

RESIDENTIAL TENANCIES TRIBUNAL

CONSOLIDATED INDEX

JANUARY 1991 INCLUSIVE

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Doyle v Polites Group of Companies (R3942/88 - hearing 7/11/88) (11/88)

"Security bond"/"residential tenancy agreement". Bond runs with agreement related to particular premises. Where tenant moves to other premises the bond must be transferred or disposed of in relation to the first agreement. Tribunal finds as a matter of inference and fairness that the tenant intended to transfer balance only of bond in respect of first premises to be held as bond in respect of second premises.

Jeffs Realty v Andrews (R4736/88 - hearing 9/12/88) (12/88)

"Landlord" Unregistered lease - right to renew not enforceable against succeeding landlord but original landlord liable to compensate tenant, Section 119 Real Property Act not affected by Residential Tenancies Act.

Plumb v Sharman (R5204/88 - hearing 22/12/88) (1/89)

Tribunal member finds security bond runs with land and not available to former landlord after settlement.

Boyd v Southgate (R1715/89 - hearing 31/5/89) (5/89)

Residential tenancy agreement - Tribunal finds jurisdiction with respect to natural person but not with respect to corporate joint-tenant.

Briscoe Bruse Eastwood v Burnell (R4457/89 - hearing 4/1/90) (1/90)

Residential tenancy agreement - Agreement not reached where duration of term not specified and tenants notify landlord do not wish to proceed.

PRD Gaetjens v Amos (R4700/89 - hearing 10/11/89) (1/90)

Rent and bond to be paid before tenancy ("right to occupy") begins - bond paid but not rent - possession not taken - Tribunal finds agreement never came into operation and landlord therefore not entitled to "abandonment" costs. Bond to be refunded to tenant (EHO).

Lawrence v Walker (R619/90 - hearing 18/4/90) (4/90)

"Residential tenancy agreement" - Tribunal finds so long as tenant is a natural person (and thus capable of residing in the premises) fact that tenant rents not for own occupation but for another's (eg by sub-letting) no bar to there being a residential tenancy agreement.

Hollow v Masons Real Estate (R90/90 - hearing 8/3/90) (4/90)

"Residential tenancy agreement" - Both parties bound on landlord's communication of acceptance to tenant of tenant's offer, provided all essential terms agreed. Parties bound by this fairly bare agreement; tenant

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Deane (by PRD Gaetjens) v Watson-Fox (R2463/90 - hearing 29/6/90) (6/90)

"Landlord". Previous landlord entitled to sue for rent due to settlement.

Markou (by PRD Gaetjens) v Jones (R2709/90 - hearing 6/9/90) (9/90)

"Residential premises". Tribunal finds mobile caravan in landlord's back yard not "premises" within the meaning of the Act. The Tribunal has no jurisdiction. (Tribunal also finds tenant to be a "boarder").

Schilling v Bermoser (R2258/90 - hearing 19/10/90) (10/90)

"Residential tenancy agreement". Contract of sale includes agreement for vendors to remain in possession after settlement by a tenancy terminable on 2 weeks' notice prior to an agreed date. After settlement tenants signed a standard form fixed term agreement not realizing it differed from the parties' agreement contained in the contract of sale. Tribunal finds earlier agreement binding and that tenancy ended on tenants' notice of termination as provided for by the earlier agreement.

Kemp v Crocker (R3977/90 - hearing 22/10/90) (10/90)

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Hayes v Carrington Cottages Management Inc (R2863/90 - hearing 5/7/90) (6/90)

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Anderson v Thomson (R4336/87 - hearing 13/10/87) (10/87)

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Telfer v Telfer (R5688/87) (12/87)

Contract of sale must be specific and enforceable before Section 7(2)(a) can have application.

Jenkins v Bishop (R481/88 - hearing 2/5/88) (8/88)

Tribunal finds no jurisdiction. Agreement for sale and purchase and pro forma "residential tenancy agreement" made at same time. Residential tenancy agreement to expire on specific day being the date of settlement of contract for sale and purchase. Purchaser allowed into residence under above. Purchaser failed to settle and contract for sale and purchase rescinded in due course by vendor. Vendor's solicitor made claim for penalty interest and rent. Interest paid but not rent. Tribunal finds no tenancy agreement entered into except for original and that was outside the Tribunal's jurisdiction by virtue of Section 7(2)(a).

Johnston v Owen-Pearce (R1506/89 - hearing 5/5/89) (5/89)

Tribunal finds no residential tenancy agreement entered into distinct and separate from contract of sale and no rent ever agreed. Tribunal finds no jurisdiction.

Commissioner of Highways v Chapman (R1540/89 - hearing 3/5/89) (5/89)

Tribunal finds that parties were never at the same time "parties to a contract of sale" and "landlord and tenant". Tribunal finds Section 7(2)(a) does not apply and Act therefore does apply.

Richardson v Mainwood (R528/90 - hearing 5/3/90) (3/90)

Tenancy given by contract and residential tenancy agreement executed at settlement. Tribunal notes that after completion of the contract of sale the tenant is no longer "a party to an agreement for the sale" and finds that Section 7(2)(a) has no application and that Act therefore applies.

Sachidanad & Pillax v McLellan (R3251/90 - hearing 6/9/90) (9/90)

Contract of sale provided for tenancy terminable upon notice by either party up to a specified date with vendors remaining in possession as tenants after

settlement. Tribunal finds that sale was completed by settlement and that from settlement the tenants (ex vendors) were no longer "parties to an agreement for the sale of the premises", that Section 7(2)(a) did not apply and that the Residential Tenancies Act did apply to the tenancy.
Kemp v Crocker (R3977/90 - hearing 23/10/90) (10/90)

SECTION 7(2)(d)

Tenant a lodger on the facts.

Ferdousian v Radovic (R1172/82 - hearing 5/5/88) (5/88)

"Tenant" occupies premises as housekeeper - held not a tenant within jurisdiction of Tribunal. No residential tenancy agreement. As licensee her right to occupation will terminate after expiration of reasonable notice.
Palmer v Crittendon (R2338/88 - hearing 6/6/88) (6/88)

Tribunal member discusses definition of "residential tenancy agreement" (exclusive possession not required), "boarder" and "lodger". Whether tenant has exclusive possession is of relevance to question whether tenant is a lodger as the primary question to be resolved is whether the landlord retains possession and control over rooms and means of ingress and egress.
Bowers v De Luca (R2941/88) (8/88)

Parties subject to contract of sale and purchase with settlement at end of fixed term. Tribunal dismisses application for lack of jurisdiction.
Osborn v Reed (R3524/88 - hearing 7/9/88) (9/88)

"Boarder/lodger" - general discussion of difficulties of definition.
Application by Veber (R4011/88 - hearing 3/11/88) (12/88)

Parties related. Tribunal finds applicant to be a lodger and therefore no jurisdiction.
Kelly v Kelly (R928/89 - hearing 6/3/88) (3/89)

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Glenside Hospital - Exemption (R5546/87, hearing 24/11/87) (11/87)

Sub-tenant a tenant on the facts. Lodging arrangement more likely where owner of premises lives there.

Way v Szep (R6248/87 - hearing 26/5/88) (5/88)

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Investigation officer's reports - nature of reports. Tribunal not bound to have regard to such reports - Tribunal's independence from Department of Consumer Affairs - requirements of natural justice in relation to disclosure of reports at hearing.

Mathias v Commissioner of Highways (R4145/87 - hearing 11/3/88) (3/88)

Advice given to parties by officer of Commissioner for Consumer Affairs not in any way binding on Tribunal.

McKenzie v Heath (R4627/88 - hearing 16/1/89) (2/89)

SECTION 21(2) Jurisdiction Limit

(1) Tribunal Member finds Residential Tenancies Tribunal has no jurisdiction (without consent) to entertain claim for \$2,500.00 where landlord has previously claimed and obtained bond of \$440.00.

(2) Tenant in breach of agreement in taking goods not part of agreement which were in locked area reserved for landlord's use.

Goldsworthy v Cox (R4140/86 - hearing 17/6/87) (6/87)

Tribunal Member finds that breach and repudiation of agreement does not terminate tenancy under Act.

Berzins v Simmons and Patterson (R5602/86 - hearing 7/7/87) (7/87)

SECTION 22

Tenant signs Form 4 in anticipation of Section 79 claim - tenant then applies for bond refund because no Section 79 claims - no appearance by tenant at hearing - landlord makes Section 22 claim as basis for retaining bond - Tribunal Member refuses to decide landlord's application without Form 2 from him.

Barnett v Vasilellis (R1509/87 - hearing 26/5/87) (6/87)

Tenant advised of intention to abandon - agent began to advertise - agent obtained no new tenant, so tenant stayed till end of fixed term - Tribunal Member finds that, as no abandonment, tenant has no liability under Section 79, and Residential Tenancies Tribunal no jurisdiction under Section 22.

PJ Daniels v McSorley (R1507/87 - hearing 19/5/87) (6/87)

Agent makes application for "bond only to avoid hearing" - bond paid out to landlord on 10 day letter - Agent makes further application for further compensation - not allowed by Tribunal Member.

Weeks & Macklin v Thomas (R2911/87 - hearing 10/8/87) (8/87)

"Joint and several liability" - Tribunal Member considers payment of contribution from one co-tenant to other co-tenant, where landlord has sought order against second co-tenant only - where jointly and severally liable.

Ken Klose Real Estate v West & Russell (R4322/87 - hearing 15/10/87) (11/87)

Agent seeks bond only in Form 2 originally and obtaining bond on ten day letter. Further Form 2 for "further compensation". Tribunal Member rejects second claim.

Public Real Estate v Barmann (R3559/87 - hearing 27/8/87) (1/88)

Infant party's liability - Infant tenant, person under eighteen, not liable for rent beyond date of vacation of premises. Tenancy agreement may create leasehold interest enforceable until repudiation by vacating of premises or a contract for necessities. Executory contracts for necessities generally not enforceable. Rent liability beyond occupation is a future or executory liability. Tribunal member discusses law.

Mills Roenfeldt Pty Ltd v Hoffman (R2959/88 - hearing 11/8/88) (9/88)

Infant party's liability - Tribunal Member finds one joint tenant an infant and that no outstanding liability when she vacated. Tribunal Member finds infant has no further liability but other joint tenant remains liable. Tribunal Member finds bond (Emergency Housing Office) payable to landlord.

Taarnby v Taarnby House Agents v Saler & Verrall (R3024/88 - hearing 15/8/88) (9/88)

Bankruptcy - Tribunal Member orders bond payable to landlord but unable to make other orders because of tenant's bankruptcy. Bankruptcy Act s58 discussed.

