



Civil and Administrative Tribunal Act 2013, REVIEW

Prepared for Department of Justice

By Gurjit Singh

Summary

The purpose of the review is to find out how well it is working, and to look at reforms that could strengthen access to justice for people in NSW. My biggest mistake was that I believed that NCAT provides dispute resolution and upheld Australian laws. However I saw tribunal members lying, screaming, refusing me to read from notes, bullying, threatening, ignoring procedural fairness, biased, ignorant, incompetent and not willing to read the material in front of them before they decide. In some of the hearings they even lost my affidavits and written submissions.

And I hope no other person and family will ever be exposed to level of unfairness and cruelty. Upholding the law is the least NCAT care.

It is not possible to include all issues in one submission. My each submission will deal with limited number of issues for easier understanding of the person evaluating it.

Quality of the human resources is missing from reception desk of registry to higher leadership of NCAT.

It is my understanding the Parliament intended to achieve cheap and quick justice for parties in litigation. However this objective is often used to circumvent the fair process to ignore important issues and make it cheap and quick for tribunal members. In other words tribunal members often abuse their power and defy the objectives of act.

Submission Part 1

1. Transparency in processes involving relisting the matters.
2. Code of Conduct and lying to parties by tribunal member.
3. Qualifications of appointed members.

No set rules for relisting the matter

In supreme court or local court parties can file notice of motion to relist the matter to have decision on any preliminary issues prior to trial. There is no such provisions in NCAT.

There is lot of uncertainty of rules for relisting the matter. If party file an application to relist the matter (no standard form exist for relisting), it is accepted by registry but they wont give any date of relisting. Once filed, request for relisting will then go to member. And member just ignore it because there are no rules or procedure of tribunal that deals with relisting of matter for hearing of any preliminary matters prior to trial.

Please note it raises serious question on leadership of the tribunal that these issues exist even after 5 years of establishing this tribunal.

Relevant Section of the act:

Tribunal is accountable and has processes that are open and transparent
(Section 3)

Senior Member



Lied

I had hearing in front of senior member [REDACTED] on 6 March 2019 in proceedings [REDACTED] for directions. I filed two applications 12 Feb 2019 and 26 Feb 2019. Those applications raises serious question of Jurisdiction of the tribunal. Senior Member lied in the hearing to me that there is no application listed in front of her in relation to Jurisdiction or other preliminary matters. The registry on later date confirmed in writing that those applications were listed on 6 March 2019. Notice of hearing was silent on what is listed. Registry confirmed in writing that two applications were listed in front of Senior Member [REDACTED]. But it was too late by that matter reached supreme court.

Relevant Section of the act:

Promoting public confidence in tribunal decision-making in the State and in the conduct of tribunal members (Section 3)

Can we expect bus driver to fly passenger plane safely?

In my respectful submissions Senior Member [REDACTED] lack skills and qualifications to hear my matter involving tax law, gst act, retail lease act, real property act, subdivision etc.

NCAT annual report list following qualification of Senior Member [REDACTED]:

1. [REDACTED]
[REDACTED]
2. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
3. [REDACTED]
[REDACTED]

It is impossible to achieve objectives of the act under review if people are not qualified to do their jobs.

A person appointing senior member can appoint a person even the person has no 7 year experience of being a lawyer. As long as appointing person satisfies that person has skill and special knowledge. **Seriously... opportunity to appoint near and dear one. !!!!.**

Relevant Section of the act:

(d) To resolve the real issues in proceedings justly, quickly, cheaply and with as little formality as possible, and (Section 3)

(e) Decisions of the Tribunal are timely, fair, consistent and of a high quality, (Section 3)

(f) A person is qualified to be appointed as a senior member if in the **opinion** of the person making the appointment, special knowledge, skill or expertise in relation to any **one or more** classes of matters in respect of which the Tribunal has jurisdiction.
(Section 13)

A close-up, low-angle shot of a person's feet as they descend a set of blue metal stairs. The person is wearing bright orange sneakers with white soles and black socks. The stairs have a textured, diamond-plate surface. The background is slightly blurred, showing a metal railing and a grid-like structure. The overall color palette is dominated by blue and orange.

Recommendations

Next steps

In line with the review, I propose following recommendation

1. Application for relisting the matter with fees.
2. Registry staff provide notice of relisting date on the spot to applicants.
3. Member be immediately reprimanded for lying.
4. Anybody covering up for lying member be reprimanded.
5. Members must have relevant qualification required for the matter.
6. Member must have minimum 7 Years of experience as a unsupervised lawyer.



Annexure



Time to Chat

I love to talk through the above with you if you require. Please email me or call me to book a time , and we'll arrange everything for the meet — including strong coffees

EMAIL [REDACTED]

Phone : [REDACTED]

Annexure

Following annexure attached to the submissions

1. Notice of hearing template.
2. Registrar Letter indicating listed applications for hearing on 6 March 2018.
3. Applications dated 12 Feb 2019 and 26 Feb 2018.
4. Transcript excerpt of hearing of 6 March 2018.
5. Submissions for 6 March 2018



Gurjit Singh
[REDACTED]

File No: [REDACTED]
Quote in all enquiries
eNumber: [REDACTED]

Notice of Directions Hearing

Please see over page for further details about your directions hearing and what you need to do to prepare.

