timber floor structure midway along the western wall was bouncing.

- 54 Mr Dridan's report assumes that the front door faces east. Therefore the western wall is at the back of the premises. This is inconsistent with the description at paragraph 5.3:

Close inspection of the underside of the floor structure found that the section of floor in question is a retro-fitted infill section of particleboard sheet flooring laid upon short joist sections that rest upon a fitted wall cleat of seasoned 75 mm x 38 mm OB hardwood.

I observed that the joists run north-south, not east-west.

- 55 Further, photograph 13 shows the area most likely to be in question and is titled:

Insecure south wall cleats below timber floor structure.

- 56 This is the same area of floor to which the Tenant drew my attention, looking up from below. It appears to be an old stair-case void.
- 57 The Tenant said Mr Sabatzadeh identified this area as potentially dangerous. In his report he said the floor structure:
- ... does not structurally satisfy floor load, this is evident from the level below, over time the load-bearing beam has given way and has begun to sag. If the right amount of weight is applied to these given areas, this could prove catastrophic, the beam will give way and the floor will collapse, this is a high hazard that needs to be addressed as soon as possible.
- 58 The Tenant also pointed out the area of floor from above where there is a gap between the painted wooden floorboards and the skirting board. I cannot be satisfied that this gap is symptomatic of structural failure rather than merely being a gap that previously accommodated a floor covering such as carpet.
- 59 I conclude that the piece of timber referred to by Mr Dridan as a wall cleat has been referred to by Mr Sabatzadeh as a beam.
- 60 Mr Foster said that no work had been done to the floor because Mr Dridan attributed some blame for floor defects to excessive water when mopping. At paragraph 4.11 Mr Dridan suggest that the timber moisture content fluctuation could be minimised by using a damp mop rather than a saturated mop. Nevertheless, paragraph 4.11 does not address the same issue as the recommendation made at paragraph 5.10.
- 61 Ms Davidovic's evidence was that the floor was in this condition when the tenancy commenced. Nevertheless, this fails to take into account clause 13 of the terms of settlement.
- 62 In the absence of engineering advice I am not satisfied that Mr Sabatzadeh's predictions are accurate but note that the Landlord has breached its obligations by failing to do what it agreed to do.
- 63 I also note that the Tenant states she has reported this alleged defect to the Melbourne City Council. The Council might issue a works order.
- 64 The Landlord must undertake the works recommended by Mr Dridan unless there is an order for work to this area by the Melbourne City Council. This must be done by 19 October 2015, and the Tenant must give the Landlord reasonable access to do so.

### Window

- 65 Mr Dridan did not see any leaking to the window and his recommendations were to monitor the location of the alleged leak and capture real-time evidence of any future leaking including any timber saturation, drips and trickles in that location.

- 66 On site it was obvious that there had, at some stage, been water entry through the joint in the window frame to the top right-hand side, when viewed from inside. There were also some marks in the dust on the window ledge, indicating that water had dried there. There was no evidence of recent leaking.
- 67 I am not satisfied of the accuracy of Mr Sabetzadeh's report concerning the window where he said:
- Leak in window has caused the following:
- window frame to rot
  - window seal to be riddled with water which will inevitably begin to rot to internal cavities
  - damaged nine floorboards
  - leaked to the floor below, leaking onto electrical fixtures and cables (electrical hazard)
- 68 I note with concern that the Tenant has not provided evidence of water leaking in "real-time" as recommended by Mr Dridan. Further, I prefer the evidence of Mr Foster that the exterior of the window was repaired by the Owners Corporation at its own cost, on 5 June 2015.
- 69 There is no allowance for the window.

#### Fire collar

- 70 I accept Ms Davidovic's evidence that this item has been repaired.

#### External sewer pipe

- 71 I accept Ms Davidovic's evidence that this item has been repaired.

### **ALLEGED AGREEMENT**

- 72 The Tenant alleged that in addition to the items listed in the report by Mr Dridan, Mr Foster on behalf of the Landlord had agreed to undertake the following work:
- i replace the toilet
  - ii replace the tiles in the toilet cubicle
  - iii install vents in the toilet and bathroom
  - iv replace the oven
  - v replace the kitchen counter.
- 73 The Tenant said all these items were to be paid for by the Landlord.
- 74 Mr Foster said that the discussion occurred on 6 October 2014, the day when the Tenant, Ms Magee of the previous agent, Mr Dridan and he met at site for Mr Dridan's inspection. He said this was before Mr Dridan's report was published and there was a preliminary discussion about the possibility

of contribution by both parties for certain works. Mr Foster recalled that he said it was possible that he would contribute 50% of the cost of certain items but he wanted quotes before the work was done. He said he was willing to consider the toilet, bathroom vanity and basin, repair but not replacement of tiles, and replacement of the oven.

#### Was the agreement made?

75 I am satisfied that the discussion took place but neither the Tenant nor Mr Foster took the next logical step of reducing the alleged agreement to writing. To give commercial reality to the discussion between Mr Foster and the Tenant I find that the Landlord's obligation was to pay half the reasonable cost of supply and installation of the items allowed below.

#### Toilet

76 The parties agree that purchase and installation of the toilet was by the Tenant. The Tenant stated that she purchased the toilet from Drills Swan Street Sales but the invoices produced by her do not mention an item which is obviously a toilet.

