

AUSTRALIA / JUDGMENT

Baker v Rowell; Rowell v Baker

[2026] NSWCATAP 307**COURT**

Civil and Administrative Tribunal

DECIDED

28 September 2026

BEFOREM Tyson, Senior Member
P Gardner, Senior Member**CASE / FILE NUMBER**

2026/00111719 and 2026/00231142

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Baker v Rowell; Rowell v Baker [2026] NSWCATAP 307**Hearing dates:** 22 July 2026**Date of orders:** 28 September 2026**Decision date:** 28 September 2026**Jurisdiction:** Appeal Panel**Before:** M Tyson, Senior Member
P Gardner, Senior Member

Decision:

(1) The application for the name of the appellant in proceedings 2026/00111719, and the name of the respondent in proceedings 2026/00231142, not to be published, but instead to be referred to by a pseudonym, is refused.

(2) Pursuant to s. 64(1)(c) of the Civil and Administrative Tribunal Act 2013 (NSW), order that the parties to these appeal proceedings are prohibited from publishing the evidence provided by Ms. Baker as part of appeal panel proceedings 2026/00231142 and 2026/00111719 and in the documents lodged by Ms. Baker as part of appeal panel proceedings 2026/00231142 and 2026/00111719, relating to:
any medical conditions which Ms. Baker may be experiencing, or any disability which Ms. Baker may be experiencing;
the other legal proceedings, involving Ms. Baker and Mr. Rowell, which are referred to, beginning at p. 45 in the bundle of documents attached to Ms. Baker's notice of appeal, and elsewhere in the written material Ms. Baker and Mr. Rowell relied upon in appeal panel proceedings 2026/00231142 and 2026/00111719.

(3) Pursuant to s. 41 of the Civil and Administrative Tribunal Act 2013 (NSW), extend to 3 June 2026 the time for Mr. Rowell to lodge his notice of appeal in appeal proceedings 2026/00231142.

(4) In appeal panel proceedings 2026/00231142, dismiss the appeal by Mr. Rowell against order 1 in Tribunal proceedings 2026/00040841 and to the extent that may be

necessary, refuse Mr. Rowell leave to appeal against order 1 in Tribunal proceedings 2026/00040841.

(5) In appeal proceedings 2026/00111719, the appeal is allowed against order 1 of the Tribunal's decision in Tribunal proceedings 2026/00060650.

(6) Order 1 of the Tribunal's orders in Tribunal proceedings 2026/00060650 is set aside.

(7) The proceedings are remitted to the Consumer and Commercial Division of the Tribunal for hearing and redetermination by a differently constituted Tribunal on such evidence as the parties file and serve in accordance with the directions and orders that become applicable for that hearing.

(8) There is no order as to costs of appeal panel proceedings 2026/00231142 and 2026/00111719.

Catchwords: APPEAL - suppression and confidentiality order – application for suppression orders and pseudonym orders
LEASES AND TENANCIES – meaning of residential tenancy agreement – essential ingredients of a residential tenancy agreement – whether there was correspondence between offer and acceptance of the offer - whether residential tenancy agreement concluded

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)
Residential Tenancies Act 2010 (NSW)
Residential Tenancies Regulation 2010 (NSW)
Civil and Administrative Tribunal Rules 2014 (NSW)

Cases Cited: Collins v Urban [2014] NSWCATAP 17
Godecke v Kirwan (1973) 129 CLR 629
Hogan v Hinch [2011] HCA 4; 243 CLR 50
Jackson v NSW Land and Housing Corporation [2014] NSWCATAP 22
Prendergast v Western Murray Irrigation Ltd [2014] NSWCATAP 69
Raybos Australia Pty Ltd v Jones (1985) 2 NSWLR 47
Russell v Russell [1976] HCA 23; (1976) 134 CLR 495
Ryan v BKB Motor Vehicle Repairs Pty Ltd [2017] NSWCATAP 39
Scott v Scott [1913] AC 417
Tucker v Godfrey (1862) 1 SR (NSW) (L) 292
Unique Commercial Group Pty Ltd v Cusumano [2024] NSWCATAP 204
Willmott Growers Group Inc v Willmott Forests Limited (receivers and managers appointed) (in liq.) [2013] HCA 51; 251 CLR 592

Texts Cited: A. Moore, S. Grattan and L. Higgs Australian Real Property Law, 7th edition, Thomson Reuters

Category: Principal judgment

Parties: Angie Baker (Appellant in 2026/00111719)
Matthew Rowell (Respondent)
Matthew Rowell (Appellant in 2026/00231142)
Angie Baker (Respondent)

Representation: Angie Baker (Self-Represented)
AJHLAW (Respondent)

File Number(s): 2026/00111719 and 2026/00231142

Publication restriction:	Nil Decision under appeal
Court or tribunal:	Civil and Administrative Tribunal NSW
Jurisdiction:	Consumer and Commercial Division
Date of Decision:	10 March 2026
Before:	P Jammy, General Member
File Number(s):	2026/00060650 and 2026/00040841

REASONS FOR DECISION

This decision involves two internal appeals under s 80(2) of the Civil and Administrative Tribunal Act 2013 (NSW) (“the NCAT Act”) against decisions made in Tribunal’s Consumer and Commercial Division. The decisions under appeal were made on 10 March 2026. Both decisions raised questions concerning the Tribunal’s jurisdiction under the Residential Tenancies Act 2010 (NSW) (“the Act”).