An application to the Tribunal has been made concerning:

Applicant: Gurjit Singh

Respondent: [REDACTED]

The application has been listed before the Tribunal and you are required to appear at:

Location: Room 15.1
Level 15, 66 Goulburn Street
Sydney NSW 2000

Provide no detail of which application is listed. Date of filing of application should be there

Date and Time: [REDACTED]

Registry says all 3 applications listed. Senior member [REDACTED] not listed

Please arrive at least 15 minutes before the start of the hearing and report to the hearing attendant or security officer.

It is important that you are on time as the Tribunal may decide the matter in your absence. The decision made will be binding on you.

There are security procedures at all venues.

[REDACTED]
for the Registrar
Date: **31 January 2018**

IMPORTANT INFORMATION ABOUT DIRECTIONS HEARINGS

NCAT lists matters for hearing depending on the type of application and the nature of the dispute. All Consumer & Commercial Division hearings are open to the public. The following explains the type of hearing you will be attending.

Directions hearing

This matter has been listed for a 'directions hearing'. Directions hearings are used to prepare for the formal hearing. They are used in complex matters where there may be a need to establish jurisdiction, identify issues in dispute, set a time frame for the hearing, or make directions for the exchange of evidence.

All parties are required to attend the first and any subsequent directions hearings and must comply with procedural directions or the matter may be dismissed. Failure to attend may also result in the matter being finally determined.

If your application concerns a home building dispute you should read the Procedural Directions on home building disputes over \$30,000.

As this is a directions hearing **you are not required to bring witnesses**. However you should bring with you all relevant documents or materials related to your case.

If you cannot attend

You can seek to have the hearing postponed by asking for an 'adjournment'. Adjournment requests must be made in writing and addressed to the Registrar. A copy should be sent to the other party. Include any supporting documentation such as a copy of the medical certificate or airline ticket. If you have the consent of the other party your request is more likely to be considered favourably.

If you have resolved the dispute

If you are the applicant and you have been able to resolve your dispute and no longer require a hearing, you need to withdraw your application. You must advise the other party and the Registrar in writing prior to the hearing. This should be done as soon as possible prior to your hearing date. If written notice is received by the NCAT before the hearing you will not have to attend

Tell us

Contact the NCAT Registry immediately in the following circumstances:

- If you need an interpreter (the NCAT arranges and pays for this service)
- If you have changed your address or phone number
- If you have special needs so we can discuss what assistance you may require.

Outcome of the directions hearing

The Tribunal Member will generally tell you the decision at the end of the hearing. Written orders will be provided at the hearing or sent to you by post.

Need more information?

Visit www.ncat.nsw.gov.au or call 1300 00 6228.

Senior Member [REDACTED] did not even know this and my submissions raises question of jurisdiction and she did not care. She refuse to attend to question of jurisdiction.

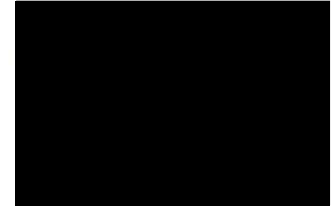
IF THIS IS NOT A SCAM then WHAT IT IS?




NCAT
NSW Civil &
Administrative Tribunal

Principal Registry
Level 9, 86 – 90 Goulburn Street
Sydney NSW 2000
E-Mail: ncatenquiries@ncat.nsw.gov.au
PH: 1300 006 228
Website: www.ncat.nsw.gov.au

Mr Gurjit Singh

Dear Mr Singh

I refer to your email of 4 April 2018 addressed to the President of NCAT, the Hon Justice , and to your email and webform of 16 April 2018 to the Attorney General about your concerns with the conduct of NCAT proceedings. The President has noted your comments and requested a response is prepared on his behalf. Accordingly, I respond to you in my capacity as NCAT's Principal Registrar and Executive Director.

You raise a number of matters about the listing of applications and about the directions made by Tribunal members. The issues raised have largely been overtaken by decisions and procedural directions made by the Tribunal in the retail lease applications and the residential tenancy applications before the Tribunal.

On 18 April 2018, the Appeal Panel dismissed your appeal of the interlocutory orders made on 6 March 2018 in the retail lease applications. That decision is final subject to any appeal to the Supreme Court of NSW.

The decision of 19 April 2018, which I note you did not appear at the hearing, to terminate your residential tenancy lease, is final subject to limited appeal or review avenues. They include an application to set aside or vary the decision under clause 9 of the *Civil and Administrative Tribunal Regulation 2013*, an appeal to the NCAT Internal Appeal Panel or an application for judicial review to the Supreme Court of NSW. An application to set aside or vary a decision must be made within 7 days of the decision and an appeal to the Appeal Panel must be made within 14 days of the decision. Both can be extended with leave of the Tribunal under section 41 of the *Civil and Administrative Tribunal Act 2013*. If you intend seeking judicial review, you should discuss the time limits with the Registry of the Supreme Court. Their contact number is 1300 679 272.

I note that the date of vacant possession, that is the date that you are to return possession of the residential tenancy to your landlord, will be determined by the Tribunal shortly, after the Tribunal considers the submissions of the parties.

If you intend pursuing any of the above options, you should seek your own advice. To assist with this, please find attached NCAT's Getting Help fact sheet which lists a number of organisations which may be able to provide you with information and, in some cases, advice.

On 30 April 2018, the Deputy President and Division Head of the Consumer and Commercial Division of the Tribunal made directions about the retail lease applications filed by your landlord and set the applications for hearing on 19 and 20 July 2018.

I note the other issues you raise and address them below:

Listing requests

Registry Confirmation that applications were listed.

You state that your requests made on 12 February 2018, 26 February 2018 and 6 April 2018 to list the applications were ignored by the Registry. The file record does not support this as the requests were considered and the applications relevant to your requests were listed accordingly on 6 March 2018 and 17 April 2018.

