VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST VCAT REFERENCE NO. BP651/2018

CATCHWORDS

Retail lease, landlord terminated lease and re-entered possession, breach of lease, misrepresentation, unconscionable conduct, claim for outstanding rent and outgoings, s77 of the *Retail Leases Act 2003*, s18 and s236 of *Australian Consumer Law*.

FIRST APPLICANT	Arif Okil
SECOND APPLICANT	Raheel Ahmed Rajput
RESPONDENTS	Jing Lu and Brett Turner
WHERE HELD	Melbourne
BEFORE	Senior Member L. Forde
HEARING TYPE	Hearing
DATE OF HEARING	7 March 2019
DATE OF ORDER	9 April 2019
CITATION	Okil and Rajput v Lu and Turner (Building and Property) [2019] VCAT 525

ORDER

1. I direct the principal registrar to amend the name of the first named respondent to read "Jing Lu" in place of "Jing Lew."
2. Jing Lu and Brett Turner must pay Arif Okil and Raheel Ahmed Rajput the sum of $37,123.
3. The counterclaim filed by Jing Lu and Brett Turner is dismissed.

L. Forde
Senior Member

APPEARANCES:

For Applicants	Both in person
For Respondents	Both in person

REASONS

Introduction

1 The applicants, Arif Okil and Raheel Ahmed Rajput (**tenants**) entered into a lease dated 25 August 2017 (**lease**) of premises at 2/11 Center Avenue, Moorabbin 3189 (**premises**) from the respondents, Jing Lu and Brett Turner (**landlords**). The tenants intended to operate a café from the premises.

2 The landlords terminated the lease on 8 April 2018 and re-entered possession.

3 The tenants claim $150,000 from the landlords for damages for breach of lease, misrepresentation and unconscionable conduct in breach of s77 of the *Retail Leases Act 2003*. The tenants did not pursue their claim for reinstatement.

4 The landlords counterclaimed against the tenants seeking $43,773.95 for outstanding rent and outgoings. They claim the tenants breached the lease entitling them to terminate and re-enter.

5 Arif Okil and Raheel Ahmed Rajput gave evidence on their own behalf.

6 Jing Lu, Brett Turner and George Papas of Barry Plant Real Estate (**Barry Plant**) gave evidence for the landlords.

Agreed facts

7 The following facts were not in dispute:

a. The parties entered into the lease of the premises on 25 August 2017;

b. The *Retail Leases Act 2003* applies to the lease;

c. Barry Plant was the managing agent of the premises for the landlords;

d. Prior to signing the lease, the tenants had access to the premises;

e. The premises were part of a new apartment complex development and the premises had not previously been occupied;

f. Barry Plant prepared the Disclosure Statement for the landlords. The landlords signed the Disclosure Statement which was provided to the tenants;

g. Rent was $3300 payable monthly in advance with a three-month rent-free period to be applied in alternate months as outlined in the lease. The term of the lease was 5 years with options;

h. When the lease was entered, the premises did not have a separate gas utility meter;

i. The tenants did not pay all rent and outgoings invoiced to them by Barry Plant;

j. A Notice to Rectify Default dated 24 January 2018 was issued by Barry Plant to the tenants requiring payment of $6,259;

k. A Notice to Rectify Default dated 25 February 2018 was issued by Barry Plant to the tenants requiring payment of $7,328.26;

l. A Notice to Rectify Default dated 14 March 2018 was issued by Barry Plant to the tenants requiring payment of $8,545.55;

m. The landlords re-entered the premises on 9 April 2019 by changing the locks;

n. The amounts in the Notices to Rectify Default for rent and outgoing had not been paid by the tenants;

o. The landlord has not re-let the premises. The landlord has not actively sought a new tenant for the premises.

Issues to be decided

8 The issues that I must decide are:

a. Is the tenant entitled to damages from the landlord on the basis that:-

i the Disclosure Statement was misleading;

ii the landlords' conduct was unconscionable; and/ or

iii the Landlords breached the lease?

b. Is the landlord entitled to damages from the tenant?

Tenants' evidence

9 The particulars of claim filed by the tenants refer to various breaches by the landlords. At the hearing the tenants confirmed that their claim was only in relation to the landlords' failure to supply a separate gas utility meter to the premises.

