

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2023/33535

CATCHWORDS

Application for compensation by a renter claiming notices of proposed rent increase to be invalid for non-compliance with the *Residential Tenancies Act 1997* (Vic.) and seeking a refund of the increased rent payments – notices invalid – compensation refused for period prior to Tribunal application for consent, failure to mitigate and because the amount paid was fair and reasonable for the rented premises at the relevant times – unjust enrichment to renter and prejudice to residential rental provider for balance period – no appreciable loss to the renter from the breach of the Act by the residential rental provider – claim for compensation dismissed - declaration made about rent payable moving forward – ability of renter to renew proceeding if rent from date of hearing was not reverted to original price pending a valid notice of proposed rent increase.

Sections 44, 45, 46, 47, 48, 210, 211, 452 and 472(1)(f) of the *Residential Tenancies Act 1997* (Vic.).

APPLICANT	Simone Maurer
RESPONDENTS	Johnny Sia Feifei Zhao
BEFORE	K Campana, Senior Member
HEARING VENUE	Melbourne
HEARING TYPE	Final Hearing
DATE OF HEARING	26 April 2024
DATE OF ORDER	14 June 2024
CITATION	Maurer v Sia (Residential Tenancies) [2024] VCAT 571

ORDERS

For the written reasons provided, the Tribunal orders and declares that:

1. The claim for compensation is dismissed.
2. The rent payable for the rented premises is \$1,608 per calendar month commencing 1 May 2024 until a valid notice of proposed rent increase has taken effect.
3. The proceeding is otherwise adjourned. It will not be listed for hearing unless the renter gives the principal registrar notice in writing by 14 August 2024 asking for the proceeding to be renewed because a dispute has arisen related to the rent payable at the rented premises from 1 May 2024, and any refund related to any overpayment. If the proceeding is renewed, the principal registrar is directed to refer the request to Senior Member Campana for further listing directions and orders as appropriate.

K. Campana
Senior Member

APPEARANCES:

For Applicant

In person

For Respondents

Esha Busgeeth and Steven Spirovski, property
managers.

REASONS

- 1 Simone Maurer ('Renter') seeks a refund of more than \$15,000 in rent she says she overpaid due to invalid notices of rent increases for a Southbank apartment ('rented premises').
- 2 The compensation claim seeks a refund of any amount paid above the initial 2021 rent of \$1,608 per month, from owners, Johnny Sia and Feifei Zhao ('Rental Providers').
- 3 There are two proposed notices of rent increase in dispute, the first notice dated 7 April 2022 ('1st Rent Notice') and the second dated 14 February 2023 ('2nd Rent Notice').
- 4 For the reasons that follow, I am satisfied that the two rent increase notices are invalid and that the amount payable under the rental agreement as at the date of the hearing was \$1,608 per month. However due to a number of factors; including a failure to mitigate the loss, the consent to the amount of rent being charged and there being no appreciable loss to the Renter, the claim for compensation is dismissed.

Relevant Provisions of the *Residential Tenancies Act 1997 (Vic.)*

- 5 Before turning to the factual matrix in this case, consideration is given to the law applicable to rent increases, any challenge and any order that can be made by the Tribunal.

Legislative framework to increase rent

- 6 Rent increases for residential rental agreements are dealt with under sections 44 to 48 in the *Residential Tenancies Act 1997 (Vic)* ('*RT Act*').
- 7 Section 44 provides strict requirements for increasing the rent and includes the following as is relevant:

Section 44 Rent Increases

- (1) A residential rental provider must give a renter at least 60 days notice in the prescribed form of a proposed rent increase.
- (2) A notice of a proposed rent increase under subsection (1) may only provide for one rent increase.
- (3) The notice of a proposed rent increase must include-
 - (a) the amount of the rent increase; and
 - (b) the method by which the rent increase was calculated; and
 - (c) a statement informing the renter of the renter's right under section 45 to apply within 30 days after the notice is given to the Director to investigate and report on the proposed rent.

