**Outcomes in rental property disputes at ACAT**

Below is a summary of the outcomes in some published ACAT decisions. You can find full versions of these decisions on our website: www.acat.act.gov.au.

If you are a party in a rental property dispute and intend to rely on a published ACAT decision, make sure you read the full version of the decision and provide a copy of the decision to ACAT and any parties in the case.

**Note, outcomes in rental property disputes can vary. Decisions are made according to the facts, circumstances and law in each case. Only a small proportion of cases go to a hearing.**

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| **Loss of use of part of the facilities** | | |
| **Case** | **Decision** | **Notes** |
| L1 v T1 [2019] ACAT 16 | $2605 compensation to the lessor for replacement of keys ($255); replacement of swipe card ($120); outstanding rent ($3229.99); cupboard repairs; and removal of rubbish, offset by $1000 + an amount equivalent to the cost of cupboard repairs for loss of use of the dryer and dishwasher. Mould (and cost of repainting/repairs due to said mould and water damage) rejected as mould deemed to be landlord responsibility. | See also fair wear and tear. |
| Faulder v Tran [2018] ACAT 80 | On appeal, the lessor to pay tenant $1082.50 for issues relating to cleaning, a broken blind, the alarm system, security key, ducted vacuum system, heating system, and general inconvenience. | Original decision awarded $154.50 for the blind, alarm, key and vacuum system (Faulder v Tran [2018] ACAT 2). |
| Sethi & Ors v Caswell & Anor [2018] ACAT 59 | Compensation for absence of telephone line ($1320 – 10% rent reduction for 11 weeks) and absence of code for the back gate ($80). Telephone line only allowed due to specific promise of availability and circumstances of tenants. | Total amount awarded to tenant was $2000.  See also fair wear and tear; see also unapproved visits. |
| Halcombe v Hitchman [2018] ACAT 5 | $433.50 compensation for a leaking spa that was not repaired (5% of rent paid between 10 September 2014 - 5 February 2015). |  |
| Bonke v Jackson [2017] ACAT 82 | The garage roof had a leak, rear door lock was not functional, windows had no locks, and the stove/oven were replaced 2 days into the tenancy with new, functional ones ($100 compensation for these cumulatively).  Fireplace non-functional at beginning of tenancy, gas heating available. Tenant had aversion to gas heating. Claim for lack of heating denied. | See also unapproved visits. |
| Withers-Norris v Pastrello [2016] ACAT 95 | Lessor to pay tenant $2017.11 for failure to repair the lift ($1344 – 35% daily rent for 56 days); failure to repair the security system ($373.23 – 25% daily rent for 22 days); and security shed ($299.88 – 3% daily rent for 147 days). |  |
| But v Baldwin [2016] ACAT 9 | Lessor to pay tenant $2167.45 for an unusable downstairs shower ($400 for approximately 8 weeks); unusable deck ($500 for approximately 7 weeks); inoperative heating ($400 for approximately 8 weeks, across Autumn and early Winter); inoperative dishwasher ($400 for approximately 10 weeks); early vacating at lessor’s request ($467.45). |  |
| Koesmarno v Mutis [2015] ACAT 89 | Lessor to pay tenant $8681 for vet bills incurred as a consequence of a poor fence ($617); broken stove ($2000); presence of mould ($2500); and $3564 for work done by the tenant to rectify property issues. |  |
| Broso & Anor v Tarlinton & Anor  [2013] ACAT 81 | Compensation of $3788 for broken air conditioner during summer ($3048, 65% rent paid during hottest months) and lack of availability of Foxtel despite assurance it was available ($610 – 5 x monthly payments owed by tenants). | Filing fee also awarded. |