10 Arif Okil's evidence can be summarised as follows:

a. He had the primary contact with Barry Plant on behalf of the tenants;

b. He had not previously leased retail premises;

c. He obtained no legal advice in relation to the lease;

d. The Landlords' Disclosure Statement provided in item 1.4 that the premises came with a separate gas meter. He relied upon that representation;

e. He met George Papas of Barry Plant at the premises on 3 August 2017. He inspected the premises because he wanted to locate the water meter, grease trap, electricity meter and gas meter. They could not locate all the utilities at the inspection. Mr Papas said he would obtain the blueprints for the premises from the body corporate;

f. On 10 August 2017 he emailed Mr Papas asking for the blueprints;

g. On 11 August 2018 Mr Papas responded by email that he was still looking for the plans;

h. On 15 August 2018 he emailed Mr Papas following up on the provision of plans for the premises;

i. On 16 August 2017 Mr Papas responded by email that the body corporate had a plan of subdivision, the manager was unsure if there was a blueprint of the complex and that they would forward documentation to assist the tenant locate the grease trap, extraction points and ventilation system;

j. On 22 August 2017 he emailed Mr Papas advising that he could not find the grease trap, gas or water lines in the plans Mr Papas had sent him and asked to meet at the premises to take pictures;

k. He and Mr Rajput signed the lease on 25 August 2017. He was of the understanding that the premises had a separate gas meter;

l. He had been told by Mr Papas that there was a gas meter. He relied on Mr Papas saying there was a gas meter for the premises;

m. He sent Mr Papas a text on 4 September 2017 asking about progress with locating the gas meter. The reply text was "The body Corp manager is getting back to me with a time and date to visit the property together. I'll be in touch;"

n. He emailed Mr Papas on 22 September 2017 asking for an update about a "date with the building manager to show us the meters." Mr Papas replied the same day that he would have a "time and date for you early next week". No meeting was arranged;

o. There was no separate gas meter for the premises. The building had gas with a meter in a restricted common property area which required a key to access through a roller door;

p. On 29 November 2017 he texted Mr Papas "how we are doing with gas I have to do the fitout of equipment".

q. On 29 November 2017, he received an email from Mr Papas which read "We have been contacted regarding the Gas meter. We spoke to a gas plumber and they advised that to get a gas meter installed, you will need to open an account with your gas supplier. You will need to advise your gas supplier that this (sic) new property and there is no gas meter. The supplier will install a gas meter."

r. By 29 November 2017 the tenants had ceiling frames installed and vinyl flooring for the kitchen. The plumber could not connect the gas without a gas meter. The gas connection had to be finalised before the ceiling could be finished. The builder wanted the ceiling installed before new flooring was laid.

s. He asked Raheel Rajput to contact AGL and organise the connection of a gas meter;

t. He was told by his plumber that they need to go through a process with Energy Safe Victoria (ESV) to install a gas meter;

u. He emailed Mr Papas on 30 November 2017 asking him to obtain a permission letter from the body corporate which was a requirement for the supplier to install a gas meter;

v. He sent a follow up email to Mr Papas on 5 December 2017 and received a response the next day advising that the landlord is waiting on paperwork from the body corporate;

w. He received an email from a Mr Erbacher of Barry Plant on 7 December 2017 with the landlords' consent to install a gas meter at a recommended location together with approval from the body corporate;

x. By letter dated 13 January 2018, ESV acknowledged receipt of the tenants' application to install the separate gas meter;

y. A Notice to Rectify Default dated 24 January 2018 was issued by Barry Plant requiring payment of $6,259. He met with Mr Papas and explained that the tenants could not pay the outgoings and raised the delay caused to the fit out by the lack of a gas meter. No resolution was reached at the meeting. He said he would come up with a plan to pay the outgoings. He was told that the rent must be paid. He paid $3,300 that day which was for the rent claimed on the notice;

z. A Notice to Rectify Default dated 25 February 2018 was issued by Barry Plant requiring payment of $7,328.26.

aa. He received an email from Mr Papas on 27 February 2018 to set up a meeting to discuss the outstanding rent and outgoings and confirming that rent must be paid on time. This was confirmed in a further email received on 28 February 2018;

bb. By letter dated 15 March 2018, ESV granted approval for the gas to be supplied to a gas meter at the premises;

cc. The tenants had a partial fit out plan prepared by their architects. The plan was required as part of the health inspector approval from the local council;

dd. The tenants agree they did not pay the full amount of rent and outgoings invoiced to them.