In appeal proceedings 2026/00111719, the appellant (“the Occupier”) is the occupier of premises used as a residence and located at Elemore Vale, New South Wales. The Occupier lodged a notice of appeal on 18 March 2026 against the Tribunal’s decision dated 10 March 2026. The respondent to the appeal (“the Owner”) is the owner of the residential premises located at Elemore Vale, New South Wales.

In appeal proceedings 2026/00231142, the Owner lodged a notice of appeal on 3 June 2026 against the Tribunal’s decision dated 10 March 2026. The respondent to this appeal is the Occupier.

The use of the terms “Occupier” and “Owner” is not intended to indicate any intention, on our part, to suggest a conclusion on the principal issue in dispute in these appeals. The principal issue at the heart of both appeals was whether the Tribunal was in error in finding that no “residential tenancy agreement”, for the purposes of s. 13 of the Act, was made.

For the reasons set out below, we have decided to allow the Occupier’s appeal and to dismiss the Owner’s appeal.

Factual background

The factual background to the two appeals is as follows:

The property at Elemore Vale (“the Property”) which is the subject of these proceedings includes a residence. The residence includes three bedrooms, a kitchen and bathroom, and a living area. The Owner is the registered proprietor of the Property. There is a registered mortgage over the Property.

The Owner and the Occupier had been friends and the Occupier moved into the premises in December 2021. The Occupier paid no rent at that time. She did housework such as cleaning up after the Owner and another housemate, cleaning the house, washing the dishes and doing laundry and says she made ad hoc contributions to household expenses, such as buying toilet paper and cleaning products.

The Owner slept in the living area within the premises and kept his belongings in one of the bedrooms. The Occupier slept in the main bedroom and kept her belongings in bedroom 3 of the premises, according to the Owner. The Occupier had a friend install a deadbolt on the inside of her bedroom door in the premises.

The kitchen and the bathroom inside the premises were shared by the Owner and the Occupier.

On 18 June 2022, the Owner felt that it was clear that the Occupier was going to be staying at the premises for longer than anticipated and was occupying a fair portion of the premises, so he sent her a text message by mobile telephone "Rent is \$150 a week, I cover utilities, within reason, probably the cheapest accommodation you will find, this starts Monday."

The Owner says that a residential tenancy agreement was made between himself and the Occupier, with the agreement's terms consistent with the 18 June 2022 text message.

The Occupier said she did not receive the text message as she had blocked the Owner's number on her telephone. The Occupier did not respond to the text message.

The Occupier did not pay any rent until July 2024.

The Occupier says that she and the Owner decided to "formalise our living arrangement" in July 2024. The Occupier said (at [12]) in her witness statement "It was verbally agreed that I would pay rent of \$50 per fortnight."

She says that she set up a direct debit from her account and paid \$50 per fortnight through the direct debit arrangement, to the Owner, since that time.

The Occupier's bank statements show she paid fortnightly payments to the Owner. The fortnightly payments are described in the transfer description as "Payment to Matthew Rowell Matt Rent - \$50.00."

The evidence showed text messages later passing between from the Owner to the Occupier such as "The tenancy agreement was not for the whole house, you know this ang ..."

The Owner agrees that the Occupier paid the \$50 rent each fortnight. He says that the only agreement was the June 2022 residential tenancy agreement and that the payments involved "repaying small amounts of rent."

The Owner says he asked the Occupier, on numerous occasions, to vacate the premises. On 30 March 2025, the Owner sent a letter to the Occupier asking her to vacate the premises and remove her belongings within two weeks.

In July 2025, another legal proceeding, involving both the Occupier and the Owner, commenced. For the purposes of these appeal panel proceedings, it is unnecessary for us to say anything further about the nature or form of the other legal proceedings.

On 16 August 2025, the Owner left the premises. The Occupier has lived at the premises by herself since that time.

On 23 December 2025, solicitors for the Owner sent a notice to terminate tenancy agreement to the Occupier. The notice to terminate cited and sought to rely upon the Act. It sought to terminate the claimed residential tenancy agreement on 14 days of notice, claiming there was a failure to pay rent and unlawful damage to property. The notice to terminate required the Occupier to vacate the premises by 9 January 2026.

The Owner has been staying with friends since he left the premises. The Property containing the premises continues to be subject to a mortgage. The Owner, as mortgagor, continues to pay the financial institution which holds the mortgage.