Mills Roenfeldt Pty Ltd v Hoffman (R2859/88 - hearing 11/8/88) (9/88)

Jurisdiction - tenant's property damaged by actions of purchaser of adjoining premises. Tribunal finds no jurisdiction as that person's actions were not

authorised by the landlord or as his agent. (Tenancy terminated via Section 71 as purchaser's actions rendered rented premises uninhabitable)

Marino v Below (R2533/88 - hearing 13/9/88) (9/88)

Tribunal cannot give legal advice.

Application by Veber (R4011/88 - hearing 3/11/88) (12/88)

Joint and several liability - contribution order made against tenant in fact responsible for damage and in favour of other tenants. All three tenants held jointly and severally liable to landlord. (Two tenants had moved out prior to termination but had not told agent that and had not been released from agreement; tenant causing damage had admitted full responsibility)

Newmark Real Estate v O'Neil, McIntyre & Halliday (R4763/87 - hearing 4/12/88) (12/88)

Right to renew not enforceable against succeeding landlord - lease unregistered - but vendor-landlord liable to compensate tenant for failure to renew.

Plumb v Sharman (R5204/88 - hearing 22/12/88) (1/89)

Tribunal decides it has no jurisdiction to determine validity of Form 7 notice except on application for orders of termination etc. Notice allegedly retaliatory.

Anderson v Edwards (R479/89 - hearing 6/3/89) (3/89)

Tenant posts keys to landlord but keys not received. Tribunal finds tenant liable for locksmith's charges.

Growden & Associates v Thurnwald (R540/89 - hearing 13/3/89) (4/89)

No appearance by Emergency Housing Office as applicant. Tribunal finds it has no jurisdiction to entertain an application from the Emergency Housing Office where it is not satisfied Emergency Housing Office is the agent of a party to a residential tenancy agreement. Tribunal finds tenant supplied with bond money by Emergency Housing Office (or any other person) may dispose of the bond (Form 4) or otherwise transfer his interest in the bond to another tenant. If by so doing the tenant is in breach of his or her agreement with the Emergency Housing Office (or other person) who supplied the funds for the bond that is not the landlord's or Tribunal's problem but a matter between the tenant and the Emergency Housing Office.

Emergency Housing Office v Manno Agencies Pty Ltd (R4970/87 - hearing 11/5/89) (5/89)

Insurance - lack or presence of insurance coverage irrelevant to party's right to recover damages - subrogation.

Roberts & Foster v Carey, Kain & Zecevich (R1190/89 - hearing 4/5/89) (5/89)

Compensation. Where tenancy ends by Form 7 notice, landlord not entitled to rent loss after vacant possession. Mere non-payment of rent does not show intention to repudiate nor fundamental breach justifying compensation for rent loss after termination.

Dunstone v Skepper (R2923/89 - hearing 7/7/89) (8/89)

Tenant claims compensation for damage caused to car by tree falling onto it. Tribunal finds no evidence of breach of landlord's maintenance obligations and dismisses application.

Murillo v Gaetjens Pty Ltd (R3107/89 - hearing 17/7/89)(8/89)

Tribunal adjourns termination application pending final orders in matrimonial property dispute or Family Court direction that one or other party pursue the matter before the Tribunal. Premises let to wife's son by wife. Property subject to order by Family Court in husband's favour.

Wynne v Furmanow (R3916/89 - hearing 12/9/89) (9/89)

Tribunal finds no jurisdiction where premises let by wife to son contrary to implication of Family Court order as to property settlement. Family Court order gives liberty to parties to apply for consequential orders and Tribunal finds parties must use that forum.

Wynne v Furmanow (R3916/89 - hearing 10/11/89) (11/89)

Application brought by landlord's Insurer within jurisdiction.

Paringawood Nominees Pty Ltd v Canham (R1353/90 - hearing 30/4/90) (5/90)

Bankruptcy - Procedure where respondent is bankrupt.

Morris v Cryer (R1911/90 - hearing 17/5/90) (5/90)

Tenants liable to previous landlord in respect of past breaches which are concluded - Tenants liable for rent to settlement.

Markou (by PRD Gaetjens) v Jones (R2709/90 - hearing 6/9/90) (9/90)

Claims which should have been made at time of earlier claim cannot be made later - principles of "res judicata" apply.

Barnes (by PRD Gaetjens) v Dowdell (R3245/90 - hearing 22/11/90) (11/90)

SECTION 22(1)(c)

"Compensation for loss or injury" landlord's "overheads fee" not allowable - landlords did work themselves though through company - \$8 per hour for actual labour only allowed.

LJ Hooker - Kensington v Shaw (R1642/88 - hearing 19/5/88) (5/88)

Remedial work done by company related to landlord - landlord himself performing part of work - account in company name - payment to company employees involved - \$12 per hour allowed for actual labour.

Ferraro v Finch (R86/88 - hearing 26/4/88) (5/88)

Tribunal allows landlord cost of damage to flyscreen caused by his re-entry and cost of rebarrelling lock where keys not returned promptly and landlord needed keys urgently for new tenants.

Nielsen & Mullin v Weinart (R5138/88 - hearing 10/1/89) (2/89)

Tribunal finds tenants may have been given advice by landlord's agent to vacate because premises unsafe. Rent reduction agreed from that time. Tribunal finds relocation costs not compensable as tenants would have faced them at end of term anyway.

Griffiths & Martin v Mills Roenfeldt Pty Ltd (R4839/88 - hearing 11/1/89) (2/89)

SECTION 22(4)(d)

Power to extend time - time ought only to be extended where there are compelling reasons relating to the fairness of the making of the original order (eg lack of notice that order might be made). - Greater the time, greater the difficulty. Tribunal refuses extension where Form 4 signed in blank at end of tenancy some eighteen months prior to current Section 22a application.

Johnson v Lehermayer (R3345/85 - hearing 21/10/88) (10/88)

SECTION 22(4)(e)

Tribunal's power to vary or set aside previous order. Tribunal's duty to interpret and apply Residential Tenancies Act and manner of conducting hearings discussed.

Gaetjens Pty Ltd v Martin (R4367/88 - hearing 19/1/89) (2/89)

Tribunal grants rehearing where party's representative at hearing failed to seek adjournment and failed to give all evidence on a point as Tribunal Member had indicated finding in that party's favour. Tribunal Member varied finding/order in written decision to that party's detriment.

Wood v King (R2959/88 - hearing 2/2/89) (2/89)

SECTION 22(5)

Money orders - Enforcement procedures under Local & District Criminal Courts Act, 1926 include garnishee (attachment) proceedings and warrant for sale of land.

Stein v Souliadis (R1424/88, hearing 13/5/88) (5/88)

SECTION 24

Illustrates appropriate use of this useful section.

Jones Taplin Realty Pty Ltd (R1681/87 - hearing 3/9/87) (9/87)

SECTION 24(4)(c)

Where Tribunal Member decides an issue after conscious consideration and gives reasons or has conducted hearing in a particular way and reasons have been given - inappropriate for that member or another to upset such decisions by granting rehearing. The Tribunal does not hear appeals from itself.

Symeonakis v Riches (R5534/87 - hearing 31/3/88) (5/88)

SECTION 24(4)(d)

Power of Tribunal to extend time does not enable Tribunal to extend time for lodging appeal to the District Court.

Bowers (by LJ Hooker - Morphett Vale) v Kaye (R3416/90 - hearing 8/1/91) (1/91)

SECTION 24(4)(e)

Form 4 consent signed by tenant and bond paid out. Form signed by tenant in knowledge that she may not be liable for carpet cleaning as claimed. Tribunal declines to re-open the matter.

Brown v Altamura (R1618/88 - hearing 4/8/88) (8/88)

Alleged error of law and complaints that Tribunal findings are against the weight of the evidence do not amount to "proper grounds" for the Tribunal to consider variation or setting aside but rather are matters for appeal.

Bowers (by LJ Hooker - Morphett Vale) v Kaye (R3416/90 - hearing 8/1/91) (1/91)

Parties should come prepared to prove and answer all claims at hearing. Rehearing cannot be ordered where one party later wishes had brought more evidence. If a party is caught by surprise adjournment should be asked for. Tribunal allows rehearing as applicant misled by other party as to matters which would be in dispute.

Pace (by Gemini Management Services) v Navakas (R4195/90 - hearing 24/1/91) (1/91)

SECTION 24(4)(f)

Respondent does not appear but respondent's husband appears on her behalf due to respondent's alleged mental illness. Tribunal refuses to adjourn to allow respondent to present evidence where respondent at work at time of hearing.

Beale & Co Pty Ltd v Yeates (R4610/89 - hearing 6/11/89) (11/89)

SECTION 24(5)

Tribunal views video of state of premises.

Wilson v Gordon-Shivel (R230/88 - hearing 7/9/88) (9/88)

SECTION 25

Tribunal refuses leave for landlord's daughter to represent him. Advice given by Investigation Officer cannot bind Tribunal. Prejudice to other party considered.

D'Angelo v Church (R3445/88 - hearing 21/8/89) (8/89)

SECTION 25(2)

Tribunal draws attention to limited right of agent to represent landlord at Tribunal hearing. Policy of Act is against representation by advocates.

Gaetjens Pty Ltd v Rowbotham (R2022/89 - hearing 8/5/89) (5/89)

SECTION 25(3)(d)

Solicitor seeks leave to appear - refused.

Rowe & Hooper v Miller (R3761/87 - hearing 27/7/87) (7/87)

SECTION 27

Costs - "special circumstances" - Tribunal allow \$80.00 costs to landlord for attendance at two Tribunal hearings brought about by tenant's false evidence - (2 x approx lic agent's fee to landlord)

Manning v Robinson & Armstrong (R4912/87 - hearing 25/3/88) (3/88)

Tribunal awards costs against landlord. Landlord given tenant's new address but described address as "unknown" on Form 2 application for bond refund. Even if landlord had lost address, new address easily found through Telecom and use of phone. Landlord found not entitled to any of bond refunded via 10 day letter order.

Graham v Kayal (R3078/89 - hearing 30/8/89) (8/89)

SECTION 29(2) - DISTRICT COURT

Landlords appeal against Tribunal findings of termination by consent - loss of rent etc claimable if abandonment found under \$1,000.00 - appeal dismissed for lack of jurisdiction.