| Salem & Gizgeez v Abeygunasekara & Jeevanthan [2011] ACAT 9 | For at least 13 June to 8 August the tenants could not use the only bedroom in the unit. For an additional 3 weeks, they could not use any of the premises and were required to relocate. The tenants had already received $1100 in compensation for various things from the builder/workmen. | Full amount awarded was $3000  See also unapproved visit. |
| Mathewson v Carney And Carney [2011] ACAT 6 | Compensation for broken bathroom window ($120 - $10/wk for 12 weeks); broken bathroom exhaust fan ($177 - $3/wk for 59 weeks); air-conditioner pipe flooding ($150); broken outdoor umbrella cable ($50). | Full amount awarded was $4130.81. |
| Conteh v Fan [2011] ACAT 45 | $600 for economic loss and $630 for non-economic loss for breach of quiet enjoyment. There was 30 people living in a 10 bedroom house with caravans in the backyard. The overcrowding resulted in a loss of facilities. | Full amount awarded was $3830. The $1230 here covered both loss of facilities and disruption.  See also disruption. |
| Sempiol v Williams And Ors [2011] ACAT 8 | Rent reduction of $35 per week until the air conditioner was repaired and operational, backdated to 11 March 2010. This reduction was deemed to reflect “the rent that would be payable for similar premises without cooling or heating.” | Full amount awarded was $1755, plus ongoing reduction. Filing fee was awarded separately. |
| Carvalho And Silva v Scarlett [2011] ACAT 80 | Compensation of $61 for a broken washing machine that had been provided as part of a furnished unit. | Tenant responsibility to repair clause deemed void. |
| Mizzi v Zeiler [2010] ACAT 20 | Lessor to pay tenant $3750 for breach of duty to repair and quiet enjoyment. No lock on back sliding door ($100); main bathroom unusable for 1 year ($3100); and other assorted repairs ($550). | Full amount awarded was $3750.  See also unapproved visit. |
| Margaret Krauss & Robert Law And Christine Law [2010] ACAT 88 | Lessor to pay tenant $450 for failure to repair the heating (heating failure discovered during Winter, 31 days between notice and repair) |  |
| Tracey Mcpartlan & Ludwig Heinrich v Stephen Ashton [2010] ACAT 82 | $1000 compensation for problems in the laundry, heat issues, and damaged windows/flyscreens. The Tribunal accepted the lessor’s submission that the tenants did not raise a number of the repairs needed, and thus there was a reduction in the amount awarded as a result of that failure to mitigate. | Total amount awarded was $1200.  See also miscellaneous. |
| Frank Eden v John Mckay [2010] ACAT 52 | Rental deduction of $2000 for 13 weeks for a lack of hot water and lighting in the kitchen, roof leaks in some rooms, and toilet problems that caused a smell. |  |
| Brogan Prestige Properties and Strand & Black [2010] ACAT 60 | Compensation of $1405 for failure to repair the non-functional heating ($625 - for 12 ½ weeks); leaking pipes ($480 - for 12 weeks); and water-stained ceilings ($300). | Tenant had to pay the lessor $6151.83 for various items. |
| Van & Biega v Trieu [2009] ACAT 49 | Tenants to vacate by a specified date, no further rent owed (roughly 1 month), tenants to allow access on reasonable and proper notice, lessors to fix hot water service. Hot water was not working for 3 weeks, ‘inadequate’ heating for 1.5 months, electricity faults for 1.5 months, assorted other issues (e.g. mice, wasps). |  |
| Gallagher & Johansen v Whittaker [2009] ACAT 42 | Compensation of $850 for loss of use and quiet enjoyment of the premises. The loss of use and enjoyment of the back yard and garden following uplifting of a paved area by the lessor in order to undertake necessary repairs – the work was not completed, making the yard unattractive and dangerous. | See also unapproved visit. |