At paragraph 9 in her supplementary witness statement, which was part of the evidence before the Tribunal, the Occupier stated “Matt often refers to himself as my ‘landlord’ and to me as a ‘tenant’.”

The Tribunal proceedings and the decisions under appeal

On 30 January 2026, the Owner commenced proceedings in the Tribunal (proceedings 2026/00040841) seeking termination of what he claimed to be the residential tenancy agreement on a number of bases, an order for possession of the premises, and an order for payment of rent arrears.

The Occupier commenced proceedings in the Tribunal (proceedings 2026/00060650) seeking an order that an oral tenancy existed, that the notice of termination was retaliatory, an order for compensation, and an order that restrictions be placed on the Owner's access to the premises.

The Occupier lodged an application for miscellaneous matters during the course of the Tribunal proceedings, seeking, amongst other things, an order prohibiting or restricting the publication of the name of the respondent. Both parties also applied for leave to be legally represented, and that application was granted, but on condition that there be no application for costs.

Both proceedings were listed together for a final hearing which proceeded on 9 March 2026. The Tribunal made orders and published written reasons for its decisions, in both proceedings, on 10 March 2026. According to the written reasons, both "parties were represented at the hearing on 9 March 2026." There is a set of written reasons for each of the proceedings. The substantive reasoning in both decisions is the same.

In its written reasons, the Tribunal first set out some of the factual background.

The Tribunal quoted s. 13(1) and (2) of the Act. The Tribunal stated at [17] and [18]:

“For there to be an agreement, the parties must agree with sufficient certainty on the essential terms of a residential tenancy agreement: Godecke v Kirwan (1973) 129 CLR 629. For a residential tenancy agreement, the essential terms include: the identity of the parties, the premises in question (or which part of the premises if the agreement is not for exclusive possession of the whole premises), the duration of the tenancy, the rent and the date of commencement of the tenancy.

There is no longer a presumption that an informal domestic arrangement is not a tenancy. But a Tribunal (or court) will look for indicia of a tenancy agreement – described in the previous paragraph, before concluding that such an arrangement was intended to take on a more formal legal significance in the form of a binding tenancy agreement: see for example *Dobrom v Dobromilsky* [1999] NSWRT 47.”

The Tribunal stated that neither the June 2022 agreement, nor the July 2024 agreement, were in writing. The Tribunal stated that there was insufficient evidence of an oral agreement.

The Tribunal then stated that it:

“is not satisfied that there is evidence that would establish an implied agreement.

Concerning the Owner’s alleged agreement concluded in June 2022 ...

- a. There was no express agreement about which portions of the house were to be occupied (described as a ‘fair portion’ and no exclusive use of all bedrooms);
- b. There was no discussion about the period of the agreement;
- c. No rent was paid for two years until July 2024;
- d. The owner took no steps to collect or enforce the rent.
- e. In March 2025 the Owner requested the tenant to move out, but made no reference to a tenancy agreement or rent.
- f. The Owner took no further steps for 9 months, when a purported Notice of Termination was sent.

...”

The Tribunal stated (at [24]):

“Concerning the Occupier’s alleged agreement concluded in July 2024:

- a. The Owner denies the agreement;
- b. While payment of rent can be indicative of a tenancy agreement, such payments can be made under an informal sharing arrangement that does not constitute a tenancy;
- c. There is no evidence of exclusive occupation of part or all of the premises having been given to the Occupier by agreement of parties.”

The Tribunal said (at [25]) that the parties co-habited from December 2021 until at least June 2022, without a tenancy agreement, and it was not improbable that the informal living arrangement continued beyond that date. If there were discussions and arrangements for the Occupier to make a financial contribution, that was insufficient to elevate the arrangement to a formal tenancy agreement. The Tribunal continued (at [26]):

“Given the extent of disagreement between the parties concerning if, when and on what terms any residential tenancy agreement was agreed, there would need to be clear evidence from the parties conduct that would allow the basis for the Tribunal to imply the existence of a tenancy agreement. For the reasons discussed above, the Tribunal is not satisfied that evidence of this is available. The consequence of finding that no tenancy agreement exists between the parties is that the relief sought in both applications is refused.”

On the Owner’s application, the Tribunal ordered: “1. The application for an order terminating a tenancy agreement and for payment of arrear rental is dismissed after hearing.”

The Tribunal also dealt with a non-disclosure order that had been sought by the Occupier and had been agreed, but only in part, by the Owner. The Tribunal explained that it would make a non-disclosure order that it regarded as appropriate. That order was in these terms:

“The Tribunal makes an order under section 64(1)(c) of the Civil and Administrative Tribunal Act 2013, prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal. The applicant may disclose his witness statement and the supporting documents to a financial institution in connection with his bond, but may not disclose the respondent’s evidence or documents.”