- (4) A residential rental provider under a fixed term residential rental agreement must not increase the rent before the term ends unless the agreement-
 - (a) provides for a rent increase within the fixed term of a specified amount and the increase is not more than that amount; or
 - (b) specifies the method by which a rent increase within the fixed term is to be calculated and the increase is not more than an amount calculated using the specified method.
- (4A) A residential rental provider must not increase the rent payable under a residential rental agreement at intervals of less than 12 months.
- (4B)
- (5) A rent increase in contravention of this section is invalid.

8 A renter may apply to the Director of Consumer Affairs Victoria ('CAV') to investigate a proposed rent increase that they believe is excessive (s.45). With or without a report by the Director, a renter can then make an application to the Tribunal for an order declaring the rent, or proposed rent, excessive (s.46)¹.

9 However, while the Tribunal may make an order declaring the rent excessive (s.47) and order a refund of any rent paid above a reasonable amount (s.48), there is no provision for a declaration about the validity of such a notice.

10 It is the position of the Tribunal that there is no application pathway under the *RT Act* to seek a declaration as the substantive and primary order. Senior Member Treble considered VCAT's declaratory power in the context of a challenge to the validity of a notice to vacate for the end of a fixed term²:

16. The application in this case, which seeks an order, determination or declaration as to the validity or effectiveness of a notice to vacate, is not a matter that gives rise to any of the specific types of orders set out in section 472 of the Act, nor is such an order one that is "ancillary" or "incidental" to other orders that could be made as a result if a renters' application challenging a notice to vacate. Accordingly, the Act does not appear to empower the Tribunal to make a declaratory order in response to an application under section 452 challenging the effectiveness of a notice to vacate on a ground specified in section 91ZZI.

¹ Leave is required under section 46(3) if no CAV report has been obtained.

² *Rosewarne v Lim* (Residential Tenancies) [2022] VCAT 1015.

17. The renters also sought to rely on section 124 of the Victorian Civil and Administrative Tribunal Act 1998 (the VCAT Act) as the basis for declaratory orders. Part 4, Division 10 of the VCAT Act sets out additional general powers VCAT can exercise in the course of a proceeding. Section 124 of the VCAT Act includes the power to make declaration concerning any matter in a proceeding, but this power can only be exercised “instead of any orders it could make, or in addition to any orders it makes, in a proceeding”. The power does not arise if a declaration is the only order sought in respect of a particular claim and there is no alternative order that could be made.
- 11 I consider this restriction on a declaratory power to apply in a number of different contexts, including a challenge to the validity of a notice of rent increase.
- 12 The only means by which a renter might obtain such a declaration is if the payment of rent under a rent increase, becomes the subject of a dispute, such as in an application for possession for non-payment of rent (s.91ZM) or compensation (ss. 210 or 452, 472(1)(f)). It would however be prudent for a renter to put a residential rental provider on notice as soon as practicable, about any issue related to validity.
- 13 The Renter has made a compensation claim under sections 452 and 472(1)(f) of the *RT Act* and seeks a refund of rent paid. Central to the success of the claim is a finding or ancillary order such as a declaration that the notices of rent increase are invalid.

Legislative framework for compensation

- 14 With the renter seeking compensation, the application was amended to be a claim under section 452, which entitles a renter to make application to resolve a dispute, and section 472(1)(f), which enlivens the power of the Tribunal to make any orders it thinks fit to require the payment of compensation to any person.
- 15 Part 5 of the *RT Act* governs the matters the Tribunal is required to take into account when considering making a compensation or compliance order. While the claim is technically within Part 11, Part 5 should not be ignored. I consider that the statutory framework within Part 5, and in particular some of the matters under section 211, which adopt common law principles in the assessment of loss, are relevant to this case:

Section 211 Matters which may be considered by Tribunal

The Tribunal, in hearing an application under section 209, 209AAB, 210AA, 210, 210A or 210B, may take into account-

- (a) whether or not the person from whom compensation is claimed has taken all reasonable steps to comply with the duties under this Act or under the residential rental agreement or site agreement in respect of which the claim is made; and

- (b) in the case of a breach of a residential rental agreement, whether or not the applicant has consented to the failure to comply with the duties in respect of which the claim is made; and
- (ba)-(bb) ...
- (c) whether or not money has been paid to or recovered by the applicant by way of compensation, including money recovered or entitled to be recovered from the bond; and
- (d) whether any reduction or refund of rent or other allowance has been made to the applicant; and
- (e) whether or not action has been taken by the applicant to mitigate the loss or damage; and
- (f) any offer of compensation; and
- (g), (h) and (i).