Judge Bowering, Whittaker v Quinn DC No 12/88 (ex tempore, 17/6/88) (6/88)

SECTION 30

Duty to mitigate. Remedial work allegedly done by company - company closely related to landlord who carried out part of the work himself - Tribunal does not accept account as bona fide indication of loss to landlord and refused to allow \$20 per hour and instead allows \$12 as some payment to employees involved.

Ferraro v Finch (R86/88 - hearing 26/4/88) (5/88)

Tribunal member notes that payment of lease preparation fee by tenant contrary to Section 30. Section 57 discussed. Tribunal Member notes in any event Real Estate Institute agreement provides for landlord to pay such fee.

Taarnby & Taarnby (R1291/89 - hearing 29/3/89) (3/89)

Lease preparation fee recoverable by tenant.

Devereaux v Nelson (R1173/89 - hearing 29/5/89) (6/89)

Tenant alleges paid money to secure "first preference". Receipt described as "part bond" and written tenancy agreement signed. Tribunal Member finds payment can only be either option payment (forfeited to landlord when tenant declines to exercise) or part bond paid under a tenancy agreement.

Facts support finding of residential tenancy agreement and abandonment by tenant. Tenant liable for rent to reletting and advertising amounting to sum slightly less than amount paid.

Willshire v Hutchens (R5350/89 - hearing 6/12/89) (12/89)

Tribunal finds credit check fee paid by tenant to agent at commencement as contrary to Section 30 and recoverable by tenant.

Semmelman (by Ian Warhurst Pty Ltd) v Williams, Masters and Willmott (R943/90 - hearing 2/4/90) (4/90)

SECTION 32

Landlord lodges bond, but gets tenant to sign Form 4 at beginning of tenancy "to retain control of bond". Tribunal Member considers breach of Section 89.

Butterworth v Anderson (R2432/87 - hearing 3/8/87) (8/87)

Bond paid to Mr Peter Marshall of Public Real Estate Bureau Pty Ltd, agent, not lodged with Tribunal. Agent cannot be found and licence in suspension. Payment to agent effective as payment to landlord. Tribunal orders landlord to lodge bond and advises landlord that he may have claim against Agents' Indemnity Fund (Section 76 Land Agents, Brokers and Valuers Act 1973).

Ireland & Glynn v Delfin DBR Realty (Landlord's new agent) (R4239/89 - hearing 31/10/89) (10/89)

SECTION 32(2)

Query whether only bond moneys received by licensed agent in that capacity are subject to extended lodgement period of 28 days.

Pastars v Harop (R2749/88 - hearing 16/2/89) (3/89).

SECTION 33

Agent seeks "bond only" in Form 2 originally and obtains bond on ten day letter. Further Form 2 for "further compensation". Tribunal Member rejects second claim.

Public Real Estate v Barmann (R3559/87 - hearing 27/8/87) (1/88)

Security bond - change of ownership of premises - landlord as at termination first entitled to bond.

A & P Mellor Ltd v La Barbera (R5775/87 - hearing 19/2/88) (2/88)

"Renewal" of agreement doesn't alter availability of bond to landlord's claim, even if tenant in whose name bond is held has vacated prior to "renewal"
Deacon v Dawson (R5139/87 - hearing 23/11/87) (1/88)

Security bond - change of ownership of premises - bond runs with land and not available to previous landlord. Tribunal orders tenant to pay rent to settlement date for previous landlord.
Psellos v Waites (R804/88 - hearing 1/3/88) (3/88)

Tenant signs Form 4 in anticipation of Section 79 claim - tenant then applies for bond refund because no Section 79 claims - no appearance by tenant at hearing - landlord makes Section 22 claim as basis for retaining bond - Tribunal Member refuses to decide landlord's application without Form 2 from him.
Barnett v Vasilellis (R1509/87 - hearing 26/5/87) (6/87)

Agent makes application for "bond only to avoid hearing" - bond paid out to landlord on 10 day letter - Agent makes further application for further compensation - not allowed by Tribunal Member.
Weeks & Macklin v Thomas (R2911/87 - hearing 10/8/87) (8/87)

Tribunal Member orders bond to landlord, even though no application (Form 2) from landlord.
Longhurst v Bosnakis (R3266/87 - hearing 3/9/87) (9/87)

Practice of Tribunal where bond, or part of bond, apparently supplied by the Emergency Housing Office.
Tiver v Feltacco (R5394/88 - hearing 20/2/89) (2/89)

Tribunal member finds security bond runs with land and not available to former landlord after settlement.
Boyd v Southgate (R1715/89 - hearing 31/5/89) (5/89)

Landlord withdraws agent's authority. Agent gives evidence that agent paid back to tenant moneys equivalent to bond. Tenants completed Form 4 in favour of Landlord/Agent. Tribunal determines it must order bond be paid back directly to landlord - disputes between agent and principal outside Tribunal's jurisdiction.
Jock Gilbert Real Estate v Loeser (R2776/90 - hearing 9/8/90) (8/90)

SECTION 33(1)

Consent order (Form 4) as to bond binding. Tenants unable to produce evidence of any mistake of fact or law. Tenants fully advised. No ground for upsetting order as to bond.

Wood & Schoergluber v Picken (R4217/88 - hearing 9/11/88) (2/89)

Form 4 consent signed by tenant and bond paid out. Form signed by tenant in knowledge that she may not be liable for carpet cleaning as claimed. Tribunal declines to re-open the matter.

Brown v Altamura (R1618/88 - hearing 4/8/88) (8/88)

SECTION 34

Landlord offers new fixed term at increased rent - not clear if sixty days notice given - landlord withdraws offer before accepted by tenant - tenant stays on as periodic tenant - Tribunal Member finds proposed increase not effective.

Gaetjens v Hasenohr, Fairweather & Murray (R2308/87, hearing 15/6/87) (6/87)

Tribunal Member finds agreement for rent to increase at unspecified date when certain condition precedent fulfilled by landlord is enforceable - landlord never fulfilled condition precedent, but agreement varied with no consideration from landlord.

Gryguc v McCarthy (R2353/87 - hearing 22/6/87) (6/87)

Increase in rent not in accordance with Section 34 - Tribunal Member finds paid in mistake of law or fact - Form 5 not given.

Le Vagueresse v Scerri (R3436/87 - hearing 11/9/87) (9/87)

No notice of rent increase. Landlord installs air conditioning at tenants' request and Tribunal finds with genuine agreement between the parties with rent increase as consequence. Tribunal finds genuine and effective variation of tenancy agreement enforceable due to part performance (see Section 26 Law of Property Act). "Overpaid rent" application dismissed.

Faraonio v Francesca (R3365/88 - hearing 29/9/88) (10/88)

Invalid rent increase (Section 40, Section 90) - Tribunal finds rent paid by mistake under invalid rent increase recoverable and that High Court decision in *Pavey & Matthews Pty Ltd v Paul* (1987) 69 ALR 577 concerning unjust enrichment is inapplicable. Tribunal also finds that Section 40 of the Act permits recovery at termination of rent paid under invalid rent increase.

Mare v Kenyon (R1688/89 - rehearing 8/10/89) (11/89)

In the absence of a special covenant, standard REI form of residential tenancy agreement does not permit rent increase during the currency of the agreed fixed term.

PRD Gaetjens v Giles (R2166/90 - hearing 15/6/90) (6/90)

Method of calculating notice period of "not less than" a specified number of days under Residential Tenancies Act discussed. In tenancy law, computation of time excludes the day on which notice is given but not that on which it expires.

Davis v Lin Andrews Real Estate Pty Ltd (R5726/89 - hearing 13/9/90) (9/90)

SECTION 36

Relation between Residential Tenancies Act and earlier more specific Act. No jurisdiction in Residential Tenancies Tribunal

Redden v Teacher Housing Authority (R844/87 - hearing 1/12/87) (1/88)

Premises used partly for non residential purposes - Tribunal member finds Act applies and that having regard to Section 36 criteria, rent is excessive.

Nicolle v Kokkinakis (R364/88 - hearing 18/3/88) (3/88)

SECTION 37

Duty of agent to supply rent receipts is unconditional once request is made. Agent cannot impose conditions such as the tenant supplying stamped self addressed envelopes.

Hitchman v James Gray Real Estate (R2596/89 - hearing 27/7/89) (8/89)

SECTION 37(1)

Rent receipts, Tribunal Member finds Agent in breach if Agent refuses receipts unless tenant provides self stamped envelopes; (1/88)

SECTION 40

Law deals only with calendar (whole) days not 24 hour periods.

Gaetjens Pty Ltd v Smith (R1142/88 - hearing 28/4/88) (5/88)

Invalid rent increase (Sectin 34, Section 90) - Tribunal finds rent paid by mistake under invalid rent increase recoverable and that High Court decision

in *Pavey & Matthews Pty Ltd v Paul* (1987) 69 ALR 577 concerning unjust enrichment is inapplicable. Tribunal also finds that Section 40 of the Act permits recovery at termination of rent paid under invalid rent increase.

Mare v Kenyon (R1688/89 - rehearing 8/10/89) (11/89)

Landlords permit tenant to leave goods in premises after termination. Tenant returned keys to landlords at termination. Tribunal finds tenancy terminated on handing up of keys, no agreement as to "charges" for storage and tenant not liable for "rent" for period while goods remained present.

Booth v Prater (R4717/89 - hearing 18/12/89) (1/90)

SECTION 41

Tribunal Member orders landlord to return goods belonging to tenant held against rent - landlord unlawfully took possession.

Van der Watt v Manning (R4397/87 - hearing 9/8/87) (9/87)

SECTION 42

Poor paintwork by tenant during tenancy - Tribunal orders tenant to rectify if landlord requires.

Johnson v Fimmell & Co (R1298/88 - hearing 12/8/88) (8/88)

Landlord complains after end of tenancy that tenant painted over wallpaper and thereby reduced selling price. On a number of occasions landlord had told tenant to "treat the house as he would his own". Landlord aware that tenant wanted to redecorate and had redecorated. Tenant gives evidence that painting over wallpaper normal practice in Scotland. Tribunal finds tenant not liable with respect to decoration work.

Kidd v David J Ward & Partners (R996/89 - hearing 24/4/89) (5/89)

Tribunal finds tenant liable for cost of "German cockroach" eradication as flowing from tenant's breach of keeping kitchen and oven "reasonably clean". Tribunal refers to text book on household pests.

Greg Toop Real Estate v Bailey (R1523/89 - hearing 2/5/89) (5/89)

Garden - Tribunal allows compensation to landlord for ringbarked mature lemon tree. Tribunal allow \$315.00 for removal of tree and replacement and \$100.00 for loss of amenity of mature tree in small urban garden.

