

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2023/32427

CATCHWORDS

Application for compensation – cleaning – painting -depreciation of damaged items when calculating compensation – sections 419A, 452 and 211 and 211A of the *Residential Tenancies Act 1997* (Vic)

APPLICANT	Blad Investments 1 Pty Ltd
RESPONDENT	Wanita Hutchinson
WHERE HELD	Teleconference
BEFORE	Member M Bevan
HEARING TYPE	Final Hearing
DATE OF HEARING	7 February 2024
DATE OF ORDER	7 February 2024
DATE OF WRITTEN REASONS	9 April 2024
CITATION	Blad Investments 1 Pty Ltd v Hutchinson (Residential Tenancies) [2024] VCAT 333

The Tribunal finds that:

The residential rental agreement ended on 28 September 2023.

The rent, which is \$2281.00 per calendar month, is paid to 12 September 2023 with \$975.50 on account and the rent owed to the end of the residential rental agreement is \$221.14.

The claims for compensation in the application have been proved in the amounts shown on the evidence presented today taking into account, where relevant, fair wear and tear and depreciation, the matters set out in sections 211 and 211A of the Act and any applicable Director's Guidelines:-

Arrears of rent allowed at	\$221.14.
Cleaning allowed at	\$350.00.
Painting allowed at	\$907.54.
Total claim proved (all other claims being dismissed)	\$1,478.68.



The renter has paid a bond of	\$2,281.00.
The Residential Tenancies Bond Authority must pay to the residential rental provider	\$1,478.68.
The Residential Tenancies Bond Authority must pay to the renter	\$802.32.

Note: Any order for arrears of rent made today includes all previous unsatisfied orders for arrears arising out of this residential rental agreement.

Member M Bevan

APPEARANCES:

For Applicant	Ms Darcie Reynolds, Agent
For Respondent	No appearance



REASONS

BACKGROUND

1. This was an application for loss and damage from the bond by the residential rental provider for rental arrears, professional cleaning and painting.
2. The rental provider was represented by its property manager Darcie Reynolds. The renter did not appear.
3. I found in favour of the rental provider in relation to the claim for rental arrears, cleaning and painting. I awarded amounts for each of these items but reduced the compensation for painting after applying depreciation to the claim.
4. Ms Reynolds requested written reasons with a focus on explaining why the claim for painting was reduced by applying depreciation.
5. Each of the items of compensation claimed and reasons why each were awarded is provided as follows.

RENT

6. The rental agreement ended on 28 September 2023 and rent was paid to 12 September 2023 with \$975.50 on account according to the rental ledger produced.
7. The rent was \$2,281 per calendar month. I allowed 16 days at a daily rate of \$74.79 for the period from 13 September 2023 up to and including 28 September 2023 and deducted the money on account.
8. The rent owing by the renter to the end of the rental agreement was \$221.14. This amount was to be paid to the rental provider from the bond held by the Residential Tenancies Bond Authority.

Professional Cleaning

9. The second item of compensation sought by the rental provider was in relation to professional cleaning to the value of \$350.
10. A copy of an invoice from Bella Wei Cleaning Services for professional cleaning in the same amount as the claim was provided.
11. The invoice lists the work performed as:
 - carpet steam cleaning, bedroom cleaning, bathroom cleaning, kitchen cleaning, living room cleaning, laundry cleaning and balcony cleaning.
12. In relation to carpet steam cleaning the agent gave evidence that the carpets were left in a dirty condition and referred to photos in the exit condition report.
13. In relation to the other items the agent referred to the entry and exit condition reports and photos.



14. The *Residential Tenancies Act 1997* (Vic) ('the Act') requires that a premises is returned as far as practicable in a reasonably clean condition and in the same condition at the end of the agreement as it was at the beginning, taking into account fair wear and tear.¹
15. Having reviewed the photographic evidence and the Director of Consumer Affairs Victoria's guidelines on cleanliness, I found that the premises were not in a reasonably clean condition at the time the renter vacated the premises.
16. I therefore found that the renter was liable to reimburse the rental provider for professional cleaning services incurred to place the premises in the state required and that the amount of \$350 was reasonable.

Painting

17. The third item that I considered was the claim for painting in the amount of \$1,375.
18. The Act requires that a renter or visitor not intentionally or negligently damage the rented premises or common area, subject to fair wear and tear.²
19. The Act also requires that depreciation is considered when making an award for damage to the premises. Section 211A states as follows:

Further matters to be considered by the Tribunal

- (1) Subsection (2) applies in respect of an application for compensation for damage to –
 - (a) rented premises under a residential rental agreement;
 - ...
 - (2) In calculating an amount of compensation payable by a renter, ... on an application referred to in subsection (1), the Tribunal must take into account any depreciation of the damaged part of the property referred to in subsection (1)(a) ... by having regard to –
 - (a) the Uniform Capital Allowance System; or
 - (b) any other prescribed scale.
20. Regulation 90 of the *Residential Tenancies Regulations 2021* (Vic) sets out the prescribed scale and states as follows:

For the purposes of section 211A(2)(b) of the Act the prescribed scale is a depreciated scale for rental properties in the Australian Taxation Office Publication NAT 1729 "Rental properties" for the relevant year, as published annually or as amended from time to time.

¹ *Residential Tenancies Act 1997* (Vic) s 63.

² *Residential Tenancies Act 1997* (Vic) s 61.



21. The agent gave evidence that the entrance hall walls and lounge room walls were unable to be remediated via cleaning and required repainting. She also referred to the entry and exit condition reports and photos.
22. Upon considering the evidence presented, I was satisfied that there was extensive scuffing damage and marks to the walls throughout the house that had been caused by the renter's negligence. I accepted the agent's oral evidence that the damage was unable to be rectified by cleaning alone and painting was required to return the subject walls to their previous condition taking into account fair wear and tear.
23. The agent gave evidence that the premises was last painted around 4 July 2022. Stating that the premises was new at that point and referring to depreciation documentation indicating the same date as the acquisition date for depreciation purposes.
24. As there is no ATO asset item for painting, to calculate the depreciation I used the Uniform Capital Allowance System and in particular the Diminishing Value methodology. To work out the value of the painting at the time when the rental provider rectified the same at the end of September 2023, I had to first work out the decline in the value of the paint. This formula is as follows:
25. Using the depreciation diminishing value formula of *Decline in value = base value x (days since item was purchased/installed divided by 365 days in the year) x (200% divided by the assets effective life)* relevant to the time period for each of the respective financial years, the value of the asset that the rental provider was entitled to be compensated for was calculated as \$907.54.

Member M Bevan