It seems to us that the reference to “the bond” was an inadvertent typographical error that was intended to refer to “the mortgage.”

On the Occupier’s application, the Tribunal ordered: “1. The application to set aside a termination notice and for compensation is dismissed after hearing.” The sole other order made, order 2, was a non-disclosure order. That order was in these terms:

“The Tribunal makes an order under section 64(1)(c) of the Civil and Administrative Tribunal Act 2013, prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence by the Tribunal. The applicant [sic] may disclose his witness statement and the supporting documents to a financial institution in connection with his bond, but may not disclose the respondent’s [sic] evidence or documents.”

The notice of appeal and the written material relied on by the parties

At the time she filed her notice of appeal on 18 March 2026, the Occupier had a legal representative, the Homeless Persons’ Legal Service, and a person associated with that body signed the notice of appeal. The notice of appeal relied on five grounds of appeal. The first two of

the grounds claimed that the Tribunal had made an error of law. Ground 2 was that the Member “erred in law in characterising the legal relationship between the parties as not constituting a residential tenancy agreement within the meaning of s 13 of the [Act].” The next three grounds were said to involve mixed questions of fact and law and leave to appeal was sought. Ground 4 was that the Member “erred by failing to find that the appellant had exclusive occupation of at least part of the premises.”

There was a four page typed document accompanying the notice of appeal headed “Notice of appeal separate sheet” which contained submissions in support of the appeal grounds. The submissions outlined the errors of law claimed by the Occupier and the appeal grounds which relied upon the grant of leave to appeal and explained why leave to appeal should be granted.

Also accompanying the notice of appeal was what appeared to be the evidence that had been before the Tribunal at first instance. The materials included witness statements from the Occupier, bank records showing the payment of rent, screen shots showing text messages between the Occupier and the Owner, communications between the parties’ representatives, photographs of parts of the premises, material relating to the other legal proceedings between the parties, the notice of termination sent to the Occupier and material relating to the health of the Occupier.

On 9 April 2026, the Owner lodged a reply to appeal.

By his notice of appeal filed on 3 June 2026, the Owner indicates in one part of the notice of appeal form that he is not seeking leave to appeal, while in another part of the notice of appeal form, he indicated that he is seeking leave to appeal. The notice of appeal refers to an accompanying document. The accompanying document relied on three grounds of appeal. The first ground is that “The Member erred in law by determining that no residential tenancy agreement existed between the parties pursuant to section 13 of the [Act].” The second ground claims that there was an error of law because, it is said, the Tribunal made an “error of law” in dismissing the rent arrears claim on the basis that no residential tenancy agreement existed. The third ground of appeal claims there was an error of law in the Tribunal’s failure to make an order for possession “despite s. 187(1(i)) of the [Act] permitting the NCAT to order possession of the property to the Appellant in the absence of any finding of a residential tenancy agreement between the parties.”

The Owner’s notice of appeal attaches the two witness statements of his that were before the Tribunal at the hearing. In the witness statements there is evidence from the Owner about the amount he has been paying a friend to stay at that friend’s residence, since the Owner moved out of the premises the subject of these appeals. Also attached to the notice of appeal are financial records showing payments the Owner was making for the electricity of the premises, council rates applicable to the premises, and payments to the mortgagee, the notice to terminate the tenancy agreement on which he relies, as well as correspondence from his solicitors to the Occupier.

The Owner relied on written submissions filed on 13 July 2026 from his solicitors.

On 15 July 2026, the Occupier filed a bundle of documents. Pages 129 – 141 in the bundle are headed “Reply submissions of Angie Baker/HNT.” The submissions are articulate and reflect legal research done by the author. The author is not identified in the submissions. The balance of the bundle, which commences at page 117, consists of an application for miscellaneous matters seeking orders under s. 64(a) and (d) of the NCAT Act, and then correspondence and supporting material relating to a request by the Occupier for a letter of support for a prioritised referral to the Legal Assistance Referral Scheme.

On 22 July 2026, the Occupier sent an email transmission to the appeal registry. Attached to the communication was a letter dated 21 July 2026 from Dr Stephen Hirneth, clinical psychologist, of New Ability Health, headed “request for hearing privacy and confidentiality order.” There was also a letter dated 15 July 2026 from Dr Hirneth headed “Request that the Tribunal accept Ms Baker’s documents filed out of time” and another letter from dated 9 July 2026 headed “letter of support for a prioritised referral to the Legal Assistance Referral Scheme.” Also attached to the communication was a letter dated 9 July 2026 from Dr Tyler Schofield of Elder St Practice giving a summary of the Occupier’s medical conditions and how they impact her housing needs.