16 In particular, I consider that the award of compensation for a refund of rent falls to be assessed by reference to the steps taken by each party, any mitigation by the Renter to reduce her loss and any concession made by the Renter that the rent being paid is not excessive and is a fair price to be paid for the rented premises.

The Application

17 The Renter made this application to the Tribunal on 6 November 2023 seeking \$15,120 in compensation:

I (*the renter*) am seeking a declaration from VCAT that two rent increase notices issued to me are invalid under Section 44(1), Section 44(3)(a) and Section 44(3)(b) of the *Residential Tenancies Act 1997*; a declaration that as a result, I have overpaid rent in my current and previous rental agreements; and an order of financial compensation to me in the form of a refund for overpaid rent and a rent reduction for the remaining months of the current fixed term lease.

18 The Renter referenced three decisions of this Tribunal in support of her claim:

- (a) *Asif v Jian Ding Property Pty Ltd* (Residential Tenancies) [2023] VCAT 1042 (7 September 2023),
- (b) *Kennedy v Pan* (Residential Tenancies) [2023] VCAT 529 (9 May 2023), and
- (c) *Boyce v Mariella Nominees Pty Ltd ATF Lorusso Family Trust* (Residential Tenancies) [2023] VCAT 89 (27 January 2023).

19 *Boyce v Mariella*³ was an application to challenge a rent increase as excessive. As a preliminary matter the Tribunal considered whether the rent increase notice complied with section 44(3) of the *RT Act* by providing a calculation of the method of rent increase:

27. The notice of rent increase, like a notice to vacate, should contain sufficient information to the renters to enable them to not only answer the question as to why it is given, but also enough information for them to determine whether the rent being proposed is excessive and should be challenged.

28. A simple reference to a “Comparative Market Analysis” with no further information about the properties that were used, their location or features, which would enable the renters to make a proper assessment about the “reasonableness” of the increase, is in my view against the spirit or purpose of the requirement to provide the method of calculation.

20 Member Klingender determined that simply stating a reference to a *Comparative Market Analysis* with no further information meant that the notice failed to comply with section 44(3)(b) of the *RT Act* and was invalid.

21 I agree with the principles enounced by the Member that a notice must detail a method of calculation that provides sufficient information for a renter to know the basis on which the new rent has been determined and to then consider whether to challenge the notice as excessive.

22 The decision of *Boyce v Mariella* has been followed in at least two written decisions of the Tribunal.

23 In *Kennedy v Pan*⁴ the Tribunal agreed with the reasoning and subsequent conclusions in *Boyce v Mariella* in relation to the requirement for a notice of rent increase to include a method of calculation in accordance with section 44(3)(b) of the *RT Act*.

24 In a similar fashion, the Tribunal applied the same considerations to the notices of rent increase being challenged in *Asi v Jian Ding Property*⁵. While the Member made a determination that the notices were invalid and there had been an overpayment of rent, he also made a notation on the order:

Note:

It is advisable that the parties agree to resolve the aspect of the \$3,650.00 overpayment mutually, as an application for compensation for this amount is likely to be successful.

25 It is important to highlight that the Member did not say an award of compensation would be made related to the first invalid notice in that case.

³ *Boyce v Mariella Nominees Pty Ltd ATF Lorusso Family Trust* (Residential Tenancies) [2023] VCAT 89 (27 January 2023).

⁴ *Kennedy v Pan* (Residential Tenancies) [2023] VCAT 529 (9 May 2023).

⁵ *Asif v Jian Ding Property Pty Ltd* (Residential Tenancies) [2023] VCAT 1042.

However, it did include an award of compensation for a period related to a second notice increase.

- 26 With the greatest respect to the Member, I do not consider that the overpayment of rent from an invalid rent increase automatically entitles a renter to a refund of the difference. The reasoning in *Asif v Jian Ding Property* does not appear to have considered the relevant matters to be taken into account in any application for compensation such as mitigation, the rent being charged not being excessive or the renter not taking issue with the lack of information in the notice. It also does not assess the significant disadvantage to a rental provider for not complying with a provision of the *RT Act* when the same does not cause any unfair disadvantage to the renter.
- 27 Any claim for compensation falls to be determined on its own facts, and the Tribunal's power to make any order it *thinks fit* is discretionary, taking into account relevant considerations and principles.