Stamping of documents

I note your comments about this issue, particularly about the lack of uniformity in how the Registries conduct this process.

There is no requirement, unless the Tribunal directs otherwise, for a party to attend a Registry to have the documents for another party stamped. The Tribunal will usually make a standard direction for a party to provide their document to the Registry and to the other party or parties. This means that you can mail your documents to both the Tribunal and to the other side, without needing to have the other side's copy stamped by the Registry.

Vary orders of tribunal members by team leaders

NCAT staff cannot vary Tribunal orders without direction from the Tribunal.

Transfer of your files from Sydney to Penrith

Your files, as you state, which are the applications about the Retail Lease, are case managed and listed in the Sydney Registry. The applications were transferred to the Penrith Registry for the listing of your return of summons, as a convenience to the parties, who reside in the area. The hearing of the applications on 19 and 20 July 2018 will take place in Sydney.

I trust this clarifies the issues for you.

Yours sincerely

**Principal Registrar & Executive Director
NSW Civil & Administrative Tribunal**

11/5/2018.

NSW Civil & Administrative Tribunal

District Registry: Penrith

File No. [REDACTED]

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[REDACTED]

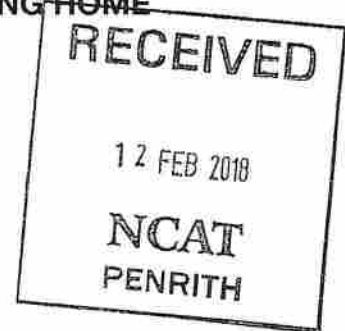
Respondents

APPLICATION FOR ORDERS REGARDING HOME

Orders Sought

The applicant seeks for the following orders to be made:

1. Directions;
2. An order that the notice of termination provided to the applicant by [REDACTED] on the 19th of December 2017 be stayed until further order;
3. An order that the applicant pay rental in an amount and by a method to be directed by this Honourable Tribunal;
4. Such further or other order as the Tribunal deems appropriate;
5. Leave to apply for further orders as necessary and appropriate;
6. Costs.



Dated: 12 February 2018

[REDACTED]
.....
Signed by Gurjit Singh
Applicant

This application is to be filed in the registry and served upon the respondent by email to the

FILED
WITM [REDACTED]
26/2/2018 3:30 pm
PENRITH

NSW Civil & Administrative Tribunal

District Registry: Penrith

File No. [REDACTED]

Division: Consumer and Commercial

GURJIT SINGH

Applicant

[REDACTED]

Respondents

APPLICATION (2ND) FOR ORDERS REGARDING HOME

Orders Sought

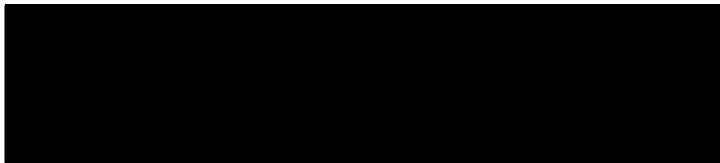
The applicant seeks for the following orders to be made:

1. Directions;
2. An order that the notice of termination provided to the applicant by [REDACTED] on the 16th of February 2018 be set aside or stayed until further order;
3. An order that the applicant pay rental in an amount and by a method to be directed by this Honourable Tribunal;
4. An order that [REDACTED] stop sending daily harassing emails to the applicant.
5. A specific order regarding the interim order and the communication permitted by [REDACTED] to the applicant by the order.
6. An order that the one monthly payment made by the applicant to the respondent as directed by this Honourable Tribunal be the only payment the applicant is required to pay to the respondent each month and that the respondent be estopped from demanding any further payment and the applicant relieved of any

obligation to make any further payment unless so ordered by this Honourable Tribunal.

7. Such further or other order as the Tribunal deems appropriate;
8. Leave to apply for further orders as necessary and appropriate;
9. Costs.

Dated: 26 February 2018.



.....
Signed by Gurjit Singh
Applicant

This application is to be filed in the registry and served upon the respondent by email to the respondent's solicitors.

NSW CIVIL & ADMINISTRATIVE TRIBUNAL

District Registry: Penrith
Division: Consumer and Commercial

File No. [REDACTED]

GURJIT SINGH

Applicant

[REDACTED]
Respondents

TRANSCRIPT OF HEARING 6TH MARCH 2016

- 1 Member [REDACTED]: The matter of Gurjit Singh and [REDACTED]
2 [REDACTED] Can I get the parties to come to the tables please? Alright, I am senior a member
3 [REDACTED] Who is here for Gurjit Singh?
4 Gurjit Singh: Ma'am, that's me. Gurjit Singh.
5 Member [REDACTED]: Right. And for, [REDACTED]?
6 Mr. [REDACTED]: [REDACTED]
7 Member [REDACTED]: So, is it a solicitor?
8 Mr. [REDACTED]: Solicitor, yes, thank you.
9 Member [REDACTED]: Thank you. I'm just seeing a few other people in the room.
10 Observer: I'm from the small business commissioners office.
11 Member [REDACTED]: Fantastic.
12 Mr. [REDACTED]: The other gentleman is my client's son.
13 Member [REDACTED]: Great, thank you. Right. On the last occasion the matter was before the tribunal, there
14 was an interim application and a substantive application. And directions were made for
15 the applicant to pay an amount of \$6,500 on account of rent by monthly installments.
16 And that on the 6th of February the respondent was to give to the tribunal and the
17 other party, in person, points of defence to the points of claim. And the parties were to
18 attend the offices of the New South Wales Small Business Commissioner. Maybe I'll
19 start with you Mr. [REDACTED] what's happened?