The appeal proceedings

The appeal panel proceedings procedural history

The appeal panel, constituted by a single member of the appeal panel, made orders in relation to the Occupier’s appeal on 10 April 2026, for the lodgement and service of material relevant to the appeal panel hearing. There was non-compliance by the Occupier with those directions. The Owner then lodged his notice of appeal. The appeal panel, constituted by a single member of the appeal panel, made further orders, in relation to both appeals, on 10 June 2026, 23 June 2026, 1 July 2026 and 6 July 2026.

The Occupier made a number of applications for further time to comply with directions on the basis that she suffered from a disability which impacted on her ability to communicate and was no longer represented by lawyers and so needed more time to prepare. Generally speaking, some extensions of time to comply with the appeal directions were granted to the Occupier by the appeal panel, until 23 June 2026 when the extensions then sought by the Occupier would have led to a vacation of the appeal panel hearing date. Some further time was granted to the Occupier to comply with the existing directions but not to the full extent of the further time that had been sought by the Occupier.

The appeal panel orders of 10 June 2026 expressly noted that the Occupier had not made an application prohibiting the disclosure of her name and if she wished to seek such an order, she would need to lodge an application for miscellaneous matters seeking such an order.

Appearances at the appeal panel hearing

At the appeal panel hearing on 22 July 2026, the Occupier appeared for herself via an audio-link. She did not wish to be seen by the respondent. The reason why the Occupier did not wish to be seen was explained in evidentiary material before the appeal panel, including the statement of the Occupier that commenced at p. 16 in the Occupier's bundle of documents attached to her notice of appeal. There was no objection by the Owner to the Occupier appearing by audio-link.

During the appeal panel hearing, the Occupier was supported by Ms. Yvonne Denham and later by Mr. Lee Averill.

At the appeal panel hearing on 22 July 2026, the Owner was represented by Ms. C. Tarleton, solicitor, of AJHLAW. Ms. Tarleton appeared by audio-visual link. The Owner was present by audio-link at the hearing but it was his solicitor, Ms. Tarleton, who conducted the proceedings on his behalf.

Course of the appeal panel hearing

When the appeal panel hearing commenced on 22 July 2026, the first issue was the Occupier's request not to be visible during the hearing, as already mentioned above. That request was granted by the appeal panel.

Next, the Occupier objected to the presence of the Owner at the hearing. There was an exchange between the appeal panel and the parties about this issue. Once it became clear that the Owner would listen to the course of the appeal panel hearing but not be participating in the hearing, the Occupier did not press the objection.

The next procedural issue was an application for miscellaneous matters filed by the Occupier on 15 July 2026. This application sought an order pursuant to ss. 64(1)(a) and 64(1)(d) of the NCAT Act "restricting the publication of the parties names and evidence given before the Tribunal", in accordance with two Tribunal publications referred to in the application, and a request for use of a pseudonym.

The Occupier made oral submissions at the appeal panel hearing asserting that she needed the appeal panel to make the orders she sought in the application for miscellaneous matters. Ms. Tarleton for the Owner did not object to a non-disclosure order if it were made in the same terms as those made by the Tribunal in the decisions under appeal. Ms. Tarleton did not object to an order preventing the disclosure of the Occupier's name, but otherwise was opposed to the orders sought. Ms. Tarleton's principal submission was that the Owner needed to be able to disclose to the Owner's mortgagee, the Owner's witness statements and supporting documents relied upon by him.

The appeal panel indicated that it would deal with the application as part of its reasons for decision.

The Occupier next made an application for both the appeals to be adjourned. The Occupier submitted that she suffered from a number of disabilities, she did not have a solicitor and was at a disadvantage in representing herself at the appeal panel hearing. The Owner was opposed to the adjournment applications.

The appeal panel gave the parties the opportunity to make submissions with respect to this application. The appeal panel briefly adjourned to reflect on the application. When the appeal panel returned, the appeal panel rejected the adjournment applications and gave oral reasons for its decision. One of the matters relied upon by the appeal panel in rejecting the adjournment applications was that the Occupier's notice of appeal and the submissions attached to it, appeared to have been prepared by lawyers and these documents articulated, and with some clarity, the Occupier's submissions why the Tribunal decision challenged by the Occupier should be set aside. The Occupier's "reply submissions", at pp. 129 – 142 in the Occupier's material filed on 15 July 2026, contained a rebuttal of the Owner's case on what residential tenancy agreement had been made.

The appeal panel then heard the oral submissions of the parties, in support of the appeal brought by the party and in opposition to the other party's appeal. From time to time during the oral submissions, it was the Occupier's support person Mr. Averill, who made submissions in support of the Occupier's appeal and in opposition to the Owner's appeal.

The appeal panel reserved its decision.

The parties' written and oral submissions

By way of brief summary of the parties' submissions:

The Occupier submitted (principally in the "notice of appeal separate sheet" document attached to her notice of appeal) that the Tribunal decision was in error in finding that there was no evidence of exclusive occupation of part or all of the premises given to the Occupier by agreement of the parties." The Occupier submitted that the decision did not meaningfully engage with the evidence.