Bird v Brailsford (R1332/89 - hearing 31/5/89)

Carpet cleaning by tenant removed scotchguarding. Tribunal finds tenant liable for quarter of this cost as scotchguarding primarily a maintenance matter but brought forward by tenant's need to steam clean.

Curtain cleaning - Tribunal finds cleaning to remove accumulated dust a maintenance matter. Contrast the situation where curtains badly soiled or stained.

Swiolko v Markus (R1496/89 - hearing 22/5/89) (5/89)

Landlord unhappy with result of degreasing methods employed by tenant and required tenant to undertake further cleaning work. Application of hydrochloric acid caused residual damage. Tenant found not liable for cost of resurfacing claimed for residual damage.

Gauci v Nedelkos (R1453/89 - hearing 8/6/89) (7/89)

Mould growth - conditions conducive to growth discussed - tenant to take remedial action when mould apparent.

Gemini Management Services v Kenny (R4627/89 - hearing 10/5/90) (5/90)

SECTION 42(b)

Tribunal allows compensation equivalent to cost of rug where old carpet burnt and not able to be patched. What would a reasonable householder do in like circumstances?

Scarce Real Estate v Louquist (R200/89 - hearing 16/3/89) (3/89)

SECTIONS 42, 43

Tenant's responsibilities - Differing onus of proof in relation to goods missing at termination - Tenant bailee of one table and found liable for its loss (due to negligence) - as to other table, landlord carries onus and failed to prove tenant removed it.

Guastella v Caire (R1435/88 - hearing 4/7/88) (7/88)

Clause in agreement that tenant have carpets cleaned at end of tenancy not enforceable by landlord.

Richie v Edmundson (R4247/87 - hearing 30/9/87) (10/87)

Gardening - apportionment of liability for various garden jobs.

Gaetjens Pty Ltd v Flay, Pankhurst & Hunt (R6349/87 - hearing 22/3/88) (4/88)

Telephone number - as consumers renting the telephone service, the tenants are entitled to arrange for that number to be transferred at end of tenancy - landlord had not made arrangements at commencement of tenancy to retain telephone number.

PM Property Managers v Walde (R2151/88 - hearing 23/6/88) (6/88)

Tenant's responsibilities - Differing onus of proof in relation to goods missing at termination - Tenant bailee of one table and found liable for its loss (due to negligence) - as to other table, landlord carries onus and failed to prove tenant removed it.

Guastella v Caire (R1435/88 - hearing 4/7/88) (7/88)

SECTION 42(1)(b)

Excess water. Tribunal finds excess water charge of \$550.00 to be landlord's maintenance responsibility. After landlord's plumber attended, tenant remained convinced of major leak but took little action to report problem. Major leak later discovered. Tribunal finds tenant liable for second account of \$400.00.

Migale v Jacobsen (R4095/88 - hearing 25/10/88) (11/88)

SECTION 42(1)(c)

Intruders gain entry by damaging screen attached to unlocked window - tenant actions in leaving window unlocked do not amount to negligently permitting damage - landlord's application for window screen repair costs dismissed.

Vrakking v Nicholson & Coleman (R6305/87 - hearing 15/3/88) (4/88)

Blocked drain - Tenants' disposal of tampons by flushing down lavatory do not amount to intentional or negligent damage.

Jackman & Treloar Nationwide Realty v Eagle (R3310/88 - hearing 13/9/88) (9/88)

Lawn killed by tenants' neglect etc. Tribunal allows compensation as cost of replacement by instant lawn (\$750.00).

Gemini Management Services v Pressler & Rowland (R4941/88 - hearing 7/12/88) (12/88)

Pine floors damaged by indentations due to high heeled shoes - Tribunal finds to be wear and tear (compare use of spiked or studded shoes).

Faber v Quarisa (R4592/88 - hearing 9/12/88) (12/88)

SECTION 42(1)(a),(c)

Damages - Carpet replacement necessitated by cats' behaviour - tenant admits liability - carpet three years' old at termination - Tribunal discounts new carpet price by 20% to reflect the value of the damaged carpet.
BW Carey/Bostle v Rougham (R5724/87 - hearing 7/4/88) (4/88)

Carpet damage - assessment of compensation - depreciation rates.
Stirling Estates Pty Ltd v MacGill (R6371/87 - hearing 15/3/88) (3/88)

Carpet damage - assessment of compensation - life of carpet.
McNicol v Hani (R6093/87 - hearing 10/3/88) (3/88)

SECTION 43(a)

Premises used for illegal purpose - brothel - landlords under warning from police that if tenancy continues they will be prosecuted under Section 29 of the Summary Offences Act - Tribunal finds landlords effectively did not "choose" to serve notices of termination and entitled to reletting fee and advertising costs despite Form 7.
John Carles & Associates v Walker (R3460/88 - hearing 16/9/88) (10/88)

SECTION 43(1)

Blocked drain - Tenants' disposal of tampons by flushing down lavatory not contrary to the Sewerage Regulations (Reg 10) and no use of premises for an illegal purpose.
Jackman & Treloar Nationwide Realty v Eagle (R3310/88 - hearing 13/9/88) (9/88)

SECTION 44

Tenancy agreement to commence "when premises ready for occupation". In the circumstances of the case Tribunal finds tenancy agreed to commence within four weeks. Landlord liable to compensate tenants for moving and storage costs, bus fares which would not otherwise have been incurred and difference in rent payable in respect of new premises of similar quality - \$1,602.00.
Crespigny and Bogner v Bair (R4389/89 - hearing 23/11/89) (12/89)

Tenants moved from Adelaide to Yongala following tenancy agreement for premises at Yongala at much less rent than they were paying in Adelaide. Landlord refuses possession. Tenants secure other premises in Peterborough

at rent in excess of Yongala rent. Tribunal allows compensation as difference between Yongala and Peterborough rents multiplied by 60 days' being the notice the landlord could have given the tenants if she had let them into occupation.

Connolly and Pride v Mouskou (R5543/89 - hearing 19/1/89) (1/90)

Tenant not given vacant possession as agreement provided. Tribunal finds tenant entitled to compensation equivalent to moneys paid for temporary accommodation. Agent alleges outgoing tenant gave oral notice and/or that termination date agreed but vacation date not honoured. Agent submits outgoing tenant should pay compensation. Tribunal finds no termination date agreed between parties and no enforceable notice given by outgoing tenant. Outgoing tenant found not liable to landlord.

McKay v Dukes Real Estate (R2027/90 - hearing 20/7/90) (6/90)

Hill v Dukes Real Estate (R2576/90 - hearing 20/7/90) (6/90)

SECTION 46

Gardening - apportionment of liability for various garden jobs.

Gaetjens Pty Ltd v Flay, Pankhurst & Hunt (R6349/87 - hearing 22/3/88) (4/88)

"Blood bath in the house of death".

Carstens v Pastars (R5165/87 - hearing 22/10/87) (10/87)

Repairs - Tribunal orders tenant to submit quotations for necessary repairs to Tribunal. If rent held by Tribunal sufficient to meet quotations Tribunal will approve and direct Registrar to pay on receipt of tradesperson's accounts.

Larkham v Clark (R5729/87 - hearing 7/7/88) (7/88)

Telephone connection - premises advertised as with telephone - tenant had to pay a larger reconnection fee than expected because telephone disconnected for more than two months. Specific representations made by agent. However landlord liable in any event as telephone or telephone connected means service available on payment of \$40.00 transfer fee. Tribunal member notes fee payable after two months disconnection same as for a completely new service.

Shelton v Executor Trustee (R2744/88 - hearing 25/7/88) (7/88)

Telephone connection - tenant had to pay larger reconnection fee than expected because telephone connected for more than three months before commencement of tenancy - No liability in landlord for additional fee.

Pritchard v Russo (R60/88 - hearing 15/7/88) (7/88)

Electricity charges. Tribunal Member finds it implicit that tenant pay for electricity. Here however no separate meter and no portion of total account agreed. Tribunal finds apportionment impossible and not to be implied into agreement by Tribunal. Tribunal finds Section 46 does not extend to ordering landlord to provide separate meters but Tribunal finds landlord liable for amount of total account.

Nash v Gaetjens Pty Ltd (R5560/86 - hearing 23/2/87) (10/88)

Tribunal Member finds cleaning of gutters to be a maintenance responsibility of landlord.

Persse Realty v Mangelsdorf (R5373/88 - hearing 8/2/89) (2/89)

Carpet cleaning by tenant removed scotchguarding. Tribunal finds tenant liable for quarter of this cost as scotchguarding primarily a maintenance matter but brought forward by tenant's need to steam clean.

Curtain cleaning - Tribunal finds cleaning to remove accumulated dust a maintenance matter. Contrast the situation where curtains badly soiled or stained.

Swiolko v Markus (R1496/89 - hearing 22/5/89) (5/89)

SECTION 46

Landlord obliged to maintain common areas forming part of premises let to various tenants - laundry not reserved from premises and probably cannot be.

Oreb and Evans v PRD Gaetjens (R4092/89 - hearing 20/9/89) (9/89)

Defective hotwater services found to be responsible for excessive electricity consumption. Landlord liable to compensate tenant.

Sparks v Betamore Pty Ltd (R5031/89 - hearing 26/2/90) (3/90)

Fences Act, 1975. Landlord obliged to repair fence. Tribunal orders repair within time specified sufficient to enable landlord to serve notice on neighbour under Fences Act to permit lawful access to landlord.

Willcox & Frost v Scott (by Casserley & Mitchell) (R734/90 - hearing 24/5/90) (5/90)

Tribunal discusses landlord's repair obligations when property requiring repair is "common property" within the meaning of the Strata Titles Act 1988. Whether corporation's consent is required depends on nature of work to be done.

Coventry and Anderson v Pogas (R2118/90 - hearing 31/5/90) (6/90)

Water supply. Premises reliant to large extent on tank water. Water ran out twelve months after tenancy began and tenant had to buy water. Tribunal

finds landlord provided an adequate water supply and not liable for lack of water caused by very dry period.

Curl v Bailey (R1709/90 - hearing 7/6/90) (6/90)

SECTION 46(1)(a)

Premises dirty. Tenant does not move in and finds other accommodation by time premises are ready for occupation. Landlord claims Section 79 costs. Tribunal finds tenant not entitled to terminate by repudiation but entitled to compensation for landlord's breach and that tenant could have successfully sought termination via Section 76. Tribunal finds tenant's entitlement to compensation a partial set off against landlord's Section 79 claims.