1 Mr. [REDACTED]: Yes, that's correct, member.
2 Gurjit Singh: Ma'am, my third application deals with this matter.
3 Member [REDACTED]: It's a very easy question.
4 Gurjit Singh: Yes, I didn't pay that. Yes, that's right.
5 Member [REDACTED]: On what basis?
6 Gurjit Singh: I think the respondent asking me to pay more money than what was ordered.
7 Member [REDACTED]: No, have you paid ... don't worry about what the respondent asked you, have you paid
8 \$6,500 on the 1st of March?
9 Gurjit Singh: No, I haven't.
10 Member [REDACTED]: Well, sir, it's a bit of a worry that you're here the second time, you still haven't got
11 yourself a solicitor. We made an order.
12 Gurjit Singh: Yes.
13 Member [REDACTED]: That you pay \$6,500, or else they can take possession. It's a conditional order.
14 Gurjit Singh: Ma'am, that's-
15 Member [REDACTED]: And you're still here sitting here, without a solicitor, telling me you haven't paid.
16 Gurjit Singh: Ma'am, that's what I'm telling you. The third application, which is made, if you have
17 looked at it, that covers that.
18 Member [REDACTED]: There is no third application.
19 Gurjit Singh: We seek instructions for-
20 Member [REDACTED]: There is no third application. What third application are you talking about?
21 Gurjit Singh: We filed three applications.
22 Member [REDACTED]: Well, I haven't got them. I've got an application ... today the only thing that's before
23 me, is a substantive application and an interim application from the applicants. I've got
24 no application from you. SHE LIED HERE. See Response to outcome of complaint which confirm the
25 applications were in front of Senior Member [REDACTED]
26 Gurjit Singh: Ma'am this is ..
27 Member [REDACTED]: And that's not what I'm dealing with today.
28 Gurjit Singh: This is three applications we filed.
29 Member [REDACTED]: Well, they're not here before me. I'll say it again.
30 Gurjit Singh: I have a received copy from tribunal.
31 Member [REDACTED]: Yeah, that's not what I'm dealing with today. Sir, I don't think you're understanding this.
32 Gurjit Singh: Ma'am.
33 Member [REDACTED]: You can not go on rent strike. Right?
Gurjit Singh: Okay, I'll pay tomorrow, that's fine.

MADE ME TO MAKE
PAYMENT IN BREACH OF TAX LAW
WITHOUT INVOICE.

1 Member [REDACTED] They'll contact you, don't contact. But I'm just telling you that I'm not trying to make it
2 difficult for your life-

3 Speaker 4: No, it's fine. Thank you.

4 Member [REDACTED]: But that's what will happen. Thanks. Alright. Now, how many witnesses are you
5 expecting?

6 Gurjit Singh: I'm not sure ma'am.

7 Member [REDACTED]: Well, if you're not sure, I'm going to make, again, a decision.

8 Gurjit Singh: Yeah, sure.

9 Member [REDACTED]: What are you claiming?

10 Gurjit Singh: It's in my points of claim.

11 Member [REDACTED]: I'm asking you what you're claiming.

12 Gurjit Singh: I can read it.

13 Member [REDACTED]: No no, you tell me what you're claiming yourself.

14 Gurjit Singh: Ma'am, I can read it but I don't really ... I mean I can definitely read it if you want.

15 Member [REDACTED]: No, I'm asking you.

16 Gurjit Singh: Okay, let me read it.

17 Member [REDACTED]: Take me to it. When did you provide your points of claim? Okay, is this the, on the 12th
18 of February, application for orders regarding home? EVIDENCE THAT APPLICATIONS
19 Gurjit Singh: That's the one ... no, not that one. WERE ON THE FILE IN FRONT OF HER AND
20 Member [REDACTED]: Okay, so which one? SHE CONTINUED TO IGNORE.

21 Mr. [REDACTED]: I think it started the 10th of January.

22 Gurjit Singh: That's the one, application regarding home, is the one which I filed to be decided today.

23 Member [REDACTED]: What do you mean to be decided today? I can't decide anything today, there's not an
24 application. You don't decide when we decide things, so what's the-

25 Gurjit Singh: No, I made an application for you to decide. I don't decide.

26 Member [REDACTED]: Decide what?

27 Gurjit Singh: That's in the application.

28 Member [REDACTED]: But what am I deciding? What do you want me to decide?

29 Gurjit Singh: You want me to read the application ma'am?

30 Member [REDACTED]: Which application?

31 Gurjit Singh: For home.

32 Member [REDACTED]: The one that I just read to you? The applicants is to be following orders to the
33 directions and know that the order of notice of termination provided to the applicant,

NSW Civil & Administrative Tribunal

**District Registry: Penrith
Division: Consumer and Commercial**

File No. [REDACTED]

GURJIT SINGH

Applicant

[REDACTED]

[REDACTED]

Respondents

Applicant's written submission for a hearing on 6th March 2018

1. Submissions of this type usually actively encourage progress to the result sought (by the applicant). That approach seems inappropriate here.
2. This matter is at an awkward stage. Significant direction is required by the Tribunal. This submission is intended to assist the Tribunal to provide that direction.