It was submitted that there were 'two iterations' of a residential tenancy agreement between the Occupier and the Owner. First, there was a tenancy agreement which involved the Occupier living in the premises, in exchange for her making contributions for household expenses and helping around the house. The Occupier's services and contributions involved value and the payment of money was not a requirement of a residential tenancy agreement. Later, there was an oral agreement between the Occupier and the Owner whereby the Occupier paid fortnightly rent of \$50.00 to the Owner, in return for exclusive possession of two bedrooms in the premises. The rent was paid on a regular basis, in a fixed amount and that was proven by the financial records in evidence. As for the Tribunal's finding that there was no fixed period of the agreement, it was submitted that such a finding is not a requirement of a residential tenancy agreement. Here, the Tribunal should have presumed a periodic tenancy, and realised that such a tenancy is contemplated by s. 13 of the Act.

In the reply submissions, the Occupier focusses on what she says is the July 2024 arrangement, which she submits is “the stronger tenancy case” and develops that submission in her written material in reply.

The Tribunal’s decision was said to be not fair and equitable and said to be against the weight of evidence. Leave to appeal should be granted, it was submitted, to make it clear that people in New South Wales, who are living under informal tenancy arrangements, can still fall within the Act and its protections. The Tribunal’s decision left the Occupier in a “particularly problematic” position, it was submitted.

The Occupier sought for her appeal to be allowed and then for the appeal panel to make an order of compensation against the Owner, for breach of the Occupier’s right of quiet enjoyment of the premises, with compensation to be paid in the amount of \$15,000.00.

Through his solicitor, the Owner submitted that he should be granted an extension of time to bring his appeal. The Owner had not appealed initially because he was considering other legal avenues to regain possession of the premises. He was notified of the Occupier’s appeal one day after the period to lodge his appeal had expired. Once the Occupier’s appeal had been filed, the Owner could not proceed with the other legal avenues he had been considering because Tribunal proceedings were on-foot. He should be granted the extension of time because the Occupier’s appeal has to be determined in any event and the Occupier will suffer no prejudice if the Owner is granted an extension of time to file his notice of appeal.

The Owner submitted that the Tribunal made an error of law by determining that no residential tenancy agreement was in existence. The Tribunal had wrongly found there was no evidence of acceptance of an agreement between the parties. It wrongly relied on *Godecke v Kirwan* (1973) 129 CLR 629, which was a vendor/purchaser case that had nothing to do with a residential tenancy agreement under the Act. It was submitted that what the Tribunal had stated at [17] in its reasons were the ‘essential terms’ of a residential tenancy agreement, were not requirements under the Act. The Tribunal should have found that there was an implied agreement, as had been contended for by the Owner before the Tribunal, with the acceptance of the agreement being found in the “eventual transfer of funds labelled as rent to the” Owner.

It was submitted that having realised that there was a residential tenancy agreement, the Tribunal should have found that the Occupier owed the Owner \$26,200 in rental arrears and the Tribunal should have made an order that the Occupier pay arrears in that amount. It was also submitted that independently of any finding about the existence of a residential tenancy agreement, that the Tribunal should have made an order for possession under s. 187(1)(i) of the Act in favour of the Owner as an “other person under this Act.”

Finally, the Owner claimed that the decision under appeal was not fair and equitable because the Tribunal had failed to consider the significant personal and financial hardship caused by the Occupier occupying the whole of the premises, while at the same time the Owner was effectively prohibited from enjoying the premises which he owned and was paying for. Given the Owner's hardship, the Tribunal should have made an order under s. 187(1)(i) of the Act giving the Owner possession of the premises.

The Owner sought for the appeal to be allowed and then for the appeal panel to make an order against the Occupier to pay the claimed rental arrears.

Scope and nature of internal appeals

Internal appeals may be made as of right on a question of law, and otherwise with the leave of the Appeal Panel: s 80 (2) of the NCAT Act.

An appeal to the Tribunal's Appeal Panel does not provide an unsuccessful party with the opportunity to run its case again, nor is it sufficient for an appellant to disagree with the outcome and to contend there should have been a different outcome: *Ryan v BKB Motor Vehicle Repairs Pty Ltd* [2017] NSWCATAP 39 at [10].

To succeed in an appeal from a decision of the Consumer and Commercial Division, an appellant must demonstrate either an error by the Tribunal on a question of law, which may be argued as of right; or that leave (permission) be granted to bring the appeal for a reason under clause 12(1) of Schedule 4 of the NCAT Act (which is expanded on below).

In *Prendergast v Western Murray Irrigation Ltd* [2014] NSWCATAP 69 ("Prendergast") the Appeal Panel set out at [13] a non-exclusive list of questions of law. A question of law can include whether a party was denied procedural fairness.

