

ORDER

Ref No: R2008/32947/00

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
RESIDENTIAL TENANCIES LIST
REGISTER OF PROCEEDINGS**

APPLICANT(S):
Tenant

Christopher Petrocino
Kelly Wood

RESPONDENT(S):
Landlord

John Tamburino
Roberta Tamburino

RENTED PREMISES:

180 EASTBOURNE ROAD, ROSEBUD 3939

Application under *Residential Tenancies Act 1997* general dispute Section 452

The Tribunal finds that:

The parties are parties to a tenancy under the *Residential Tenancies Act 1997*.

The tenancy commenced on 22 March 2008.

The tenants ceased to use the premises as their principal place of residence on 29 June 2008.

The keys were not returned, and possession was not returned to the landlord.

The tenants have property remaining in the rented premises.

The tenants notified the landlords through their agent of the need for maintenance to stop the ingress of water into the rented premises on 17 May 2008 and 13 June 2008.

There were delays in the attention given by the landlord to the need for maintenance.

The extent of the water damage and the delay in attending to the problems was sufficient to cause damage to the tenant's property.

The landlord is not responsible for damage to the tenants property other than when that damage is a consequence of a breach of duty by the landlord.

The lack of knowledge by the landlords of the unauthorised conversion of the garage to a bedroom is no defence to the tenants claim, as the claim relates to the failure to attend to repairs once informed of the need to do so. The failure to attend to the repairs resulted in the damage to the rented premises and the tenants property through the development of high levels of mould growth.

The rent of \$1213.00 per calendar month is paid to 3 July 2008.

The landlord has lodged an application for possession on the basis of rent arrears.

The tenancy is deemed to terminate on 12 September 2008.

The determination of this matter and the landlord's application no R200831033 are combined in this order.

The Tribunal orders and directs that:

1. The landlord is entitled to possession of the rented premises on 12 September 2008.
2. The principal registrar, at the request of the person who obtained the possession order and on payment of the prescribed fee, shall issue a warrant of possession to be executed within days after 7 the date of issue. Any request shall be made by 8/03/09
3. The tenants shall pay to the landlord rent payable as follows -rent at the rate of of 60% X \$1213 from 3 July 2008 to 12 September 2008 being \$1898.88.

4. The landlords shall pay to the tenants compensation for loss of amenity from 15 May 2008 to 2 July 2008 of 15% (1213 X12/365 X48) being \$287.13.
5. The landlords shall undertake or cause to be undertaken the works described under "Scope of works for the remediation program" in the quotation provided by MBJC Pty. Ltd trading as Premier Restorations by 30 September 2008.
6. In the performance of (4) above the tenants shall identify all items which fall into the category 5 of the scope of the works, and remove any items which are not to be subject to the order by 12 September 2008.
7. Liberty to the parties to renew this application before me to seek further orders or directions in relation to orders 5 and 6 above granted to 30 October 2008. The parties shall notify the Principal Registrar in writing of any such request by or on the renewal date.

S M Burdon-Smith



S M Burdon-Smith, Member
08 September 2008

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