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| **Unlawful terminations and evictions** | | |
| **Case** | **Decision** | **Notes** |
| Lochrin v Jaiswal [2019] ACAT 23 | $500 compensation to the tenant for general damages for unlawful eviction, reduced by failure to mitigate. | Tenant had been deemed an occupant and was sub-leasing and living with the sub-lessor. |
| Rowena And Jason Thomson & Karl And Rafa Marjan [2010] ACAT 72 | $2500 compensation for damages (only for the actual losses incurred) for unlawful termination of lease. |  |
| Anna Costanzo & Ross Laria v Luke Watson [2010] ACAT 79 | Lessor to pay the tenant $4500 for breaching their obligations under the Residential Tenancies Act 1997, including issuing an invalid Notice to Vacate and seeking to terminate the tenancy without the required period of notice. | Total amount awarded was $4730 to tenants and $2800 to lessor (rental arrears). $4500 encompasses dispossession and miscellaneous breaches.  See also miscellaneous. |

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| **Lessor’s or agents unapproved visits or aggressive visits / breach of quiet enjoyment** | | |
| **Case** | **Decision** | **Notes** |
| Sethi & Ors v Caswell & Anor [2018] ACAT 59 | $600 compensation for unauthorised visits – calculated at $50 per visit for 12 visits. | Total amount awarded to tenant was $2000.  See also fair wear and tear; see also loss of facilities. |
| Bonke v Jackson [2017] ACAT 82 | $200 compensation for two unauthorised visits by the lessor. | See also loss of facilities. |
| Lee v Guo [2017] ACAT 60 | $1500 compensation for a number of unauthorised visits and other incidents (8 total) deemed to be a breach of clause 52. | Tribunal fee also awarded. |
| Shkolar and Anor v Thomson  [2015] ACAT 21 | $1250 compensation for the lessors issuing a retaliatory notice to terminate, which was considered to be a breach of quiet enjoyment. | Full amount awarded was $1796 - including application fee, moving costs and medical costs. |
| Huskisson v Roper [2011] ACAT 41 | $2006 compensation for direct economic loss as a result of the lessors breach ($1806 for hiring a storage unit) and loss of quiet enjoyment ($200 – 4 visits at $50 each). |  |
| Salem & Gizgeez v Abeygunasekara & Jeevanthan [2011] ACAT 9 | For 3 weeks, the tenants were required to relocate. After this, workmen continued to use the unit for access to the external courtyard. Work continued in the general vicinity for quite some time. The tenants had already received $1100 in compensation for various things from the builder/workmen. | Full amount awarded was $3000.  See also loss of facilities. |
| Minion v Mann [2011] ACAT 7 | Application dismissed. The outside of the premises was painted over an eight day period. The lessor contacted the tenant to arrange times/days that were most convenient. The real estate agent then arranged dates for showing prospective buyers the premises. The tenant claimed that she was pressured/bullied into agreeing to access. The Tribunal found no breach. |  |
| Gallagher & Johansen v Whittaker [2009] ACAT 42 | Compensation of $850 for loss of use and quiet enjoyment of the premises. The lessor began work in the backyard for necessary repairs, and were frequent visitors at the property without actually completing the work. | See also loss of facilities. |
| Bell & Bell v Boccola, Campbell & Lawrence [2009] ACAT 26 | Claim dismissed. Inspection without notice claim was not made out. Construction of a pergola in the backyard took longer than anticipated and tenants were unable to use the backyard for 2 weeks. However, work would increase the amenity of the property and the work did not constitute substantial interference. | See also fair wear and tear. |
| Ohman v Matesa [2009] ACAT 23 | $250 compensation for breach where there was little evidence beyond general inconvenience from noise and diminished privacy. |  |
| Xia v Wang & Bian [2009] ACAT 21 | $1908.78 for breach of quiet enjoyment where the tenant was subject to unlawful rent increases and an unlawful notice of termination. | The amount awarded was balanced against the same amount being awarded to the lessors for other issues. |
| Mizzi v Zeiler [2010] ACAT 20 | Lessor to pay tenant $3750 for breach of duty to repair that caused the breach of quiet enjoyment, but no money was awarded separately. Breach arose from an unqualified lessor carrying out repairs; doing them on weekends; and taking an excessive timeframe to complete the repairs. | Full amount awarded was $3750.  See also loss of facilities. |

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| **Disruption caused by adjacent tenants** | | |
| **Case** | **Decision** | **Notes** |
| Dangar & Anor v Mansour & Anor [2016] ACAT 61 | Lessors to pay tenants $1800 ($100/week for 18 weeks) as compensation for breach of contract and quiet enjoyment – specifically, for lack of valid address and not having full access to the building. Tenancy set to terminate. | Total amount awarded was $4800.  See also miscellaneous. |
| Mansour v Dangar [2017] ACAT 49 | On appeal, the tribunal found that there was not an impediment to use of the premises for residential purposes. Also that inability to have phone/internet/mail were not breaches of quiet enjoyment. Appeal tribunal found that the rent reduction was given in error. | Total amount reduced to $3000 on appeal. |
| Conteh v Fan [2011] ACAT 45 | $600 for economic loss and $630 for non-economic loss for breach of quiet enjoyment. There was 30 people living in a 10 bedroom house with caravans in the backyard. The overcrowding resulted in a lack of access to common facilities and general disruption. | Full amount awarded was $3830. The $1230 here covered both loss of facilities and disruption.  See also loss of use of facilities. |