In *Unique Commercial Group Pty Ltd v Cusumano* [2024] NSWCATAP 204, the Appeal Panel, at [25] provided further guidance in relation to what is a question of law. In summary:

A question of law should be articulated with precision;

Absent leave to appeal, the question of law is the subject of the appeal;

A question of law means a "pure question of law" which can be decided without any reference to facts or may proceed by reference to assumed facts and whose character as a question of law can be recognised on the face of the question and does not depend on the answer to the question;

A party contending that a question of law was wrongly decided must identify the question in abstract terms;

A mixed question of fact and law is not a question of law, and a question of law must not be hypothetical or arid;

A question of law must be capable of affecting orders the subject of the appeal, not purely the reasons; and

There may be disclosed an error of law but this of itself does not necessarily raise a question of law.

An error on a question of law by the Tribunal gives rise to an appeal as of right (if established) and does not require leave.

Where the grounds of appeal do not raise a pure question of law, an appellant may seek leave to appeal.

The circumstances in which the Appeal Panel may grant leave to appeal from decisions made in the Consumer and Commercial Division of this Tribunal under s 80(2)(b) of the NCAT Act are limited to those set out in cl 12 (1) of Sch 4 of the NCAT Act. In such cases, the Appeal Panel must be satisfied that the appellant may have suffered a substantial miscarriage of justice on the basis that:

12(1)(a) - the decision of the Tribunal under appeal was not fair and equitable; or

12(1)(b) - the decision of the Tribunal under appeal was against the weight of evidence; or

12(1)(c) - significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

The principles governing an application for leave to appeal under the NCAT Act are well-established and are repeated in many decisions of the Appeal Panel, often quoting *Collins v Urban* [2014] NSWCATAP 17. As explained in *Collins v Urban* at [84], it is not sufficient merely to show that the Tribunal below was arguably wrong or that there is a bona fide challenge to an issue of fact.

In *Collins v Urban*, the Appeal Panel stated at [76] that a substantial miscarriage of justice for the purposes of cl 12 (1) of Sch 4 may have been suffered where:

“... there was a "significant possibility" or a "chance which was fairly open" that a different and more favourable result would have been achieved for the appellant had the relevant circumstance in para (a) or (b) not occurred or if the fresh evidence under para (c) had been before the Tribunal at first instance.”

Even if an appellant from a decision of the Consumer and Commercial Division has satisfied the requirements of cl 12(1) of Schedule 4, the Appeal Panel must still consider whether it should exercise its discretion to grant leave to appeal under s 80(2)(b).

In *Collins v Urban*, the Appeal Panel stated at [84] that ordinarily it is appropriate to grant leave to appeal only in matters that involve:

“(a) issues of principle;

(b) questions of public importance or matters of administration or policy which might have general application; or

- (c) an injustice which is reasonably clear, in the sense of going beyond merely what is arguable, or an error that is plain and readily apparent which is central to the Tribunal's decision and not merely peripheral, so that it would be unjust to allow the finding to stand;
- (d) a factual error that was unreasonably arrived at and clearly mistaken; or
- (e) the Tribunal having gone about the fact-finding process in such an unorthodox manner or in such a way that it was likely to produce an unfair result so that it would be in the interests of justice for it to be reviewed."

Consideration

We shall deal first with the Occupier's application to be referred to by a pseudonym.

The appeal panel does have the power to make an order prohibiting or restricting the disclosure of the name of any person: s. 64(1)(a) of the NCAT Act. The fact that the Occupier has, shortly before the appeal panel hearing made an application to restrict the publication of her name, and that the Owner does not object to that course, is not determinative of whether the appeal panel should make an order under s. 64(1)(a) of the NCAT Act. In exercising its power under s. 64 of the NCAT Act, the appeal panel does not merely give effect to the wishes of the parties. The appeal panel must be "satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason." The appeal panel is exercising a public function, when determining appeals argued before it, and the appeal panel must have regard to the public interest when doing so.

The appeal panel in this case is not satisfied that it is desirable to make an order prohibiting or restricting the disclosure of the Occupier's name.

One of the primary objectives of the administration of justice is to safeguard the public interest in open justice. The common law has recognised the importance of the public interest in transparency in the decision-making of Courts and that proceedings should be fully exposed to public scrutiny: *Scott v Scott* [1913] AC 417 at 422-423; *Russell v Russell* [1976] HCA 23; (1976) 134 CLR 495 at 520. One element of open justice is the fair and accurate reporting of proceedings "including the names of the parties and the witnesses": *Hogan v Hinch* [2011] HCA 4; 243 CLR 50 at [22] and *Raybos Australia Pty Ltd v Jones* (1985) 2 NSWLR 47 at 55 and 61. The principle of open justice, including openness and transparency in Tribunal processes and the fair and accurate reporting of Tribunal proceedings, is also an important public interest when conducting and determining Tribunal proceedings. The legislative framework in which the Tribunal operates makes that clear: see for example, the NCAT Act ss. 3(e), (f) and (g), 49, 60(2) and (3) and Civil and Administrative Tribunal Rules 2014 (NSW) rule 42(2) and (6).