Are the Notices of Rent Increase Invalid?

- 28 The Renter entered into occupation of the rented premises under a fixed term rental agreement from 1 June 2021 to 31 May 2022, with the amount of \$1,608 rent being payable per calendar month.

The 1st Rent Notice

- 29 During a routine inspection conducted at the rented premises in March 2022, the agent for the Rental Providers encouraged the Renter to put forward a new rental amount, in return for a new fixed term agreement.
- 30 The parties then engaged in negotiations over the terms of the new agreement:

17 March 2022 email from Renter to agent:

... I am interested in whether I could continue the lease (which is due to end 31 May 2022) for another 12 months (i.e. until 31 May 2023) at an increased rent price of \$470/week.

24 March 2022 email from Renter to agent:

Thanks for your call earlier this week explaining that my offer of \$470/week was lower than the owner's expectation of at least \$490/week. Could I ask if they'd be willing to settle on a middle price of \$480/week over a 12 month extension of the lease?

7 April 2022 email from agent to Renter:

The owner finally accepted your offer at \$480 per week (very good deal), I am going to organise the lease agreement for you.

7 April 2022 email from Renter to agent:

Wow, that is great news and thank you for taking the time to respond to me quickly. I'm reassured to know the price has been locked in and will wait for the contract to come through.

- 31 The 1st Rent Notice was simply an emailed letter that accompanied the new fixed term lease, dated 7 April 2022, and included the following:

We wish to advise that your rent has been reviewed and will increase to \$2086.00 (per calendar month), effective from 07/06/2022.

Please ensure that you amend your rental payments accordingly ...

The *Residential Tenancies Act 1997* provides that the following information must be supplied to you when you are advised of any proposed rent increase:

Residential Tenancies Act 1997 (extract)

Section 45 (1,2)

A renter may complain to the Director about excessive rent.

A renter may apply to the Director to investigate and report if the tenant:

- a. Considers that the rent under a Residential Rental Agreement is excessive, having regard to the fact that the Rental Provider has reduced or withdrawn services, facilities or other items provided with the rented premises; or
- b. Has received a Notice of Rent Increase and the renter considers that the proposed rent is excessive.

An application under sub-section 1(b) must be made in writing within 30 days after the Notice of Rent Increase is issued.

- 32 The 1st Rent Notice was not in the prescribed form and is invalid because it does not comply with section 44(1) of the *RT Act*.
- 33 The Renter also complains that the notice did not provide at least 60 days' notice of the increase as it started on 1 June 2022 and not 7 June 2022, and the 1st Rent Notice does not provide the method by which the rent increase was calculated.
- 34 As the 1st Rent Notice references 7 June 2022 as the start date, it does provide 60 days' notice as required by section 44(1) of the *RT Act*. It may have been implemented earlier, but it does not mean the notice itself was invalid.
- 35 The letter of 7 June 2022 is absent a "*method by which the rent increase was calculated*" and therefore does not comply with section 44(3)(b) of the *RT Act*. However, I note that the Rental Providers could have simply stated

the method as “*amount agreed between the parties*” and the same would have reflected the basis on which the new rent was set.

- 36 The 1st Rent Notice, increasing the rent from \$1,608 to \$2,086 per calendar month is invalid as it contravenes the requirements of section 44 of the *RT Act*.

The 2nd Rent Notice

- 37 By email dated 14 February 2023, the Rental Providers purported to increase the rent from \$2,086 to \$2,309 per calendar month, sending a letter and a “*Notice of proposed rent increase to renter of rented premises*”.
- 38 The 2nd Rent Notice is in the format of the prescribed form in accordance with section 44 of the *RT Act* and regulation 21 of the *Residential Tenancies Regulations 2021* (Vic.), however it does not provide all of the information required in the prescribed form as the same relates to the amount of detail related to the method to calculate the rent increase.
- 39 The 2nd Rent Notice states the method used to calculate the rent increase as a “fixed dollar based on market comparison”. No further details of these market comparisons were provided. It does not provide the details of the process and calculation used to reach the new rent amount of \$2,309.
- 40 The agents for the Rental Providers concede that the 2nd Rent Notice does not comply with the requirements of section 44 of the *RT Act* and say that their agency has since changed its procedures for giving a notice of rent increase.
- 41 The 2nd Rent Notice is invalid as it fails to comply with section 44(3)(b) and/or section 44(1) of the *RT Act*.
- 42 I also note that the 2nd Rent Notice is invalid as it incorrectly states the amount of the rent increase:

4 Proposed rent increase

I intend to increase the rent as follows:

Current rent amount	\$2,086 per calendar month
New rent amount	\$2,390 per calendar month
Amount of rent increase	\$304 per calendar month
Start of increased rent	1/06/2023

- 43 With the 1st Rent Notice being invalid, the current rent amount that was payable under the residential rental agreement was \$1,608 per calendar month. By increasing the rent to \$2,390 per calendar month, the correct amount of the increase was \$782. The difference between the stated \$304 and the amount of \$782 is significant.
- 44 I am of the view that the significant error in the amount stated to be the *amount of the rent increase*, means that there has been a failure to comply

with section 44(3)(a) of the *RT Act* and I would have found this contravention to also render the notice invalid.

Is the Renter entitled to a refund of rent?

45 At the hearing on 26 April 2024, I indicated to the parties that it was highly likely that given the evidence presented that both the 1st Rent Notice and the 2nd Rent Notice were invalid. I formed a preliminary view that the rent payable from 27 April 2024 was \$1,608 per calendar month and that I would only deal with any claim for compensation up to, and including, the date of the hearing accordingly.

46 The first time that the Renter raised the issue about the validity of the notices of rent increase with the Rental Providers was in an email dated 26 October 2023:

I'm contacting you with regards to a question I have about my current tenancy agreement – specifically that I don't think the rent increase which was made effective 1/06/2023 is valid.

You're probably aware of this recent article from The Age <https://www.theage.com.au/property/news/how-jy-got-his-landlord-to-repay-him-1365-in-back-pay-20231019-p5edkt.html>.

It highlights that some rent increases in Victoria have been found to be invalid due to incorrect wording of the reason for an increase and a lack of evidencing/explaining the calculation/comparison.

Looking at the Consumer Affairs Victoria site <https://www.consumer.vic.gov.au/housing/renting/rent-bond-bills-and-condition-reports/rent/rent-increases> it states that invalid wording examples include:

Rent increased by dollar amount.

Based on the rental market valuation.

And looking at my rent increase notice, the method of calculation states “fixed dollar based on market comparison” and does not provide the market comparison or further information. Therefore, in light of the other situations, I believe this rent increase is invalid.

I understand that I can go to VCAT about this situation, but it was advised to first approach the real estate agent/landlord.

Could you please review my documents and the Consumer Vic rules – or pass it onto the appropriate MICM staff member – and let me know what the next steps are from your end?

47 The agents replied by email on 1 November 2023 apologising for the delay in responding and acknowledged as correct some, but not all, of the propositions put forward by the Renter:

We wish to advise you that it is indeed correct as per what you have mentioned. If not comparable or incorrect wording is used, the notice would be invalid.

Your rent increase notice was issued in February to be effective from June onwards. The notice provided to you was a formal notice of rent increase from Consumer Affairs. It was being spoken about, however did not really become effective at the time. As of recently since June/July or so, the rent increase notice has been amended and became effective as per mentioned in the articles provided. Hence, Consumer Affairs as well have now amended their notice, which is the one we are using. Hence, your notice is still valid and the rent increase would remain as per notice.

We wish to advise you the current value of the property would be around \$620 to \$650 per week. However, the rental provider is very happy with your tenancy, as you always pay the rent on time and the property is maintained in an impeccable condition, hence he decided to not increase to the market value as he would prefer to maintain your tenancy.

48 The Renter lodged the application with VCAT on 6 November 2023. On this date the agent for the Rental Providers provided the Renter with a list of comparable properties said to have been used for each of the rent increase notices.