Gaetjens Pty Ltd v Harvey (R3925/88 - hearing 17/11/88) (11/88)

SECTION 46(1)(b)

"Fault" by landlord not required before breach made out - Tribunal terminates and makes possession order under Section 76 on tenant's application where wall dangerous (council notice to remedy served) and repair work will render premises uninhabitable.

Wiszniewski v Gaetjens Pty Ltd (R2451/88 - hearing 1/7/88) (7/88)

Excess water. Tribunal finds excess water charge of \$550.00 to be landlord's maintenance responsibility. After landlord's plumber attended, tenant remained convinced of major leak but took little action to report problem. Major leak later discovered. Tribunal finds tenant liable for second account of \$400.00.

Migale v Jacobsen (R4095/88 - hearing 25/10/88) (11/88)

Pelmet falls from wall and damages tenant's television set. Section 42(1)(b) not relevant on the facts. Tribunal notes that liability imposed by Section 46(1)(b) is established irrespective of fault. (Neither party at fault on the facts). Tribunal awards tenant cost of television repair but not more remote costs.

Brown v Cliff Hawkins Real Estate (R137/89 - hearing 9/2/89) (3/89)

SECTION 47

Tribunal finds tenant consented to work being done by landlord. Landlord ceased work when tenant complained. Tenant not entitled to compensation for breach of quiet enjoyment.

Seale & Signorelli v Greg Toop Real Estate (R1852/89 - hearing 29/5/89) (6/89)

SECTION 48

Landlord gives new tenants keys to premises before present tenants vacated - \$200.00 missing from premises - Tribunal Member finds landlord liable for tenants loss as landlord in breach of Section 48 or implied term re security of premises.

Gibbs and Strauss v Robey (R2472/87 - hearing 16/7/87) (7/87)

Tribunal Member discusses standard of security required.

Flat Management v Brazier & Pine (R3061/87 - hearing 6/11/87) (11/87)

Window latch defective and bolt defective. Defect reported to landlord. Break in by forcible removal of screen and entry through window. Tenant suffered substantial losses. Tribunal not satisfied that as a matter of causation that loss flowed from the landlord's breach. Application dismissed.

Roberts & Foster v Cary, Kain & Zeceovich (R1190/89 - hearing 4/5/89) (5/89)

Tenant returned keys at termination. Landlord changed locks after neighbours reported other people continued to have access to the premises. Tribunal finds it is not an implied term that tenant will not make duplicate keys available to others and on facts not satisfied tenant did so anyway.

Dunne (by Myles Pearce & Co Pty Ltd) v Storen (R2380/90 - hearing 22/6/90) (6/90)

SECTION 49

"Reasonable hour" - Tenant a shift worker. What would otherwise be a reasonable hour (between 12 and 2 pm) not reasonable on the particular facts. "Reasonable" to be read as "reasonable to the landlord and tenant".

Whiston v John Martin First National (R5308/90 - hearing 23/11/90) (11/90)

SECTION 49(1)(f)

Inspection by "prospective purchasers" - open inspections discussed.

Bandt v Morrison (R717/89 - hearing 13/3/89) (3/89)

Tribunal inclines to view open inspections necessary to sell premises by auction.

Professionals - Prospect v Hayes (R1120/89 - hearing 23/3/89)

Tribunal previously ordered bi-weekly open inspections for four week period preceding auction. Premises did not sell at auction. Tribunal orders landlord

to grant quiet enjoyment - no more open inspections until end of tenancy; inspections by appointment to comply with requirements of Section 49(1)(f) as to notice and frequency etc.

Voekel v Migliaccio (by *LJ Hooker - St Peters*) (R5619/89 - hearing 6/4/90) (4/90)

SECTION 50

Compensation to landlord for damage to floor in remaining carpets installed by tenant.

Hardy v Wells (R1825/87 - hearing 25/9/87) (9/87)

TV antenna held to be a landlord's fixture - tenant liable for replacement cost of antenna removed.

Walsh v Willson (R2209/88 - hearing 8/7/88) (7/88)

Fixtures - Tribunal member makes no comment as to whether outgoing tenant could effectively have sold wall to wall carpet to next tenant. That tenant replaced defective carpet with her own which she removed at the end of her tenancy, leaving smooth edge exposed. Removal of smooth edging caused considerable damage to tiles. Landlords seek compensation. Tenant finally accepts liability limited to bond.

Sweeting Shipway v Busby (R2344/88 - hearing 21/7/88) (7/88)

Fixtures may be removed by tenant during tenancy or within a reasonable period after termination.

Ashton v Selig (R1409/89 - hearing 22/5/89) (5/89)

Removal of stove - presence of remaining wiring a "nuisance". Tribunal finds not "irreparable damage" and tenant's removal of stove lawful.

Chapple v Johnston (R1883/89 - hearing 26/5/89) (6/89)

Premises sold. Tenant entitled to remove fixtures although vendor landlord may have to compensate purchaser landlord.

Wade v Merino and Newton (R5381/89 - hearing 21/12/89) (1/90)

SECTION 51

Excess water - Tribunal notes standard form (RTT) agreement not explicit. Also that "excess water consumption" is increasing.

Rotolo v Bennett (R1897/88 - hearing 7/7/88) (7/88)

Excess water liability - landlord seeks excess water payment - two premises share same meter - no specific agreement as to apportionment of excess

water liability - no means of identifying excess water used by tenanted premises in course of agreement - application dismissed.

Myles Pearce & Co Pty Ltd v Glover (R2407/88 - hearing 22/7/88) (7/88)

Excess water. Tribunal finds excess water charge of \$550.00 to be landlord's maintenance responsibility. After landlord's plumber attended, tenant remained convinced of major leak but took little action to report problem. Major leak later discovered. Tribunal finds tenant liable for second account of \$400.00.

Migale v Jacobsen (R4095/88 - hearing 25/10/88) (11/88)

Excess water - Term of agreement that landlord pay excess water charges. No evidence of breach of agreement by tenant, nor any explanation of large consumption. Tribunal finds landlord liable under agreement.

Eoncheff v Hill (R3380/88 - hearing 14/12/88) (12/88)

Tribunal accepts calculation of excess water liability based on readings at commencement and termination, less annual allowance calculated on pro rata basis.

Delfin DBR Realty v Drew (R177/89 - hearing 6/2/89) (2/89)

Tribunal notes that calculation of excess water by actual use per day over allowance per day may be unfair and inaccurate calculation during short tenancy and where actual yearly consumption not yet known.

Myles Pearce Pty Ltd v Deanshaw (R3040/89 - hearing 3/8/89) (9/89)

SECTION 52

Breach by landlord sufficient to warrant termination of tenancy. Details of sub-tenants which landlord can be expected to be given.

Shantis & Francis v Comley (R2124/88 - hearing 27/5/88) (5/88)

What amounts to reasonable refusal of permission to sublet or assign.

Barnes and Belfrage v El Deeb (2293/87 - hearing 10/7/87) (7/87)

Tribunal finds landlords unreasonably withheld consent to assignment and due to this and delay in cleaning etc failed to take all reasonable steps to mitigate losses on abandonment.

Holman v Davie (R5216/88 - hearing 5/4/89) (4/89)

"Reasonable expenses" discussed. No relation to reletting fee liability on abandonment.

Philip-Harbutt v Real Estate Centre (R3699/89 - hearing 11/9/89) (9/89)

Landlord ordered to consent to sub-letting. Fact that proposed sub-lessee not married to the tenant and landlord's moral objections are based on that fact not a reasonable refusal.

McLoughlin v Harold Steele Real Estate (R3144/89 - hearing 30/10/89) (12/89)

Agent does not appear to justify \$50.00 claimed for "processing transfer of lease" on assignment. Tribunal unable to determine whether amount sought justifiable.

Coe v Taplin Management (for Appelt) (1498/90 - hearing 24/5/90) (5/90)

Assignee not liable to compensate landlord for breaches committed prior to assignment.

Conroy Pineapple Crunch (by Jackman & Treloar Pty Ltd) v Randall (R5471/90 - hearing 3/1/91)

SECTION 53

Tenant not liable for acts of persons not lawfully on premises. Damage caused by ex boyfriend and friends. Tenant vicariously liable for one item.

Zollo v Betterman (R3255/87 - hearing 9/2/88) (4/88)

SECTION 54

Landlord to provide own address: agent's address insufficient for Section 54.

Stan Barnes v Kennedy (R5925/87 - hearing 8/12/87) (1/88)

SECTION 57

Landlord instructed agent to obtain written tenancy agreement - tenant therefore not liable for cost even though had signified assent to proposition - fee recoverable under Section 90.

Fimmell & Co Pty Ltd v Burchell (RL78/87 - decision 21/3/88)

Circumstances where Residential Tenancies Tribunal will find tenant liable for "lease preparation fee".

Carter v Gaetjens (R5102/87 - hearing 27/10/87) (11/87)

Lease preparation fee. Tenant did not seek written tenancy agreement. Amount paid recoverable.

Coe v Taplin Management (for Appelt) (R1498/90 - hearing 24/5/90) (5/90)

SECTION 59

Lease preparation fee recoverable by tenant.

Devereaux v Nelson (R1173/89 - hearing 29/5/89) (6/89)

SECTION 61

Death does not itself terminate tenancy but may lead to termination by abandonment etc.

Fisher v Cruickshank (R586/88 - hearing 24/3/88) (4/88)

Landlord offers new fixed term at increased rent - not clear if sixty days notice given - landlord withdraws offer before accepted by tenant - tenant stays on as periodic tenant - Tribunal Member finds proposed increase not effective.

Gaetjens v Hasenohr, Fairweather & Murray (R2308/87 - hearing 15/6/87) (6/87)

Tribunal Member finds that breach and repudiation of agreement does not terminate tenancy under Act.

Berzins v Simmons and Patterson (R5602/86 - hearing 7/7/87) (7/87)

Landlord sells premises in good faith during fixed term - purchaser could terminate pursuant to Section 61(1)(c1) - tenancy terminated pursuant to Section 75, but landlord ordered to pay compensation.

Georgiou v Williamson (R3527/87 - hearing 15/7/87) (7/87)

Termination by disclaimer.

Public Real Estate v Owens & Boston (R1795/87 - hearing 4/8/87) (9/87)

Series of written tenancy agreements for fixed terms - tenants described as A & B, B & C, C respectively. Tribunal member finds three separate agreements and tenancies. Tribunal member finds landlord consented to termination at end of each respective term and notional delivery up of possession. Fresh inspection sheets ought to have been issued at beginning of each term.

Haseldene v LJ Hooker - Prospect (R1937/88 - hearing 28/7/88) (8/88)

Tribunal finds residential tenancy agreement subject to condition precedent as to repairs etc which condition was not met. Premises never occupied. Rent paid in advance refundable.