11 Arif Okil's evidence about loss and damage can be summarised as follows:

a. The tenants entered into hire purchase arrangements with Kitchen Equipment Australia (**KEA**) financed through Thorn Australia Pty Ltd for items of kitchen equipment particularised in KEA invoices dated 6 September 2017 and 3 October 2017. The invoices were produced. They defaulted under the agreement as the café could not operate. Thorn Australia Pty Ltd obtained a default judgement (copy produced)

in the Magistrates Court against them on 19 February 2019 for $28,783.97 being $25,631.73 for claim, $1,235.94 for interest and $1,916.20 for costs. In addition, $3,850 remains owing for the equipment listed in invoice dated 3 October 2017. No attempts have been made to sell the equipment or give the equipment back to KEA;

b. He paid $1,200 cash for plyboards and marble counter installation having sourced the products from a shop in Oakleigh;

c. He paid $2,150 on 7 December 2017 for a stainless-steel splash back as evidenced in a screenshot of a banking receipt;

d. He paid $823 on 8 March 2018 for another stainless-steel splashback pursuant to a cash on delivery invoice dated 8 March 2018 from George Archer Metals Pty Ltd (docket produced);

e. He bought a sink on ebay for $600 but produced no record;

f. He paid an electrician $450 in cash to do work at the premises;

g. He paid $2,543 on about 29 September 2017 (invoice produced) and $1500 to J Andersen for vinyl flooring;

h. He received a quote from Domenic Pecora plumbing to install the gas meter to the premises. He paid $1,300 on 1 February 2018 and a further $1,000 after receiving the tax invoice on 1 April 2018;

i. He paid $1,750 to OKILS for design drawings. (Invoice produced);

j. He made two payments to South East Water of $353.65 each;

k. He paid $5,200 to Barry Plant on 24 July 2017 for rent and bond;

l. He paid $8000 on 19 June 2017 as part of the security deposit for the premises of $9000;

m. He paid $3,300 for rent on about 25 January 2018.

12 Mr Ahmed gave evidence in relation to contacting Energy Australia in November 2017 to open an account. He received an email from Energy Australia which he forwarded to Mr Okil the same day being 30 November 2017. Energy Australia required a permission letter from the body corporate to set up a new gas meter separate from the main supply and a compliance letter from the plumber.

Landlords' evidence

13 Mr Papas gave the following evidence:

a. He sent an email to Mr Okil on 22 August 2017 confirming they could meet the next day at the premises to inspect the utilities. He also provided contact details for the project manager to assist with identification of the location of the utilities;

b. He visited the premises with Mr Okil on 23 August 2017 and could not locate the gas meter but could see the gas lines;

c. He referred to the same emails relied upon by Mr Okil as exchanged between himself and the tenants;

d. On 22 September 2017, he emailed the body corporate seeking access for the tenant to the gas meter. He received a response from Chris Galae on the same day saying he had passed the request onto the access team who will be in touch;

e. On 17 October 2017, he emailed Chris Galae asking how to get a gas meter installed as soon as possible for the premises;

f. He received a response from Chris Galae on 27 October 2017 with a link to Origin;

g. He contacted Origin and received an email in reply on 27 October 2017 attaching an application form for a gas installation. He forwarded that form by email to Chris Galae requesting the name and accreditation details of the builder of the premises;

h. He emailed the tenants on 29 November 2018 advising them to contact their gas supplier to open an account to get the gas meter installed;

i. He emailed the landlords on 1 December 2017 attaching the Commercial Gas Form for a new gas service request and asking for approval letters from the landlord and body corporate and details of where the gas meter is to be located;

j. He, or his colleague as he was on leave, received a response from the landlords on 6 December 2017 giving approval and directing where the meter was to be located;

k. Statements were issued to the tenants each month and occasionally when an outgoing was received. The tenants defaulted by not paying rent and outgoings;

l. The tenants were reassured that the Landlords would pay the cost of the gas meter installation;

m. No formal marketing has been done to re-let the premises. The premises remain vacant.