49 The Renter's VCAT application calculates the claim as follows:

Notice #1 issued 7/4/22 increased rent from \$1608/month to \$2086/month – a difference of \$478/month. I am seeking financial compensation via a refund of the 12 months overpaid rent, totalling \$5736.

Notice #2 issued 14/2/23 increased rent from \$2086/month to \$2390/month. However, if the 2022 rent increase is invalid, the rent in 2023 was actually increased from \$1608/month to \$2390/month – a difference of \$782/month. I am seeking financial compensation via a refund of the rent I have paid so far (as of 6/11/2023, this was 6 months totalling \$4692) and the remaining rent for the rest of my tenancy agreement to be reduced to the original rent value prior to the two invalid increases (\$1608/month). As of 6/11/2023, I have 6 months remaining on my lease to the value of \$4692 in invalid extra rent.

50 I am going to deal with the Renters claim for compensation relevant to three distinct timelines:

- (a) 1 June 2022 to 31 May 2023, related to the rent paid under the 1st Rent Notice ('Refund under 1st Rent Notice'),
- (b) 1 June 2023 to 6 November 2023, related to rent paid under the 2nd Rent Notice, up to and including the date of the application to the Tribunal ('First Refund period under 2nd Rent Notice'), and

(c) 7 November 2023 to 26 April 2024, related to rent paid under the 2nd Rent Notice from the day after the application was made to the date of the hearing ('Second Refund period under 2nd Rent Notice').

51 Each of the periods will be considered by reference to the matters under section 211 and in particular the actions taken by the parties (s.211(a)), including the Renter's action or lack of action in consenting to the increase and failing to mitigate (ss.211(b) and 211(e)), and the reduction in rent on the market value of the premises and the benefit this and a fixed term agreement has provided to the Renter (ss.211(c) and 211(d)).

Refund under 1st Rent Notice

52 The 1st Rent Notice, increasing the rent from \$1,608 to \$2,086 a month was invalid. It contravened the requirements of section 44 of the *RT Act* in that it was not in the prescribed form and additionally did not provide the basis on which the rent increase was calculated.

53 The Renter seeks a refund of \$478 a month for the 12-month period (from 1/6/22 to 31/5/23) that the increase was in effect, an amount of \$5,736.

54 Such an award of compensation would in my view be an unjust enrichment to the Renter and unfairly disadvantage or punish the Rental Providers.

55 The Renter negotiated the price of \$2,086 per calendar month. Both the Renter and the Rental Providers made concessions on what the price should be and the Renter was provided with the security that comes with being in a fixed 12 month lease.

56 The Renter has obtained a significant benefit from the agreed price and the amount of rent paid reflected a reduction in the amount that could have been charged at that time, and was being charged, for similar properties. It was not excessive.

57 The Renter did not challenge the rent increase or raise issue with the information she was provided, and the letter dated 7 April 2022 provided her with information about section 45 of the *RT Act* and her options to seek to challenge the notice. She did not do so.

58 The Renter, having consented to the price paid for the rented premises for the period from 1 June 2022 to 31 May 2023, both directly and by not challenging the rent as excessive or the notice invalid, has obtained the benefit of living in the rented premises during that period of time, at a rent amount below the market rate. I am therefore not satisfied the Renter has suffered any loss for this period.

59 I dismiss the application for compensation as it pertains to a refund related to the 1st Rent Notice.

First Refund period under 2nd Rent Notice

60 The 2nd Rent Notice, which increased the rent payable from \$2,086 to \$2,390 per month, applies to the 12-month period commencing 1 June

2023. It was sent to the Renter in early February 2023 and for the reasons provided above, the 2nd Rent Notice is invalid.