The respective substantive claims

3. The applicant's substantive claim is based on two specific legal foundations, particularly:
 - a. A contention that the applicant has a term tenancy pursuant to the last operative renewal of the 2006 tenancy; and
 - b. A contention that the applicant has a term tenancy pursuant to the renovation agreement of 2015;
4. The applicant believes and contends that it has fully and adequately pleaded both causes of action.
5. The respondents' response to both contentions is denial with the respondents contending that neither claim can succeed and the respondent is entitled to vacant possession.

6. In the applicant's respectful submission, the issue is joined to quite a substantial extent if not completely. Other than some pending issues as to pleadings, which, from the applicant's perspective, are highlighted in the Reply, there is little more to do in relation to the substantive claim.
7. The applicant can make application in relation to further and better particulars including amendment and strike out as the applicant deems appropriate. In the alternative, if the Tribunal so wishes, the Tribunal can give directions regarding pleadings.
8. There does not seem to be much more that requires attention in relation to the substantive claim.

Interlocutory proceedings (applicant)

9. The applicant has made three applications for orders. The applicant contends all three are the products of the conduct of the respondents.
10. The first is an application arising from the Tribunal's order that the parties try to address the shop 2 issue. The applicant understands the shop 2 issue. Nonetheless, the applicant is dealing here with [REDACTED] to whom the applicant contends he has handed over in excess of \$800,000 in cash, which [REDACTED] now denies.
11. The applicant's position in relation to [REDACTED] is that he is a liar. The rest of his family are implicated as 6 of them attended from time to time to collect cash. This is an issue that will be explored in the course of this action. For the purposes of this present application and the issues pertaining to it, the applicant has no faith and confidence in anything said by this [REDACTED] family. As a result, the applicant by his letter of 31st January required all communication be in writing. As the applicant's said to the respondents, there is nothing that can be said that can't be written.
12. The applicant has received nothing in writing from the respondents in terms of dealing with this issue since the 31st of January other than the affidavit of [REDACTED] sworn on the 27th of February.
13. The applicant believes that that the proposal for method of dealing with this issue is not obstructive, not cumbersome or demanding. It is an acceptable and appropriate method of addressing this issue.

14. The clear appearance is that the respondents wish to say things down not prepared to write down and supply. The applicant persists with the application and seeks the orders.
15. The second is an application lodged on the 11th of February 2018 seeking orders protecting the applicant from a notice of termination from the respondent, by their agent, [REDACTED] dated and delivered on the 19th of December 2017. The notice is referred to in paragraphs 3 to 7 of the supporting affidavit. The agitation by [REDACTED] based on the termination notice is further dealt with in paragraph 8 and 9 of the supporting affidavit.
16. The applicant's claim under the renovation agreement includes a term contended to be agreed that the home tenancy is secured for three years without variation of rent. The claim is made in the Points of Claim, paragraph 4.
17. The claim was clearly made and present in the Points of Claim filed and served by the applicant. On the return from holidays, in spite of the interim order and the prospect of it applying to the residential tenancy, after 5th February 2018, [REDACTED] persisted with assertion of the termination was deposed in the supporting affidavit.
18. The applicant seeks the orders sought to protect the status quo on and to preserve the entitlement of the applicants to the residential accommodation. The applicant persists with the application and seeks the orders.
19. The third application is a further application to project the residential tenancy. The orders sought and the basis for the orders are made out. This is an application for an order for breach of the interim order among other orders. The applicant believes it is necessary for the Tribunal to read this application and affidavit in support in full.

20. The applicant seeks the orders sought to protect the status quo on and to preserve the entitlement of the applicants to the residential accommodation. The applicant persists with the application and seeks the orders.
- 21.
22. Paragraph 5 of the order directed the applicant to file and serve Points of Claim by the 9th of January 2018. The required Points of Claim were filed and served on the 10th of January 2018, being one day late. The reasons for being one day late will be set out in a dedicated section titled, Reasons for Filing Points of Claim one day late, later in this document.
23. Paragraph 6 of the order directed the respondent to file and serve any evidence and submissions in response to the application for interim orders, by the 16th of January 2018.
24. Since the time of preparation of these submission, the respondent has filed an affidavit. The applicant responds to the affidavit in a section below commencing at paragraph 24.
25. The applicant's Points of Claim set out two sets of material facts related to the lease/contract between the parties and pleads that on the basis of those material facts, the lease/contract is ongoing, on one basis, until the 31st of October 2019, and on the other, until 31st of October 2020.
26. The Tribunal in paragraph 4 of the order provided directions and requirements as to mediation. There has been communication in relation to the mediation, with two letters from solicitors for the respondent on a without prejudice basis, inviting mediation and the response from the applicant in an open letter, a copy of which is available for the Tribunal at this hearing.
27. The applicant's perception of the Tribunal's comments in paragraph 4 of the interim order is that the Tribunal requires this matter to proceed to some form of mediation, either arranged between the parties or by application for mediation to the Office of the Small Business Commissioner.
28. The applicant is inclined to participate in either of those options and is willing to adopt and undertake the path of mediation as a methodology for resolving this dispute.