14 Mr Turner made submissions that the landlords had not done anything wrong. He claimed that the delay in installing a gas meter did not interfere with the tenancy. He said the tenants' lack of judgement and planning was the reason for their situation. He submitted that the tenants' failure to have a proper fit out plan at the beginning of their occupation was the cause of any loss.

15 Ms Lu made submissions that the tenants having been provided with the project manager's contact details on 22 August 2017 should have contacted him and found out that there was no gas meter.

16 Ms Lu gave evidence that she knew at the time the Disclosure Statement was prepared and signed by her that there was no separate gas meter at the premises. She said the Disclosure Statement did not specify that a gas meter was provided because it did not have a cross in the box to the left-hand side of the words "separate utility meter – gas."

ISSUE 1 - Is the tenant entitled to damages from the landlord

Misrepresentation

17 Mr Turner, Mr Papas and the tenants agreed that the Disclosure Statement represented in item 1.4 that a separate utility meter for gas was provided by the landlords at the commencement of the lease.

18 The defence filed by the landlords contains an admission that the Disclosure Statement provided for a separate gas utility meter for the premises.

19 Notwithstanding her defence, Ms Lu denied in oral evidence that the Disclosure Statement provided for a separate utility meter for gas to the premises. She claimed that because the box against the item "separate utility meter – gas" was not marked with a cross, it was clear that the premises did not have a separate gas meter. She said she knew prior to the premises being let that there was no separate utility meter for gas. If that was the case, why did she admit in the defence that a separate gas meter was to be provided to the premises? I did not find Ms Lu to be a credible witness. She appeared to develop her submission about the interpretation of the Disclosure Statement as she gave her evidence. On the other hand, I found Mr Turner to be a credible witness. He acknowledged that he did not know when the premises were let whether there was a separate gas meter or not. It was not something he appeared to turn his mind to notwithstanding the Disclosure Statement contents.

20 The Disclosure Statement is a standard form document. Barry Plant completed the document on behalf of the landlords, then forwarded it to them for review. This was not disputed by the landlords. Item 1.4 of the Disclosure Statement lists "Existing structures, fixtures, plant and equipment in the premises, provided by the landlord (excluding any works, fit out and refurbishment described in Part 3)." Where items are not provided at the premises, the item is ruled through with a line. The crossed-out item remains visible. An empty box appears beside some of the items which are not ruled through with a line. A cross appears to the left of some other items which are not ruled through. On a couple of items, which are not ruled through, there is neither a box nor a cross to the left of the item.

21 If an item is ruled through with a line in item 1.4, it is clearly not included in the premises. I agree with the interpretation of Mr Turner, Mr Papas and the tenants that where the words "separate utility meter – gas" appear next to an empty box, it is to be interpreted as meaning that the premises have a separate utility meter for gas.

22 The Disclosure Statement is not a contract document signed by both parties and incorporated into the lease. Instead it is a document signed by the Landlords which contains information or representations by the landlords to the tenants about the lease and premises.

23 The evidence, which is not disputed, is that at the time the lease was entered, Mr Papas of Barry Plant believed that the premises had a separate meter for gas. On the evidence before me, Mr Papas became aware between 22 September 2017 and 17 October 2017 that there was no separate gas meter for the premises. He notified the tenants of this fact on 29 November 2017. The one-month delay in notifying the tenants was not explained.

24 The tenants' evidence is that they relied upon the gas meter representation and entered into the lease. Mr Okil says they would not have entered into the lease had they known there was no separate gas meter. This evidence was not challenged by the landlords. The landlords contend that the absence of a gas meter did not affect the tenants' use of the premises.

25 I find for the reasons stated that the Disclosure Statement contained a representation that the premises included a separate gas meter (**representation**).

26 I find that the representation was false as there was no separate gas meter installed to the premises.

27 I accept the tenants' evidence which was not challenged that they relied upon the representation and would not have entered into the lease had they known it to be false.