- 61 On 14 February 2023, the Renter acknowledged receipt of the notice of rent increase and advised that she was “indeed interested in continuing” her rental agreement and asked for a 12-month fixed term period. She was provided with a lease renewal agreement the following day.
- 62 The 2nd Rent Notice was in the prescribed form and provided the Renter with details and information about challenging the notice as excessive. She did not do so.
- 63 Evidence provided by the agent for the Rental Providers showed that rents for similar properties, at the time that the notice was given, were increasing. In January 2023, properties in the same complex of the same amenity were obtaining \$560 to \$600 per week; by March 2023 that had increased to \$650 and by April 2023 it was \$700 per week. The rent that the Renter paid, and is required to pay, for the rented premises from 1 June 2023 under the 2nd Rent Notice is \$2,390 per calendar month, which equates to \$550 per week.
- 64 The Renter first raised the issue of the validity of the notice in correspondence dated 26 October 2023 after seeing a news article. While the Rental Providers’ agent made a number of concessions about the validity of the notice, they did not agree to any refund, and on 6 November 2023 the Renter made this application to the Tribunal.
- 65 The Renter seeks a refund of the difference between the amount paid of \$2,390 per month, and the amount she says she should have paid due to the notices not being valid, being \$1,608 per month, an amount of \$782 per month. For the six-monthly payments made between 1 June 2023 and 6 November 2023 on the first of each month, the Renter claims compensation in the amount of \$4,692.
- 66 While there has (technically) been a breach of the *RT Act* by the Rental Providers, and the 2nd Rent Notice is invalid, I am not satisfied that there is any loss to the Renter related to this contravention.
- 67 The Renter does not challenge the rent as excessive, nor does she suggest that she was not paying what was a fair price for living in the rented premises. The evidence produced by the Rental Providers shows that in fact the Renter has obtained a benefit at that price. It was up to \$150 a week less than market price and the reduced rent was locked in for a fixed 12-month period to the advantage of the Renter.
- 68 The Renter did not seek to challenge the notice of rent increase prior to the application being made on 6 November 2023, and only raised issue with the notices after seeing a story in the media. Had she raised the issue earlier, the Rental Providers could have served a new valid notice of proposed rent increase for the same amount, being the amount referenced in the new fixed term rental agreement of \$2,390 per calendar month.

- 69 The Renter having consented to the amount being charged for the rented premises, with the amount of rent paid and the fixed 12-month period providing a benefit to the Renter and there being a delay by the Renter in taking action to raise the issue of the validity of the notice, I do not consider that the Renter has established a loss. I decline to make any award of compensation or refund of the amount paid.
- 70 The application for a refund of rent in the amount of \$4,692 to the date of application is dismissed.

Second Refund period under 2nd Rent Notice

- 71 The Renter's application sought a declaration that the 2nd Rent Notice was invalid, and that the rent payable for the remainder of the rental period under the current fixed term lease is \$1,608 per calendar month, being the original amount of rent payable.
- 72 At hearing on 26 April 2024, the Renter had paid a further 5 months (December 2023 to April 2024) at the amount of \$2,390 per calendar month. She seeks a refund of the difference of \$782 per month, being a refund of \$3,910.
- 73 For the reasons provided above related to the first six months under the 2nd Rent Notice, I am not satisfied that the Renter has suffered an actual loss arising from the notice being invalid. The Renter has obtained a benefit from the amount being charged and the amount is well below market rent for the rented premises.
- 74 The Rental Providers could have issued the Renter with a new notice of rent increase in November 2023 based on the amount of \$2,390 per calendar month which is the amount they were restricted to seeking in the residential rental agreement (s.44(4) of the *RT Act*). However, had they done so, they would have been limited to that price, and not been able to seek any further increase in accordance with expenses and market value for the property for a further 12-month period.
- 75 The Renter has not suffered a loss, with any rent paid being a benefit to the Renter for living in the rented premises with security of tenure and below market rent. I therefore decline to make any award for a refund of rent to the Renter in accordance with the above. This part of the Renter's claim for compensation is also dismissed.

Conclusion

- 76 For the reasons provided above, there being no appreciable loss or detriment to the Renter from the contravention of the *RT Act* by the Rental Providers, the claim for compensation is dismissed.
- 77 At hearing I indicated to the Rental Providers that the notices of rent increase were invalid and that the rent payable moving forward would be \$1,608, unless and until this amount is varied by a valid notice of proposed rent increase, and it has taken effect (being a date at least 60 days after the notice was given).

78 If the Renter has paid more than this amount from the date of the hearing, then she is entitled to a refund of any difference. In the event there is any dispute arising related to the rent payable from 1 May 2024 to when a valid notice has taken effect, then the Renter can seek to renew the proceeding and I will make a determination accordingly. Such a right of renewal applies up to and including 14 August 2024.

K. Campana
Senior Member