77 Further, although the Tenant said she had Valiant Plumbing undertake certain work including installing the toilet, they gave only a lump sum price for all items of \$3,036.

78 Ms Davidovic said she believed a reasonable price for the toilet was \$400 with a further \$400 for installation. The Tenant agreed to this sum at the hearing.

79 The Landlord must pay the Tenant \$400 being half the agreed cost of supply and installation of the toilet.

#### Tiles

80 This item is dealt with above.

#### Vents

81 Mr Sabetzadeh's report suggest that the Landlord should "Install new air vents to remove moisture and allow ventilation".

82 On site I saw two small vents, one each in the ceilings of the bathroom and toilet cubicle. There was no electricity supply to the premises, so I was unable to see whether they have fans attached or are just passive systems, and if the former, whether they are working. The vent in the bathroom appeared reasonably clean. The vent in the toilet cubicle had a substantial build up of dust that is indicative of a fan drawing air and dust into it.

83 There was no evidence about the state of the vents at the commencement of the lease. Further, there is no reference to the vents in the Driden report. I am not satisfied that there was an agreement between the Landlord and Tenant about the vents.

84 I am not satisfied that the vents are defective, and even if they are, I am not satisfied that the Landlord is liable to the Tenant concerning the vents.

#### Oven

85 The parties agree that the Tenant paid for the supply and installation of an oven and range hood. I am satisfied that Mr Foster indicated willingness to bear half the cost of an oven, but made no such offer regarding a range hood.

86 The Tenant said that the price she seeks for the oven \$1,448 was a cheap price because it included a \$245 range hood. She also seeks \$440 for installation and a certificate of electrical safety and \$55 for delivery.

87 I accept Ms Davidovic's evidence that the reasonable cost of the oven at the time of installation was \$860 plus \$280 for installation and delivery of \$55; a total of \$1,195. In accordance with Mr Foster's evidence, the Landlord must pay the Tenant half of the sum for supply and installation of the oven, being \$597.54.

#### Range hood

88 The parties agreed that the Tenant is entitled to remove the range hood on her departure but Mr Foster remarked that it will be necessary for her to make good the area from which the range hood will be removed.

#### Kitchen counter

89 As discussed above under "Evidence", the cost of the kitchen counter including GST was \$110. Adopting Ms Davidovic's rule of thumb that the cost of installation is the same as the cost of the item, I allow \$110 for installation. The Landlord must therefore pay the Tenant half the total being \$110.

### **TERMINATE LEASE?**

90 The Tenant gave evidence that she has not been able to use the premises since 1 January 2015. She said that although she has been unable to accommodate "paying clients" since 1 January 2015, she had had three "pop-up" events accommodating between 25 and 75 people. She said she did not earn any money for these events because the guests were limited to the downstairs area and she had access to a toilet in another building, rather than in her own premises.

91 Having regard to both reports and having seen the premises I am not satisfied that the premises, or the building in which the premises are located, have been damaged to the extent that section 57 of the RLA applies. I am not satisfied that the premises are damaged to the extent that they cannot be used for the purposes described in the lease, or even to the extent that their use is reduced under s57(1)(b).

- 92 Further, the Tenant has not drawn my attention to any document from her to the Landlord which demonstrates that she followed s57(1)(d) and gave the Landlord at least 7 days written notice of intention to terminate.
- 93 I dismiss the Tenant's application for a declaration that the lease has been terminated and therefore also for return of her security deposit and relocation costs.
- 94 The lease continues and the obligations of the parties to one another remain on foot.

### **REFUND OF RENT AND OUTGOINGS**

- 95 I am not satisfied that the Tenant is entitled to refund of part or all of the rent and outgoings, for the same reasons. This claim is dismissed.

### **MEDIATION FEE**

- 96 I am not satisfied that there is a basis upon which the Tenant is entitled to recover the mediation fee paid to the Office of the Small Business Commissioner and therefore this claim is dismissed.

### **RENT AND OUTGOINGS CURRENTLY DUE**

- 97 I make no order as to rent and outgoings currently due but note the Tenant gave evidence that she has been paying rent of \$4,164.16 per month, inclusive of GST. I note that Ms Davidovic gave evidence that the monthly rent inclusive of GST is now \$4,330.73. I note that this amount is consistent with the rent for the fourth year of the tenancy, set out in item 6 of the schedule to the lease.
- 98 Should the parties be unable to agree on current rent and outgoings, either may commence proceedings concerning these matters.

### **CONCLUSION**

- 99 The following orders will be made:

- 100 The Landlord must pay the Tenant the following sums:

Vanity	\$804.00
Toilet	\$400.00
Oven	\$597.54
Kitchen counter	<u>\$110.00</u>
	\$1,911.54

- 101 In accordance with the Terms of Settlement dated 23 September 2014 the Landlord must, without delay:
- Rectify the loose wall tiling, and
  - Rectify the floor structure in accordance with Mr Dridan's recommendation to "insert appropriate type and number of fixings to

stabilise the floor section in question and also to the adjacent floor section east of that in question”, unless there is an order for work to the floor by the Melbourne City Council, which order will take precedence over this order.

102 The Applicant must give the Respondent reasonable access to undertake the work ordered. I grant liberty to apply with respect only to the work ordered.

103 The application is otherwise dismissed.

**SENIOR MEMBER M. LOTHIAN**