Condos v Public Real Estate Bureau Pty Ltd (R1668/88 - hearing 13/2/89) (2/89)

Tenancy terminating after Form 7 notice of termination - tenant not liable for loss of rent after vacant possession. Mere non-payment of rent does not show intention to repudiate nor fundamental breach justifying compensation for rent loss.

Dunstone v Skepper (R2923/89 - hearing 7/7/89) (8/89)

Agent purports to increase rent contrary to Section 34. Tenant queries increase during currency of term but told by agent he must pay or if he leaves will be liable for "abandonment costs". Tribunal finds agent repudiated contract and tenant entitled to treat contract as at an end.

PRD Gaetjens v Giles (R2166/90 - hearing 15/6/90) (6/90)

Landlord unlawfully purported to increase rent payable contrary to notice requirements of Section 34. Tenant objected and landlord waived part of the increase. A few weeks after increase tenant gave two weeks notice on basis that she had to move to cheaper accommodation. Tribunal finds landlord not entitled to rent in lieu of 21 days notice as by the unlawful increase he had repudiated the agreement and the tenant was entitled to accept that repudiation.

Dohnt v Kouzaba (R4085/90 - hearing 6/11/90) (11/90)

SECTION 61(1)(ab)

Tribunal Member finds periodic tenancy not to be presumed within thirty days of expiration of fixed term unless evidence that this was parties' intention.

Gill v Bright (R834/88 - hearing 15/4/88) (4/88)

SECTION 61(1)(e)

Tribunal finds employee of agent acted with apparent authority to consent to termination and principal bound by consent.

McCulloch, Ashby & Burns v Scarce Real Estate (R2328/89 - hearing 20/7/89) (8/89)

SECTION 61(1)(g)

Tenants go on holiday. Landlord relets to others. Tenancy has ended by disclaimer and tenants' rent liability ceases at date disclaimer acted upon by the tenants in quitting the premises.

Smith, Thomas & Currie v Romanik (R3639/89 - hearing 21/9/89) (10/89)

SECTION 63

Notice of termination cannot be unilaterally withdrawn. Fact that notice may have been ineffectual or tenant not in fact in breach as alleged irrelevant to whether tenancy has terminated by tenant's vacation.

John Martin Land Agents v Uldum (R4847/89 - hearing 19/12/89) (1/90)

SECTION 64

Tribunal discusses binding nature of oral fixed term agreements and common law nature of yearly tenancy. Tribunal concludes that Residential Tenancies Act provides only for fixed term agreements and for agreements terminable on period of statutory notice.

Wade v Merino & Newton (R5381/89 - hearing 21/12/89) (1/90)

SECTION 64(5) AND (6)

Narrow construction of Section 64(5) considered and rejected by Tribunal Member.

Williams v Audas (R286/87 - hearing 15/7/87) (7/87)

SECTION 67(2)

Tenants refusing access to landlord's tradespeople to effect Housing Improvement Act repairs - Tribunal Member makes conditional order to effect that if tenants do not give access as required by Section 49, landlord may serve 60 days notice under Section 64(1)(b).

Gianno Kopoulos v McLaren & Kennedy (R1275/88 - hearing 11/5/88) (5/88)

SECTION 67(2)(b)

Hard to see how landlord can be motivated by Housing Improvement Act notice where such predates tenancy. Permission thus granted without limiting it to specified grounds.

Hewitt v Wright, Godfrey & Everett (R3482/88 - hearing 17/8/88) (8/88)

SECTION 70

Notice of termination by tenant cannot be unilaterally withdrawn by tenant - creates fixed term which can be enforced by landlord through Section 73a.

Samoilenko v Hepburn (R3168/87 - hearing 30/6/87) (7/87)

1. Notice by one of two joint tenants ineffectual. (No evidence that party giving notice acting as other tenant's agent.)
2. Fixed term tenancy followed by periodic tenancy agreed - Tribunal finds notice ineffectual until 21 days into periodic tenancy.
Herbert Real Estate v Grodon and King (R631/90 - hearing 26/2/90) (3/90)

SECTION 71

When does rent abate after premises become uninhabitable?
Halden v Zollo (R5349/87 - hearing 22/10/87) (10/87)

Premises not "uninhabitable" within the meaning of this provision if only uninhabitable by particular tenant because of tenant's medical condition - tenants advised by doctor that chemicals to destroy pest infestation could have adverse effect on tenant's health due to her particular illness - tenants actions in vacating precipitate - Tribunal Member finds premises abandoned and tenants liable accordingly.
Leahy v Gaetjens Pty Ltd (R1675/88 - hearing 22/4/88) (6/88)

SECTION 73

Time limits for application for order after Form 7 issued - Section 27(2) Acts Interpretation Act 1915 .
DBR v Spencer (R916/85 - hearing 9/6/87) (6/87)

Tribunal Member finds God's instruction to Isaiah to remain in occupation now overridden by Act.
Bethesda Christian Centre v Bakker (R5683/87 - hearing 19/11/87) (11/87)

Definition of "residential tenancy agreement" - Agreement to enter into occupation at a future date is a residential tenancy agreement, even if landlord can't give vacant possession at date agreement made.
President Realty v Twigg (R3602/87 - hearing 13/11/87) (11/87)

Joint landlords - Where joint landlords, both must agree in giving Form 7 Notice. Landlord's right of entry and use of premises discussed. Impounding Act discussed.
Schnell v Clavell (RT5247/87 - hearing 24/11/87) (11/87)

Calculation of notice period in Form 7 - Section 27 Acts Interpretation Act 1915 - day of service to be ignored but final day to be included in period.
Taarnby & Taarnby House Agents v Shaw & Sprou (R3096/88) (9/88)

Tribunal decides it has no jurisdiction to determine validity of Form 7 notice except on application for orders of termination etc. Notice allegedly retaliatory.

Anderson v Edwards (R479/89 - hearing 6/3/89) (3/89)

Tenant in breach of Articles of Strata Corporation (binding on occupiers) by "bringing objects or materials onto the site of a kind that are likely to cause justified offence to the other members of the strata community". However breach remedied. Tribunal orders tenant to clean and dismisses termination application.

Nugent v Evans (R842/90 - hearing 28/2/90) (2/90)

Method of calculating notice period of "not less than" a specified number of days under Residential Tenancies Act discussed. In tenancy law, computation of time excludes the day on which notice is given but not that on which it expires.

Davis v Lin Andrews Real Estate Pty Ltd (R5726/89 - hearing 13/9/90) (9/90)

SECTION 73a

Holding over - general discussion by Tribunal Member.

Langford v Johnson (R1690/87 - hearing 19/5/87) (6/87)

Payment and acceptance of rent after end of fixed term - periodic tenancy not to be necessarily inferred.

Herbert Real Estate v Collie (R70/85 - hearing 14/3/88 Mt Gambier) (3/88)

Parties enter into written agreement for six months "to continue as a fortnightly tenancy ...". Tribunal finds parties entered into tenancy for six months and thereafter periodic tenancy. Section 73a not available.

LJ Hooker - Prospect v Martelli (R4885/88 - hearing 22/11/88) (11/88)

Tribunal Member inclined to view that tenant remaining in occupation after expiration of fixed term and paying rent is agreeing to new tenancy. (Compare other decisions on this point). Here negotiations etc between parties lead to contrary conclusion.

Bennett v Walker & Fry (R3689/88 - hearing 24/11/88)

Right to renew - tenancy agreement for fixed term - purchaser buys premises in knowledge of tenancy agreement - lease not registered. (Real Property Act, Section 119). Tribunal finds right to renew not enforceable against purchaser-landlord but tenant may be entitled to compensation from vendor-landlord because of failure to renew.

Plumb v Sharman (R5204/88 - hearing 22/12/88) (1/89)

SECTION 73a(3)(b)

Short fixed term agreement cannot be terminated pursuant to Section 73a unless provision satisfied.

Maschio v Lavell (R1869 - hearing 5/5/88) (5/88)

SECTION 75

Tribunal Member finds that breach and repudiation of agreement does not terminate tenancy under Act.

Berzins v Simmons and Patterson (R5602/86 - hearing 7/7/87) (7/87)

Landlord sells premises in good faith during fixed term - purchaser could terminate pursuant to Section 61(1)(c1) - tenancy terminated pursuant to Section 75, but landlord ordered to pay compensation.

Georgiou v Williamson (R3527/87, hearing 15/7/87) (7/87)

Invalid Form 7. Tribunal Member used Section 75 to terminate. Discussion of "undue hardship".

Bertram Sach v St Clair (R4459/87 - hearing 3/9/87) (9/87)

Tenant employed to work on farm - premises situated on farm - not excluded by Regulation 13 - tenant's employment terminated - use of Section 75 to terminate tenancy.

Matson v Golding (R5017/87 - hearing 7/10/87) (10/87)

SECTION 76

Tribunal orders termination and makes possession order on tenant's application for breach of Section 46(1)(b) by landlord. Wall of premises dangerous - council notice to remedy served - premises soon to be uninhabitable by reason of necessary repair work (Section 71 not authorising termination and possession order - see Section 63, Tribunal makes orders under Section 76).

Wiszniewski v Gaetjens Pty Ltd (R2451/88 - hearing 1/7/88) (7/88)

SECTION 78

Tribunal Member finds that breach and repudiation of agreement does not terminate tenancy under Act.

Berzins v Simmons and Patterson (R5602/86 - hearing 7/7/87) (7/87)

Tribunal Member finds that breach and repudiation of agreement does not terminate tenancy under Act.

Berzins v Simmons and Patterson (R5602/86 - hearing 7/7/87) (7/87)

SECTION 79

Tribunal Member finds agent not mitigated loss, so no rent loss allowed, but allows reletting fee.

Peter McGlone Pty Ltd v Thompkins (R133/87 - hearing 19/5/87) (6/87)

Tenant advised of intention to abandon - agent began to advertise - agent obtained no new tenant, so tenant stayed till end of fixed term - Tribunal Member finds that, as no abandonment, tenant has no liability under Section 79, and Residential Tenancies Tribunal no jurisdiction under Section 22.

PJ Daniels v McSorley (R1507/87 - hearing 19/5/87) (6/87)

Tribunal Member does not allow reletting fee where agent cannot prove landlord has or will have suffered loss.

Central Districts Real Estate v Seaman and David (R2309/87 - hearing 14/7/87) (7/87)

Tribunal Member allows landlord who does own reletting some out of pocket expenses as "letting fee" - formula.