29. The applicant contends that there is one appropriate precondition or prerequisite before the matter proceeds to mediation.
30. The applicant has been required to plead extensively, in effect, twice. The applicant pleaded once in support of the interim order. The applicant has pleaded a second time in the Points of Claim.
31. At this juncture, the respondent has pleaded nothing, and particularly nothing in relation to the applicant's comprehensive Points of Claim.
32. The applicant finds it difficult, if not impossible, to identify the points of difference between the parties to be addressed in a mediation in circumstances where there is no pleading in response to the applicant's Points of Claim.
33. If the respondent is ordered to plead in relation to the applicant's Points of Claim, that will enable the points of difference between the parties to be identified and addressed.
34. Then the parties can explore their respective positions in relation to those points of difference and a mediation can be conducted to explore the question of how those points of difference can be resolved and this matter finalised by mediation and settled agreement and/or orders.
35. The applicant would contend a prejudice if directions of the Tribunal were to provide that a mediation proceed in circumstances where the applicant has comprehensively pleaded but the respondent has not pleaded in response. The applicant respectfully submits, the respondent's affidavit, while touching on aspects of the substantive claim, does not address many contentions contained in the applicant's Points of Claim and is significantly incomplete compared to the requirements for pleading.
36. The applicant's prejudice would be that it is not possible for the applicant to identify all of the points of difference to be addressed at the mediation without the respondent's pleading.
37. Accordingly, the applicant invites the Tribunal to make the following orders:
 1. That the respondent file a pleading by way of reply to the applicant's Points of Claim within such time as the Tribunal directs.

2. Within 14 days of service of the said reply upon the applicant, that the parties agree a process of mediation.
3. If there is no agreement as to a process of mediation, within a further 7 days, the applicant make application for mediation to the Office of the Small Business Commissioner.
4. That the interim order remain in operation and continue until further order of this Tribunal.

Reasons for Filing Points of Claim one day late.

38. The applicant was aware of the obligations to file the Points of Claim by the 9th of January 2018 since receiving the order of the Tribunal on the 19th of December 2017.
39. The applicant retained [REDACTED], solicitors before Christmas to discharge the obligation and comply with the order to file the Points of Claim by the 9th of January 2018.
40. In spite of repeated assurances and particularly, emails of the 4th and 5th of January that the Points of Claim would be filed and served by the 9th of January 2018, at 5:00 pm on the 9th of January 2018, the document was not filed and served and [REDACTED] retainer was terminated.
41. The applicant caused the Points of Claim to be completed, filed and served on the 10th of January 2018.
42. The applicant apologizes to the Tribunal for failing to comply with the order.

Response to respondent's affidavit

43. This portion of the submission was not prepared until after the respondent's affidavit was served on the 17th of January, 2017.
44. In response to the respondent's affidavit sworn the 16th of January, 2018 (the affidavit), the applicant's Points of Claim were served on the respondent on the 10th of January, 2018. The applicant notes that the interim order did not require response to the Points of Claim. Nonetheless, the respondent has chosen not to designate this response as a response to the Points of Claim although the deponent touches upon the substantive claim in parts of the affidavit. It may be that

the respondent believes a pleading in response is appropriate. That is the view held by the applicant, and it is for the Tribunal to decide.

45. In response to paragraph one of the affidavit, the applicant submits that the appropriate evidence is a certificate of incorporation and the most recent annual statement which is not provided. While the applicant does not agree nor deny that Fobupu is the owner, this deposition is inadequate as evidence.
46. In response to paragraph two of the affidavit, the applicant submits that the appropriate evidence is a Certificate of Title which is not provided. While the applicant does not agree nor deny that [REDACTED] is the owner, this deposition is inadequate as evidence.
47. In response to paragraph three, the applicant submits and contends that a lease was created in 2006. The deposition contained in this paragraph that the lease was "in respect of the shop one, [REDACTED] [REDACTED]" is not consistent with the lease document itself. The lease document provides for the property leased, to the extent exhibit B is complete, with the exhibit ending at page 19 of 24 pages on page 28 of the affidavit (hand numbered). The portion of the lease as provided sets out:
- i. On page one, that the Torrens Title is Folio Identifier [REDACTED], being [REDACTED] [REDACTED] (which is not exhibited);
 - ii. Paragraph 3.1 at page 18 of the lease refers back to Folio Identifier [REDACTED].
48. There is no reference to shop [REDACTED] or an exclusion shop [REDACTED] and there is no plan in the exhibit.
49. In response to paragraph four, the complete lease when provided will speak for itself and paragraph four of the affidavit is obsolete. In any event, the deposition is wrong, particularly as to subparagraph (g). Rent review is not 3% as deposed. Rent review is dealt with on page 14, item 16 and particularly, provides for a current market rent as at 1st November, 2014. The applicant will demonstrate that a market rent assessment would produce a reduced rent rather than an increased rent because of deterioration in the premises. Further, the applicant will contend that by verbal agreement and also

as demonstrated by the conduct of the parties, a lower rent was paid by the applicant and accepted by the respondent for many years of the tenancy.

50. In response to paragraph six, this deposition is denied in its entirety, both as to its factual foundation and correctness, and also whether the alleged events constitute breach in all the circumstances. Cash payments given and received go to the core of the issue as to these contentions by the respondent. That cash payments issue will be determined in the applicant's substantive claim.
51. In response to paragraph seven, this deposition is denied in its entirety, both as to its factual foundation and correctness, and also whether the alleged events constitute breach in all the circumstances. Cash payments given and received go to the core of the issue as to these contentions by the respondent. That issue will be determined in the applicant's substantive claim.
52. The applicant notes the documents referred to in paragraphs 8 to 11. The applicant does not dispute those documents exist. Further consideration of those documents is appropriately a subject of evidence, and then submissions. Other than innuendo, the applicant respectfully submits the respondent has established nothing in relation to those documents.
53. In response to paragraph twelve, this statement is false. Requests for ongoing operation of the lease occurred on multiple occasions involving the demanded cash payment of \$85,000 in July 2010, both at the time the demand was made, and at the time payments were made. Further, conversations relating to the ongoing lease occurred from time to time with the substitution of new trading companies becoming involved to conduct the restaurant business in the leased premises. The entirety of this deposition is false and a lie.
54. In response to paragraph thirteen, the applicant contends this is a misconceived and inappropriate deposition for the following reasons:
1. The deposition ignores the existence of an ongoing tenancy with another tenant and occupant paying rent from July 2010 and the terms of that tenancy;