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| **Habitability** | | |
| **Case** | **Decision** | **Notes** |
| Seears v Havelock Housing Association Inc [2018] ACAT 55 | 25% rent reduction for a 1 year period to be refunded to the tenant. The lessors often delayed or did not complete repairs, resulting in extensive mould growing on the ceiling of the unit and water leaks. |  |
| Mathew & Anor v Barranco [2016] ACAT 102 | $7598.57 in compensation for hotel accommodation reimbursement ($4970), and reimbursement of rent paid 14 October to 10 November ($2160). Burst toilet valve flooded the premises, and the downstairs roof collapsed. Tenants moved out on 14October. The unusable living room, lack of electricity, broken ceiling, and unusable kitchen resulted in a declaration that the premises was not habitable. | $328.57 in interest and the Tribunal filing fee also awarded. |

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| **Fair wear and tear** | | |
| **Case** | **Decision** | **Notes** |
| Zhang v Barden [2018] ACAT 44 | Claims in relation to scratches on floorboards dismissed as ordinary wear and tear. Claims for carpet cleaning and further rent dismissed. Bond returned to tenant. |  |
| Gedeon & Anor v Bason & Anor [2018] ACAT 13 | Previous decision upheld – tenants to pay $6082.16 for damage to blinds and cost of cleaning them ($540); poorly completed plaster/paint work and cost of rectification ($937.12 – 33% of the cost); cost of a tiler; replacing the front lawn ($2442); replacing window locks ($498.80); and general cleaning costs ($646.25 – 55% of the costs). |  |
| Sethi & Ors v Caswell & Anor [2018] ACAT 59 | $6616 to lessors as compensation for extensive painting work ($2400); carpet cleaning ($180); general cleaning ($450); outstanding water bill ($190); outstanding rent owed ($3257); and costs caused by adjourning the proceedings ($139).  Claims for damage to bathroom vanity, removal of grease spots in garage, and mowing dismissed. | See also loss of facilities; see also unapproved visits. |
| Dean v Singh & Anor [2017] ACAT 61 | The natural growth of trees and bushes is fair wear and tear, and such growth on return of property will be considered giving the property back in substantially the same condition. There is no obligation to prune them (except for, for example, where they are fashioned into a hedge). Overgrown grass does not constitute fair wear and tear, so the tenant had to pay $233 for mowing and removal of clippings. |  |
| Chandra v Masterman & Anor [2017] ACAT 90 | Compensation of $2233.56 to the lessor for a missing bin ($19); stained living room carpet cleaning ($145) and replacement ($522.60 – 30% replacement cost); kitchen benchtop repair ($396); repairing and repainting walls, skirting boards and door frames ($60 for a gouge, remainder is wear and tear); and replacing dead plants ($50). $167.91 for pest control fumigation, $60 for vacuuming and wiping down after fumigation, $242 to repair and paint the front door/wall and $391.05 for replacing oven trays was already agreed upon by the parties. | Tribunal fee also awarded. |
| Selleck v Cassin & Anor [2017] ACAT 7 | $2466.45 compensation to lessors for patching and painting the walls ($281.25 – 75% of the cost); odour treatment of carpet ($280); cleaning the premises ($640); second cleaning of carpet ($35); gardening and rubbish removal ($200); lessened lifespan of carpet ($400); replacement light bulbs ($50); water usage ($70.20); and one week of lost rent ($510). Scratches on wooden floor deemed to be fair wear and tear. Claims for the wooden venetian blinds, wardrobe, vanity unit and towel rack, and pool dismissed. |  |
| Tankard & Anor v Ogbonna & Anor [2017] ACAT 72 | $5465.86 in compensation to lessors for damaged carpet ($119.50 – 10% of the value of the replacement carpet); replacement fridge ($2867); damage to skirting boards and kitchen cabinets ($1872.75 – 25% of the quote because only 25-50% was attributable to tenant damage and there was scant evidence); repairs to kitchen bench ($451); and water consumption ($155.61).  Claims for damaged blinds; part of the claim for damage to skirting boards and kitchen cabinets; and incidental wall damage throughout the house dismissed as fair wear and tear. Claims for damaged to a ducted vacuum cleaner head and cleaning costs dismissed in general. | Decision upheld on appeal (Ogbonna & Anor v Tankard & Anor [2018] ACAT 14). |
| Maroney v Bullard [2016] ACAT 33 | Tenants to pay lessor $768 for compensation for damage ($528) and cleaning ($240). Making nail holes, attaching screws and putting up curtain fixtures does not constitute fair wear and tear. |  |
| Edwards v Izzard [2016] ACAT 91 | Tenant to pay lessor $390.00 (equivalent to six hours labour to restore the garden) and $71.50 (calculated by reference to 10% of the cost of the mulch and the labour to install the mulch). Property was missing mulch, there was some dog faeces in the yard, and unmaintained lawn/garden. |  |
| Clay v Hatala [2016] ACAT 128 | Compensation of $1800 to the lessor for cleaning ($800, at $25/hr for lessors doing it), curtain repairs ($350), carpet spot removal ($100), painting 3 rooms ($450), and gardening and tip fees ($100). |  |
| Capital First National Real Estate v Sharma [2010] ACAT 14 | Tenant to pay lessor $13905, $803 of the bond released to lessor, and $57 of bond released to ACAT for fees. Considerable damage to property, tenant claimed it was fair wear and tear, claim dismissed. |  |
| Bell & Bell v Boccola, Campbell & Lawrence [2009] ACAT 26 | Bond released to tenants and lessors’ application dismissed. Marks and scratches on a floating wooden/laminate floor constitute fair wear and tear because it is ordinary and reasonable to walk on floors and wear shoes inside. | See also unapproved visits. |
| Verscheure & Bradbury v Richards & Retmock [2009] ACAT 11 | Bond released to tenants, and lessors’ application dismissed. Marks and scratches on a wooden floor constitute fair wear and tear because it is ordinary and reasonable to walk on floors and wear shoes inside. Also, the marks were not noted in the final inspection and were only noticed a few days later on a subsequent visit – must be ‘finality about the condition of the premises at the end of the tenancy’. |  |