Otto v Kuchel (R1099/87 - hearing 23/6/87) (7/87)

Mitigation - Tribunal Member not satisfied that landlord has mitigated where advertised at higher rate and in "bulk" - tenant's liability for telephone.

Berlyn & Sykes v Taplin (R1373/87 - hearing 14/9/87) (9/87)

"Role of agent" - Tribunal Member holds that requirement by agent that abandoning tenant enter into "agency" agreement with him before he will seek replacement tenant is contrary to Section 79, and any payments made pursuant to such agreement are made in mistake of law or fact.

Emslie v Real Estate Centre (R2815/87 - hearing 14/10/87) (11/87)

Tribunal Member reduces tenant's liability by amount over tenant's rent that new tenant paying.

Showers v Campbell (R5679/87 - hearing 21/12/87) (12/87)

Duty to mitigate - local circumstances.

Landlords let premises in Quorn for six months to take up jobs in Woomera. Tenant abandoned two weeks later. Only brief attempt to relet by word of mouth enquiries. Landlords soon decide to resume occupation and unable to do so for over four weeks. Very difficult to let premises in Quorn. Landlords held entitled to bond (of 4 weeks rent) as compensation.

Swan v Kennedy (R5603/87 - hearing 19/1/88) (2/88)

Death does not itself terminate tenancy but may lead to termination by abandonment etc.

Fisher v Cruickshank (R586/88 - hearing 24/3/88) (4/88)

Landlord entitled to lost rent after abandonment even though he stayed in residence after abandonment for security purposes.

West v Gosti (R478/88 - hearing 31/3/88) (4/88)

All reasonable steps to mitigate - form of advertisements, placing premises on market for sale; reletting to another person by oral agreement.

HD Rooney & Son Pty Ltd v Mankey (R6423/87 - decision 5/4/88) (4/88)

All reasonable steps to mitigate - premises offered at increased rental, no advertising - Tribunal finds tenant liable for letting fee (calculated as from reletting date) but not for rent to reletting.

Irwin v Gaetjens Pty Ltd (R111/88 - decision 21/3/88) (4/88)

Although new tenants might have been ready for earlier commencement date, landlord was not. Delay not unreasonable (one day) Section 79 satisfied.

Gaetjens Pty Ltd v Smith (R114288 - hearing 28/4/88) (5/88)

1. Letting fee - Tribunal member satisfied fee is to be charged to landlord and is recoverable from tenant under Section 79 - landlord's account not debited as at hearing date - trust account not to be put into debit.

2. Credit check fee of \$5.00 - part of letting fee and not separately recoverable where licensed agent employed to relet.

De Cristofaro v LJ Hooker - Prospect (R1730/88 - hearing 9/6/88) (6/88)

Infant's liability after abandonment - see "Section 22".

Mills Roenfeldt Pty Ltd v Hoffman (R2959/88 - hearing 1/8/88) (9/88)

Tenant under periodic agreement vacated premises without notice. Landlord did not advertise in press for some nine days but promptly contacted "Whereabouts" to advise of vacancy. Premises listed with Whereabouts, Emergency Housing Office, Flatmates. Premises comprise individual bedrooms (with tenants having exclusive possession) and share facilities. Most tenants are referred through above and similar organisations. Tribunal member finds landlord took all steps to mitigate loss which were reasonable in the circumstances which include nature of accommodation and likely means of attracting new tenants to it.

Lombardi v Strangewis (R3374/88 - hearing 14/9/88) (9/88)

Advertisement - full proportioned costs allowed although costs include cost of agent's logo in advertisement - Tribunal Member compares situation where logo large part of advertising cost.

Myles Pearce & Co Pty Ltd v Ferreiro (R2995/88) (8/88)

"Section 79" reletting and advertising costs allowed despite termination via service of Form 7. Landlords gave Form 7 notice on breach of Section 43(a) (illegal purpose/brothel) after warning from police they would be prosecuted if tenancy continued.

John Charles & Associates v Walker (R3460/88 - hearing 16/9/88) (10/88)

Tenant fails to take up occupation because of landlord's breach (premises dirty). Tribunal allows set off to tenant in respect of landlord's Section 79 claims.

Gaetjens Pty Ltd v Harvey (R3925/88 - hearing 17/11/88) (11/88)

Landlord allegedly unwilling to let abandoned premises to a single person. Tribunal member draws attention to prohibitions contained in Equal Opportunity Act. Tribunal finds on facts landlord did take all reasonable steps to mitigate.

Hunter Real Estate v Maslen (R5156/88 - hearing 13/1/89) (1/89)

Tribunal finds landlord unreasonably withheld consent to assignment and due to this and delay in cleaning etc failed to take all reasonable steps to mitigate losses on abandonment.

Holman v Davie (R5216/88 - hearing 5/4/89) (4/89)

Abandonment - prospective tenant may or may not have entered into enforceable tenancy agreement but declined to proceed. Tribunal finds abandoning tenant liable for rent loss until premises definitely relet to another tenant.

Ken Gaetjens Real Estate v Oldham (R935/89 - hearing 3/4/89) (4/89)

Tribunal finds tenant abandoned premises, leaving sub-tenants in occupation. Tenant later told landlord one sub-tenant would "take over" tenancy. Landlord attempted to contact nominated sub-tenant and tried to obtain rent from him. No express agreement between landlord and nominated sub-tenant. Tribunal finds new implied residential tenancy agreement reached at some time after abandonment between landlord and (former) sub-tenant. No rent received from new tenant. Tribunal finds abandoning tenant liable for three weeks rent in lieu of notice plus further compensation (equivalent to another three weeks' rent) as a loss flowing from tenant's abandonment and failure to give up vacant possession. (Beyond this and for cleaning necessary at termination some several weeks later, landlord's only remedy is against new tenant ie former sub-tenant).

Wood v King (R2959/88 - hearing 8/3/89) (3/89)

Tribunal finds further fixed term agreed upon shortly prior to expiration of first term. Tenants abandon just prior to end of first term. Tribunal finds tenants liable for rent loss until reletting and for advertising but does not allow reletting fee. Tribunal not satisfied of landlords' "loss" given that only

for a very brief period could landlord reasonably have expected not to incur reletting costs.

Delfin Realty v Rodriguez (R175/89 - hearing 22/3/89) (5/89)

Landlord or agent not entitled to demand "Section 79 costs" in advance. On abandonment landlord is obliged to mitigate losses caused thereby - tenant is not assigning or sub-letting to new tenant.

Devereaux v Nelson (R1173/89 - hearing 29/5/89) (6/89)

Reletting fee - Tenant is liable to compensate the landlord for the landlord's loss - Tribunal requires proof of extent of landlord's loss, namely amount of reletting fee paid by landlord - Tribunal may require documentary proof of amount charged - Tribunal will generally apply proportionate formula to landlord's actual loss.

Taplin Real Estate v Manfield (R2788/89 - hearing 10/7/89) (7/89)

Tribunal does not allow letting fee and rent commissions against abandoning tenant where agent not used for original letting and where not necessary in order to mitigate in accordance with Section 79.

Burnell v Pierson & Ellis (R3633/89 - hearing 30/8/89) (8/89)

Tribunal allows full reletting fee where premises relet only to end of agreed term as landlord did not want to let premises beyond agreed term.

Ian Warhurst Pty Ltd v Roberts (R2500/89 - hearing 3/7/89) (8/89)

Landlord relets at higher rent - the extra rent payable to the end of the abandoning tenant's term, is to be deducted from abandoning tenant's liability.

Quinn and Cutteridge v Australian Real Estate (R3789/89 - hearing 5/10/89) (12/89)

Tribunal finds no residential tenancy agreement entered into where term not specified prior to Tribunal's notification to landlord that they did not wish to proceed.

PRD Gaetjens v Amos (R4700/89 - hearing 10/11/89) (1/90)

Premises relet for term to expire at same time as tenant's term was to expire. Two weeks letting fee paid at commencement and one week's fee on reletting. Abandonment halfway through term. Tribunal allows total reletting fee equivalent to one week's rent charged to landlord. "Formula" inapplicable.

Newmark Real Estate v Murray (R5434/89 - hearing 22/1/90) (1/90)

Tribunal finds that agreement terminable by notice from each party is not a fixed term agreement and that statutory notice periods apply. However, in

this matter the landlord told the tenant to go. The tenant vacated almost immediately - landlord cannot claim rent in lieu of notice.

Parbery v Cooper (R5356/89 - hearing 4/1/90) (1/90)

Tenant abandons six weeks prior to end of term with Christmas period intervening. Landlords not intending to relet beyond end of term. Tenant found liable for rent to end of term.

Byfield v Mortimer (R354/90- hearing 19/3/90) (3/90)

Tenant gives amply "prior notice" of abandonment and vacates one week before Christmas with four weeks to run before end of term. Landlord says he could not travel to Adelaide from Mount Gambier to commence reletting before Christmas. Tribunal indicates that given the time of vacant possession and the Christmas season landlord appeared to have acted adequately - parties reach agreement.

Lampshire v Carman (C150/90 - hearing 13/3/90) (3/90)

Tenant completes "application for tenancy form". Commencement date not specified. Agent notifies tenant of landlord's acceptance. On the facts Tribunal finds that no commencement date agreed and as this is an essential term of a tenancy agreement finds no agreement concluded. Tribunal finds agent believed commencement date had been agreed and that tenant believed no date had been agreed. Tribunal therefore applies objective legal test and finds it is not satisfied agreement concluded.

Deane (by PRD Gaetjens) v Watson-Fox (R2463/90 - hearing 29/6/90) (6/90)

Tenant abandons six month agreement. Tenant liable for rent loss but not advertising costs as landlord relet for a 12 month term. Landlord gained advantage of thus not having to advertise at expiration of the tenant's six month term.

Roscioli v Ristivojevic (R3702/90 - hearing 3/10/90) (10/90)

Tribunal not satisfied agent involved in letting. Agent and landlord closely related. "Reletting fee" not allowed.

Roberts v Mail Mart Pty Ltd (R4713/90) (1/91)

SECTION 79a

Landlord removed and disposed of some goods prior to two days after termination. (Termination affected by landlord just prior to intended abandonment by tenant.) Both parties' evidence unsatisfactory. Tribunal finds tenants' entitlement to compensation for losses caused by landlord's failure to comply with Section 79a virtually equivalent to rent arrears and electricity charges.