28 I find that the absence of a separate gas meter significantly impacted the tenants' ability to fit out the premises and open the café for the following reasons:

a. It was not until 29 November 2018 that the tenants were notified that they would have to install a separate gas meter. This is three months after the lease commenced;

b. Up until 29 November 2017, the communications from Barry Plant were consistent with the premises having its own separate gas meter. The issue was in locating it;

c. The tenants took no steps to install a gas meter for the first three months of the tenancy as they were not aware the premises did not have one;

d. As soon as the tenants were told there was no separate gas meter, they took steps to have one installed;

e. The installation process was slow, primarily because of the two-month delay by ESV between acknowledging receipt of the tenants' application and granting approval for the gas meter installation;

f. The fit out, on the evidence of the tenants, which I accept, could not be completed until the gas meter was installed;

g. With the time it took the landlords to notify the tenants that there was no separate gas meter and the time it took the tenants to be able to install a separate gas meter, at least five months had elapsed since the start of the lease. During this time the tenants could not finish the fit out and open the café;

h. The landlord re-entered possession before the gas meter was installed.

29 The Australian Consumer Law[1] (ACL) s 18(1) provides

> A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

30 Liability for misleading conduct is strict rather than fault-based. In other words, it is irrelevant that there was no intention by the maker of the statement to mislead.

31 It was submitted by the landlords that the Tenants ought to have made inquiries of the building manager at the time they were given his contact details and had they done so they would have known there was no separate gas meter. It was submitted that the tenants caused their own loss for their lack of professionalism.

32 I do not accept that the tenants had any obligation to make enquiries before the lease was entered as to the truth of the Disclosure Statement. To place this obligation on tenants completely disregards the very purpose of Disclosure Statements.

33 It was reasonable for the tenants to rely on the contents of the Disclosure Statement and on the conduct of Mr Papas. I do not find any contributory fault by the tenants as suggested by the landlords.

34 Based on the evidence of the tenants, I conclude that, on the balance of probabilities, they would not have entered into the lease had they known there was no separate gas meter to the premises. The landlords did not challenge the tenants' evidence in this regard. The tenants may have proceeded with the tenancy had they known, but possibly on other terms.

35 Having found that the tenants would not have entered into the lease had they known there was no separate gas meter, I turn to the question of loss.

36 The lease was terminated by the landlord. The tenants do not seek reinstatement.

37 Section 236 of the ACL provides

> Actions for *damages*
>
> (1) If:

[1] The Australian Consumer Law is Schedule 2 of the Competition and Consumer Act 2010 (Cth).

> (a) a *person* (the claimant) suffers loss or *damage* because of the conduct of another *person*; and
>
> (b) the conduct contravened a provision of Chapter 2 or 3; the claimant may recover the amount of the loss or *damage* by action against that other *person*, or against any *person* involved in the *contravention*.

38 The tenants are entitled to damages caused because of the representation. In this case that is an amount to put the tenants in the position they would have been had the tenancy not proceeded, ie had the representation not been made. They are not entitled to a loss of profits claim as such a claim is reliant upon the tenancy proceeding.

39 An applicant who seeks a s 236(1) award of damages must demonstrate to the Tribunal the existence of a sufficient causal link between the misleading or deceptive conduct of the respondent and the loss and damage which it alleges that it suffered.

40 I accept the undisputed evidence of Mr Okil that he made the following payments towards the lease and fit out:

a. $1,200 cash for plyboards and marble counter;
b. $2,150 for a stainless-steel splash back;
c. $823 for another stainless-steel splashback;
d. $600 for a sink;
e. $450 for electrical works;
f. $4,043 vinyl flooring;
g. $2,300 for gas meter;
h. $1,750 for design drawings;
i. $707.30 to South East Water;
j. $13,200 for rent;
k. $9,900 for security deposit.

Payments

41 The payments would not have been made had the tenants not entered into the lease. Accordingly, the payments are a loss caused by the misrepresentation and are compensable.

42 The landlords must pay the tenants $37,123 in damages for the payments.

43 The tenants claim as part of their loss, $28,783.87 being the amount of a Magistrates' Court judgement obtained against them by Thorn Australia Pty Ltd on 19 February 2019. Their evidence was that the judgement related to their default under an equipment finance lease.

44 The tenants also claim $3,850 being the value of two 3.8-metre canopies left at the premises.

45 The Magistrates' Court complaint was not in evidence nor was the finance lease documentation relating to the equipment the subject of the proceedings. The tenants did not provide any evidence about the terms of the finance lease other than that it related to equipment sold by Kitchen Equipment Australia pursuant to invoice PFI-H17-609172 dated 6 September 2017. The loss is not a reasonably foreseeable loss. On the evidence before me, it was not reasonably foreseeable that the tenants would default under an equipment finance lease.