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| **Miscellaneous cases** | | |
| **Case** | **Decision** | **Notes** |
| Dangar & Anor v Mansour & Anor [2016] ACAT 61 | Lessors to pay tenants $3000.00 as compensation for breach of contract and quiet enjoyment – specifically, for lack of valid address and not having full access to the building. Tenancy set to terminate. | Total amount awarded was $4800.  See also disruption. |
| O’Shaughnessy v Lanton Superannuation Pty Ltd  [2014] ACAT 25 | Decision upheld: 20% rent reduction for 9 weeks ($783), and 10% rent reduction, with a 5% reduction for failure to mitigate loss, for 11 weeks ($319). 57 tradesmen visits to bring the property up to standard with 23 in the first month, 9 in the second month and 10 in the third month and further repairs done over a further 2 months. |  |
| L J Hooker Belconnen v Richard Sempiol [2012] ACAT 20 | Remaining bond released as $230 to lessor and $212 to tenant. The $230 was to cover cost of cleaning that the tenant did not do on leaving. Claim for $212 for re-keying was dismissed – tenant had arranged for a second set of keys and requested $48 for them, lessor should have mitigated loss and paid for the keys. | Bond originally $1760, only the disputed amount of $442 was considered by the Tribunal. |
| Anna Costanzo & Ross Laria v Luke Watson [2010] ACAT 79 | $30 compensation for the tenant having to remove 3 boxes of rubbish and taking them to the tip. $200 compensation for payments the tenant had to make for electricity without any separate reading.  Lessor to pay the tenant $4500 for breaching their obligations under the Residential Tenancies Act 1997, including failure to provide a copy of the information booklet; failure to provide a condition report; failure to provide rental receipts; and issues relating to transferring the electricity account. | Total amount awarded was 4730 to tenants and $2800 to lessor (rental arrears)  $4500 encompasses dispossession and miscellaneous breaches.  See also unlawful dispossession. |
| Tracey Mcpartlan & Ludwig Heinrich v Stephen Ashton [2010] ACAT 82 | $200 compensation for electricity bills paid (total paid was $3932.65) where the laundry was shared with a tenant in the back flat and was not separately metered. | Total amount awarded was $1200.  See also loss of facilities. |
| Klonaris & Klonaris v Pumpa [2009] ACAT 20 | Tenant to pay lessors $1628.07 for cost of repairs after allocation of bond. | Total amount awarded was $1815.37 and the bond of $1400. |