New v Meaken (R3122/88 - hearing 26/9/88) (10/88)

Tribunal finds landlord wrongfully disposed of tenant's goods at termination. Landlord liable for \$732.47, being value of missing goods.
Cornelius v Carroll (R245/90 - hearing 8/2/90) (2/90)

Agent believed tenants had abandoned but Tribunal satisfied that they were in process of vacating. (Form 7 served but had not expired). Goods of tenant should not have been removed. Tenant entitled to compensation for missing goods and not liable for costs of premature cleaning.
Henstridge & Payne v Toorak Pampas Pty Ltd (R4179/90) (10/90)

SECTION 80

Tribunal Member orders landlord to return goods belonging to tenant held against rent - landlord unlawfully took possession.
Van der Watt v Manning (R4397/87 - hearing 9/8/87) (9/87)
Illegal eviction and other breaches.
Piggins v Ranieri (R1331/89 - hearing 26/5/89) (6/89)

SECTION 81

Tenancy vested in tenant pursuant to Section 81, even though landlord of vested tenancy is South Australian Housing Trust.
Wood v Woodmore (R2865/87 - hearing 4/6/87) (6/87)

Time delays in making applications, and other matters.
Bell v Dinham (R5268/87 - hearing 26/10/87) (10/87)

Mortgage proceedings to recover possession current before Supreme Court - Tribunal has no power to vest tenancy at that stage.
Hatton v Schloithe (R4077/88 - hearing 28/9/88) (10/88)

Tribunal has no power to vest a tenancy in a lodger of the landlord.
Malone v Napier (R5092/89 - hearing 1/12/89) (12/89)

SECTION 84

Nature of moneys held in the Fund - bond moneys not held by Tribunal on "trust" or as "stakeholder" but pursuant to Statutory scheme.
Tiver v Feltracco (R5394/88 - hearing 20/2/88) (2/89)

SECTION 86(ca)

Application of Residential Tenancies Fund to research projects.
IYSH v Boarders & Lodgers (R3773/87) (12/87)

Emergency Housing Office application to Fund
EHO v Fund (R1954/87 - hearing 10/6/87) (6/87)

IYSH application - boarders and lodgers (R3773/87) (8/87)

"Landlord" absconds with bond - tenant's claimable losses in excess of bond amount - delay in Tribunal decision - order unenforceable - Tribunal recommends payment equivalent to bond from Fund. Landlord's wrongful behaviour quite beyond risks tenant should be expected to take in making agreement.

Wiremu v Carew-Reid (R2321/86 - hearing 15/2/88) (2/88)

SECTION 86(d)

Factors to be considered by Tribunal in deciding whether to make a recommendation to Minister.

Application by Tsipouridis (R1178/88 - hearing 13/2/88) (2/89)

All reasonable steps must be taken to enforce order before recommendation to the Minister for payment from the Fund should be made.

York Estates - Application for recommendation under Section 86(d)
(R4117/87 - hearing 14/4/88) (5/88)

Factors to be considered in making a recommendation to the Minister.

Australian Real Estate - Featherstone, Stone and Walsh (R1105/89 - hearing 23/6/89) (6/89)

Succession of Vietnamese tenants - landlord attended to few formalities and out of kindness took little interest in premises - cleaning and damage substantial at termination of last tenancy which ended when tenant forced to vacate by domestic violence. Tribunal recommends 75% of cleaning the last tenant "would have done" if she could have, be paid from investment of fund. Tenant also found liable for cleaning.

Ingilizian v Nguyen Thi Vang (R756/88 - hearing 30/6/88) (7/88)

SECTION 89

Landlord lodges bond, but gets tenant to sign Form 4 at beginning of tenancy "to retain control of bond". Tribunal Member consider breach of Section 89.
Butterworth v Anderson (R2432/87 - hearing 3/8/87) (8/87)

Clause in agreement that tenant have carpet cleaned at end of tenancy not enforceable by landlord.
Ritchie v Edmundson (R4247/87 - hearing 30/9/87) (10/87)

"Role of agent" - Tribunal Member holds that requirement by agent that abandoning tenant enter into "agency" agreement with him before he will seek replacement tenant is contrary to Section 79, and any payments made pursuant to such agreement are made in mistake of law or fact.
Emslie v Real Estate Centre (R2815/87 - hearing 14/10/87) (11/87)

Prohibition of tenant's right to remove a fixture void. Conditions on tenant's right to remove fixture cannot be imposed and if imposed are void.
Chapple v Johnston (R1883/89 - hearing 26/5/89) (6/89)

SECTION 90

Increase in rent not in accordance with Section 34 - Tribunal Member finds paid in mistake of law or fact - Form 5 not given.
LeVagueresse v Scerri (R3436/87 - hearing 11/9/87) (9/87)

No repayment under Section 90 unless payment in mistake of law or fact made to other party.
Nias v Elders Real Estate (R4136/87 - hearing 26/10/87) (10/87)

Unending catalogue of incompetence and stupidity on all sides.
Kay v Bradfield (R3785/87 - hearing 2/11/87) (11/87)

No notice of rent increase. Landlord installs air conditioning at tenants' request and Tribunal finds with genuine agreement between the parties with rent increase as consequence. Tribunal finds genuine and effective variation of tenancy agreement enforceable due to part performance (see Section 26 Law of Property Act). "Overpaid rent" application dismissed.
Faraonio v Francesca (R3365/88 - hearing 29/9/88) (10/88)

Invalid rent increase (Section 34, Section 40) - Tribunal finds rent paid by mistake under invalid rent increase recoverable and that High Court decision in *Pavey & Matthews Pty Ltd v Paul* (1987) 69 ALR 577 concerning unjust enrichment is inapplicable. Tribunal also finds that Section 40 of the Act permits recovery at termination of rent paid under invalid rent increase. *Mare v Kenyon* (R1688/89 - rehearing 8/10/89) (11/89)

SECTION 92

Harsh and unconscionable term - claim re excess water.
Huxtable v True (R3485/87 - hearing 17/8/87) (8/87)

Term of agreement that tenants pay 5/6 of electricity consumption found to be harsh and unconscionable where clear to Tribunal that landlords' use of electricity much greater than 1/6 of accounts. Tenants held liable to pay half. *Swanson v Craig* (R2833/89 - hearing 17/8/89) (9/89)

Tribunal notes that term of standard form Real Estate Institute of South Australia Inc tenancy agreement that no person permitted to stay over fourteen days without landlord's consent to be harsh and unconscionable. *Jackman & Treloar v Minh Tam Ha* (R4576/89 - hearing 1/11/89) (11/89)

SECTION 93(1)(b)

Service by post - Tribunal Member finds tenant posted notice of termination, correctly; also finds landlord did not receive notice. Section 15 Acts Interpretation Act, *Farncourt v Mercantile Credits Ltd* (1983) 154 CLR 87 apply. In the absence of proof of non-delivery (compare non-receipt by intended recipient) service deemed effective - tenancy terminated by correct notice and tenant entitled to bond.
Bullwinkel v May (R561/88 - hearing 27/4/88) (5/88)

REGULATION 8 (Form 5)

Form 5 not given at commencement - tenant unaware that 21 days notice required - Tribunal finds that statutory requirement to provide Form 5 militates against general rule that ignorance of the law no excuse - landlord's entitlement to rent in lieu of notice reduced.

Kendrick & Burnet v Zollo (R9/88 - hearing 10/2/88) (4/88)

REGULATION 13

Tenant employed to work on farm - premises situated on farm - not excluded by Regulation 13 - tenant's employment terminated - use of Section 75 to terminate tenancy.

Matson v Golding (R5017/87 - hearing 7/10/87) (10/87)

Matson v Golding etc discussed

Noble v Matthias (R2988/89 - hearing 4/9/89) (9/89)

REGULATION 13(a)

Use of shed and laundry for business purposes does not exclude Act's operation - not part of a building in which "other premises" were let to tenant for purposes of business.

Nicolle v Kokkinakis (R364/88 - hearing 18/3/88) (3/88)

REGULATION 13(1)(b)

Premises let for purposes of residence - vendor remaining in occupation after settlement - harvesting of growing crop merely incidental to right of residence. Tribunal finds Regulation 13(1)(b) has no application and Act therefore applies.

Richardson v Mainwood (R528/90 - hearing 5/3/90) (3/90)

AGENCY

Tribunal finds employee of agent acted with apparent authority to consent to termination and principal bound by consent.

McCulloch, Ashby & Burns v Scarce Real Estate (R2328/89 - hearing 20/7/89) (8/89)

Agent acting within apparent authority in consenting to early termination of agreement - landlord bound by agent's acts although done without actual authority.

Professionals - Normanville v Prior (R5690/89 - hearing 19/2/90) (2/90)

FAIR TRADING ACT

Tenant alleges harassment by landlord after end of tenancy. Tribunal draws attention to Section 43 of the Fair Trading Act, 1987 -

43. (1) A creditor, or the agent of a creditor, shall not, for the purpose of recovering a trading debt of the creditor -
- (a) make any demand for payment without indicating the creditor's identity and the balance owing to the creditor and, where the demand is made by the agent, the agent's identity and authority to make the demand;
 - (b) demand payment of any amount that the creditor or agent does not honestly believe to be due and owing to the creditor;
 - (c) persist in demanding payment from a person who has denied liability without making reasonable inquiries to ensure that the demand is based on reasonable grounds;
 - (d) make any personal calls or telephone calls for the purpose of demanding payment -
 - (i) on a public holiday;
 - or
 - (ii) between the hours of 10.00 pm of one day and 7.00 am of the next;
- or
- (e) except as reasonably necessary to determine the debtor's whereabouts, communicate with an employer, acquaintance, friend, relative or neighbour of the debtor (not being a guarantor);

Penalty: \$2,000.00

- (2) A creditor, or the agent of a creditor, shall not, for the purpose of recovering a trading debt -

- (a) falsely represent that criminal or other proceedings will lie for non-payment of the debt;
- (b) falsely pretend to be authorized in some official capacity to claim or enforce payment;

or

- (c) falsely represent that a document has some official character that it does not have.

Penalty: \$2,000.00 or imprisonment for 6 months.

- (3) In this section -

"agent" includes an employee of a creditor whose main duty of employment is to seek to recover trading debts owed to the creditor.

Tribunal Member mentions organisations providing assistance services to small business and rent relief.

Carey, Kain & Zeceovich Pty Ltd v Cisse (R467/90 - hearing 7/2/90) (2/90)

FAIR TRADING ACT - SECTION 65

Premises advertised at rent lower than landlord willing to accept. Tribunal points out that this practice is prohibited by Section 65 of the Fair Trading Act (Penalty \$20,000.00)

Lediaev v Lombardi (R588/90 - hearing 5/4/90) (4/90)