46 The equipment remains at the premises. There was no evidence that the tenants made any attempt to gain access to the equipment. No evidence was provided about the ownership of the equipment other than two invoices from Kitchen Equipment Australia one addressed only to "Arif" and the other addressed to the tenants. There was no evidence about whether the equipment was subject to any encumbrances. The tenants did not know much about the financing arrangements for the equipment having not brought any documentation about it to the hearing.

47 The tenants have an obligation to mitigate their loss. There is no evidence that the tenants took steps to mitigate their losses in relation to the equipment.

48 There is no evidence that the tenants have been denied access to remove the equipment.

49 For these reasons, I find that the tenants are not entitled to any compensation in relation to the equipment including the amount of the judgement. It is not a loss that is reasonably foreseeable.

50 The tenants claimed $5000 for personal expenses. They provided no evidence in support of their claim other than a few general unsupported statements made in submissions to the Tribunal. I find the tenants are not entitled to their unsubstantiated claim for personal expenses of $5000.

51 The tenants claim $55,000 for lost profit. For the reasons stated a loss of profits claim is not a loss arising from the misrepresentation.

Breach of contract

52 The particulars of claim filed by the tenants contains a heading "Breaches". The document appears to have been prepared by solicitors although no solicitor is named on the document. Despite the heading "Breaches", nowhere in the document is a breach of contract claim clearly set out. There is no reference to a provision in the lease which has been breached by the landlords.

53 As stated earlier in these reasons, the only conduct of the landlords relied upon by the tenants at the hearing was them falsely representing that there was a separate gas meter installed at the premises.

54 The tenants did not identify a breach of the lease by the landlords during the hearing before the Tribunal.

55 In the circumstances the tenants' claim for damages including the loss of profit claim based on breach of contract must fail.

Unconscionable conduct

56 The particulars of claim filed by the tenants sets out in paragraph 18 "The tenants claim that the landlords engaged in unconscionable conduct in breach of s77 of the *Retail Leases Act 2003* (**RLA**)".

57 The conduct relied upon in the particulars was the landlords' failure to notify the tenants that there was no separate gas meter, the landlords' failure to ensure the lease and Disclosure Statement were properly understood by the tenants and their failure to ensure the tenants obtained independent legal advice. The tenants also claim the landlords failed to act in good faith.

58 Section 77 of the RLA provides: -

> (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.

59 The tenants did not refer to this claim at the hearing or make any submissions in relation to the claim.

60 It is not the landlords' responsibility to require the tenants to obtain legal advice or to ensure that the tenants "properly understood" the lease and Disclosure Statement. The tenants' case did not rely upon a lack of understanding of those documents. There is no evidence before me of the landlords failing to act in good faith or acting unconscionably.

61 If the misrepresentation by the landlords in the Disclosure Statement is the conduct said to be unconscionable conduct in breach of s77, the tenants' claim fails. The misrepresentation falls well short of conduct which would satisfy the test of unconscionability under the RLA.

62 The tenants bear the onus of proof in relation to claims brought by them. They have not discharged the onus for this claim. I am not satisfied on the evidence before me that the landlords' conduct was unconscionable. This claim fails.

ISSUE 2 – Are the landlords entitled to damages from the tenants?

63 It is not in dispute that the tenants failed to pay rent and outgoings owing under the lease.

64 Had the tenants not brought a successful claim against the landlords under s 18 of the ACL, the landlords would have been entitled to an order for damages for breach of lease by the tenants.

65 Given my finding that the tenants are entitled to be put in the position they would have been in had they not entered into the lease, the landlords' claim cannot be pursued.

66 I find that the landlords are not entitled to any compensation from the tenants. The landlords' counterclaim is dismissed.

67 It is very unfortunate that neither party appeared to obtain legal advice on their rights and obligations as landlords and tenants at the commencement of the lease or when issues arose during the lease. Had they done so the outcome of this matter is likely to have been very different. The tenants may have avoided their liability under the Magistrates' Court judgement and the landlords would have almost certainly been advised of their obligations concerning the Disclosure Statement. The landlords appeared ignorant of their obligation to mitigate their loss once they terminated the lease and as a result the premises have remained vacant for a long period of time. Both parties found themselves in difficult predicaments, the impact of which could have been significantly reduced had they received timely legal advice.

L. Forde
Senior Member