2. The deposition ignores the existence of an ongoing tenancy with another tenant and occupant paying rent and the terms of that tenancy, after ██████ was deregistered in 2012 for in excess of five years.
 3. The deposition sets out orders the respondent contends the Tribunal should make. This material should be contained in an application for orders made to the Tribunal and is not appropriate to be set out in a sworn deposition;
 4. This deposition and that application (if made) would pertain to the substantive dispute between the parties. Given the contentions raised by the applicant in both the application for interim order and the Points of Claim, the subject matter and depositions as deposed do not address the issues and points alive between the parties as to the terms of the current tenancy;
 5. This deposition is singular and incomplete, selective, involves numerous significant omissions and is demonstrably self servicing and accordingly unreliable as a foundation for any order the Tribunal might be capable of making.
 6. The deposition, in sub-paragraphs (d) and (e) deals with claims by the respondent, in sub-paragraph (d), asserting an entitlement to claim and in sub-paragraphs (e), apparently making a claim. This material should be contained in an application for orders in the substantive claim, made to the Tribunal. This material is not appropriate to be in a sworn deposition.
55. In response to paragraph fourteen, this deposition and contention is disputed. The applicant respectfully submits it is for the Tribunal to determine the effect of the events which occurred from July 2010 set out in of the applicant's Points of Claim, paragraphs 23 to 45. This is a fundamental issue in relation to a substantive claim for relief in the applicant's Points of Claim. The respondent's assumptions and conclusions do not determine the issue and dispute.
56. In response to paragraph fifteen, the applicant submits this deposition is false. The relevant consideration is that another company trading the restaurant business replaced ██████ with the

respondent's consent, in consideration of the agreement to pay \$85,000 in cash, in July of 2010 and the payment of that amount for that purpose.

57. In response to paragraph sixteen, the applicant submits this deposition is false and known by the respondent to be false. This is a fundamental issue in relation to the substantive claim for relief in the applicant's Points of Claim. The respondent's selective, incomplete, evasive and self servicing deposition is inadequate as evidence, not a proper deposition and so unreliable and so inadequate as evidence as to not produce any foundation for an order of this Honourable Tribunal or a foundation for consideration of an order.
58. In response to paragraph seventeen, the respondent is in possession of both the application for interim order and the Points of Claim. It is not clear whether this is an application pertaining to the interim order or the substantive claim. Consideration of the substantive claim is not before the Tribunal today other than for directions. Consideration of the interim order is before the Tribunal. The applicant contends no variation to the interim order should occur on the basis of this deposition or this affidavit. The deposition demonstrates plainly, the respondent's inclination and intention to regard the tenancy as terminated, repossess and lock out unless the respondent is restrained by the ongoing interim order.
59. The substantive claim is not before the Tribunal today and the Tribunal orders to date make it clear (at least to the applicant) that the Tribunal requires the substantive claim to proceed to mediation. In that respect, this material should be the subject of a claim and application in the substantive claim and thereby, in the mediation. The claim should be included in the respondent's reply to the applicant's Points of Claim.
60. In response to paragraph eighteen, the applicant makes no objection as to form. In the context of the orders of the Tribunal, this request by way of deposition is sufficiently presented as to the interim order to prevent a proper objection from the applicant. The respondent has accepted November and December rent. This proposal does not amount to a preservation of the status quo. This is the respondent asking the Tribunal to grant the respondent their wish list terms of the interim

order pending resolution of the substantive dispute. These terms do not represent fair market rent and there is no evidence that rent to this level has ever been agreed between the parties or paid. This rent is 50% more than the applicant has paid for Shop 1.

61. In response to paragraph nineteen, the contention by the respondent " I had never agreed to a monthly rental amount of \$5000", is an element of the substantive dispute between the parties. The applicant's contend in the Points of Claim (paragraphs 42 to 44) that [REDACTED] did agree in those terms in the renovation agreement of the second half of 2015. The applicant contends the version provided by [REDACTED] later in this affidavit as to those events is a recent invention. This submission will return to that point.
62. In response to paragraph twenty, the applicant contends it is for the Tribunal to determine what the terms are from the renewal of 2009 including considerations of July 2010, November 2014, the last half of 2015 and since the 1st of November, 2017. What the respondent "notes" is of little consequence.
63. In response to paragraph twenty one, the applicant contends this is an assertion by the respondent based on his presumption that the applicant will fail in the prosecution of the substantive claim. That presumption cannot come into operation until the applicant does fail, and accordingly this deposition is presently irrelevant. In any event, the deposition does not go to the interim order. This issue is properly directed through the respondent's reply through to the mediation.
64. In response to paragraph twenty two, the fact versions of the parties are diametrically opposed and there is a substantive issue to be determined between the parties. One prime issue will be the existence of and extent of cash payments made by the applicant to the respondents. In the circumstances, only one version can be upheld and the other must fail. While in some instances comments regarding discussions have a similarity to the discussions in the last half of 2015, otherwise, this deposition are entirely false, lies and recent invention Further particularly as to the sub-paragraph allegations, the applicant responds:

- (a) Works were authorised by the agreement of 2015. The applicant cannot otherwise comment on the deposition;
- (b) This conversation in this context is denied and contended to be false. Words similar to this were said in the discussion in the second half of 2015, as pleaded by the applicant;
- (c) This conversation in this context is denied and contended to be false.
- (d) This conversation in this context is denied and contended to be false. Words similar to this were said in the discussion in the second half of 2015, as pleaded by the applicant;
- (e) This statement is false. Rent was paid for Stop 2 for the whole of the period of the renovation apart from the first month.
- (f) This statement is false. Rent was paid for Stop 2 from 2006.
- (g) This statement is false. Rent under the agreement made in the second half of 2015 was that the rent for shop 1 would be \$5000 per calendar month for shop 1 only, without shop 2 continuing to be occupied by the applicant.
- (i) The applicant's present understanding is, an extensive volume of work performed by the respondent in relation to the tenancy premises has been performed without the necessary and compulsory council approvals. Inquiries are being made and documentation sought. If the respondent believed unauthorised work was being performed on his property by the applicant, it was his responsibility to take appropriate intervening action. Otherwise he has acquiesced to the performance of the work.
- (j) This statement is false. Rent was paid for Stop 1 in cash in the amount of \$5000 per month for the period of the renovation other than for January 2016. Other than at the beginning in 2006, and for half a rent for the first month of the renovation, January 2016, there has never been a rent free period. The overall circumstances, when fully explored in a final hearing and determination of the substantive claim will demonstrate the approach of the respondent to the applicant and how unlikely it is that any other financial indulgence was ever given. Rent was paid for Stop 2 as deposed.

- (k) This is an inappropriate deposition as it involves a question of document construction and interpretation and also issues of law.
- (l) The fact versions of the parties are diametrically opposed and there is a substantive issue to be determined between the parties. In the circumstances, only one version can be upheld and the other must fail.
- (m) This is a proper issue for attention and consideration in the mediation.

65. In response to paragraph twenty three, the fact versions of the parties are diametrically opposed and there is a substantive issue to be determined between the parties. In the circumstances, only one version can be upheld and the other must fail. The applicant invites the Tribunal to reject the respondent's submission in this paragraph, preserve the status quo and continue the interim order. This is especially the case given the unequivocal demonstration of the respondent's continuing inclination to terminate the tenancy, re-enter and lock out as demonstrated in paragraph 17 of the respondent's affidavit. This has been the respondent's demonstrated intention since [REDACTED] letter of Wednesday 13th December, 2017 which is attached to the application for interim order. The evidence demonstrates the respondent's position and attitude has not changed.
66. In response to paragraph twenty four, Repeat paragraph 46.
67. In response to paragraph twenty five, this deposition contains a statement by the respondent which is an expression of a conclusion of fact and a conclusion of law which is an aspect of the applicant's substantive claim before this Honourable Tribunal. The deposition is misconceived, presumptive, and improper. It is for the Tribunal to determine the issues which the respondent attempts to pre-empt by this deposition. The Tribunal should ignore this deposition.
68. In response to paragraph twenty six, this submission will deal with paragraphs 26 (a) to (f) collectively in the first instance. All of the orders sought should be rejected. Both contentions of fact and arguments for each of the orders sought in sub-paragraphs (a) to (f) have been addressed, rejected or disputed in the body of this response. Accordingly, at best, there is a dispute in relation

to each and every one of the contentions advanced by the respondent and the proper place for determination of the dispute is, with regard to the question of an interim order, a full hearing of a disputed interim order application. Until that full hearing is completed, the current interim order should remain. The respondents request for orders should be refused.

69. In response to paragraph twenty seven, the applicant contends these orders should not be made as issue is joined in relation to the subject matter and relief sought in the Points of Claim, paragraphs 56 to 69.

70. The respondent has ignored this pleading and by this deposition, asserts that the Tribunal give him his wish regardless of the issues and the substantive claim for relief and present interim order. While the applicant understands the respondent's desire to have a rent paying tenant in Shop 2, the respondent has to understand and fulfil its obligation to provide a secure tenancy and quiet enjoyment to the applicant. The applicant's present understanding is that the whole of shop 1 and shop 2 have council approval as one entity. The respondent's intention is to implement a subdivision of the two shops which the applicant believes requires council approval and plans. The applicant has experienced the respondent proceeding without regard to sections 33 and 34 of the Retail Leases Act. The applicant expects the respondent to continue to behave that way unless restrained.

71. In response to paragraph twenty seven, Repeat paragraph 51.

Summary of a submission

72. In summary of the entirety of this submission, the applicant contends:

1. The orders sought in paragraph 18 of this submission remain appropriate after consideration of the respondent's affidavit.
2. The respondent's affidavit, in some respects, complies with the Tribunal orders. In the applicant's respectful submission, this matter will best advance in respect of the substantive dispute if the orders sought in paragraph 18 are made.

3. Clearly the respondent is questioning the interim order and seeking variations, which the applicant opposes. The applicant contends the interim order should remain the same except that the time of operation be varied to " until further order".
 4. In the applicant's respectful submission, the interim order issue will best advance if orders seeking variations of the interim order are applied for by the respondent by formal application with evidence in support. The interim order issue can then proceed in the ordinary way, leading to being set down for full hearing.
 5. The applicant raises, but does not argue for mediation of the interim order issue. The applicant's position is that it is unlikely mediation of this issue would be productive.
73. The applicant respectfully contends those orders properly address the matter at today's hearing and set the matter on its appropriate path for ongoing resolution.

Unless there is anything else the Tribunal wishes to hear from the applicant, this is the applicant's submission.

Gurjit Singh
Applicant