Having transparency in Tribunal decision-making promotes confidence in the integrity of the administration of justice and the Tribunal's role in the determination of disputes within its jurisdiction.

The Occupier has a personal wish for her name not to be disclosed, which follows from the application for miscellaneous matters which she filed shortly before the appeal panel hearing, but apart from that personal wish, the Occupier did not point to any reason why her name needed to be protected by a pseudonym. The appeal panel has taken note of what has been set out in the section "4. Grounds of application" in the application for miscellaneous matters, but what is set out there is directed to why the Occupier says particular parts of the evidence should not be disclosed, rather than why the Occupier should be given a pseudonym. There is nothing in the material before us to suggest that the important principle of open justice, and the element of the fair and accurate reporting of proceedings, should give way in these two appeals, to the Occupier's preference, at the appeal panel phase of this dispute, that her name be replaced by a pseudonym.

We deal next with the Occupier's application for an order restricting the publication of evidence. In doing so we note first that neither party made any appeal against the Tribunal's order 2 made on 10 March 2026 in the Tribunal proceedings lodged by the Owner and in the Tribunal proceedings lodged by the Occupier. Those orders remain in force.

As to the Occupier's application for an order prohibiting or restricting the publication of evidence before the appeal panel, we regard it as appropriate to make an order under s. 64(1)(c) of the NCAT Act, prohibiting or restricting the publication of evidence, or material contained in the documents that have been lodged, relating to: (a) any medical condition or disability being experienced by the Occupier; and (b) the other legal proceedings, involving the Occupier and the Owner, which are referred to in the Occupier's evidence and documents lodged as part of the appeal proceedings.

We are satisfied that the material the subject of the order has a confidential nature. We are satisfied that it is desirable to make such an order because while much of that evidence was relevant to the Occupier's adjournment application at the appeal panel hearing, we have already dealt with the adjournment application by the delivery of oral reasons at the appeal panel hearing. There is no need for the material the subject of the order to be referred to or disclosed for the purposes of these reasons. The issue that has now been left for the appeal panel to determine in these reasons for decision is a legal question about the meaning of "residential tenancy agreement" for the purposes of s. 13 of the Act. Evidence relating to the topics identified in our s. 64(1)(c) order relates to personal and sensitive information about the Occupier that is extraneous to the issues that the Appeal Panel is now considering and these reasons for decision. Some of the personal and sensitive information about the Occupier may also be relevant to the discretion whether to make a termination order under the Act, or if making a termination order, to stay the operation of the order for a period. But sitting as we are as an appeal panel, with limited scope to determine contested facts, it is not feasible for this appeal panel to determine any of those issues as part of these appeal proceedings.

The next issue we consider is the Owner's appeal and the Occupier's appeal against order 1 made by the Tribunal on 10 March 2026, in each of the Tribunal proceedings under appeal.

Section 13 of the Act provides as follows:

“Agreements that are residential tenancy agreements

- (1) A "residential tenancy agreement" is an agreement under which a person grants to another person for value a right of occupation of residential premises for the purpose of use as a residence.
- (2) A residential tenancy agreement may be express or implied and may be oral or in writing, or partly oral and partly in writing.
- (3) An agreement may be a residential tenancy agreement for the purposes of this Act even though--
 - (a) it does not grant a right of exclusive occupation, or
 - (b) it grants the right to occupy residential premises together with the letting of goods or the provision of services or facilities.

Note: See section 8 for agreements that are not covered by this Act. Section 7 sets out premises not covered by this Act.

- (4) For the purpose of determining whether an agreement is a residential tenancy agreement, it does not matter that the person granted the right of occupation is a corporation if the premises are used (or intended for use) as a residence by a natural person.”

Section 3(1) of the Act provides:

"residential premises" means any premises or part of premises (including any land occupied with the premises) used or intended to be used as a residence.

A "residential tenancy agreement" (s. 3 of the Act) is a statutory form of tenancy. A "residential tenancy agreement," while not equivalent in all respects with a tenancy at common law, has, like a tenancy at common law, a similar duality of character that a tenancy at common law has throughout its term: that is, the parties to the residential tenancy agreement have a relationship which is shaped by rules reflecting both some of the ordinary principles of the law of contract and some of the ordinary principles of the law of property: see *Willmott Growers Group Inc v Willmott Forests Limited* (receivers and managers appointed) (in liq.) [2013] HCA 51; 251 CLR 592 on the duality of character of leases. The distinguishing feature of contractual relations, when compared to other legal relations, is that parties to a contract adopt legal relations based on the parties' agreement. To the extent that a residential tenancy agreement is a contract, the parties to it have the freedom to agree on the rent or related payments payable by a tenant to a landlord in return for a right of occupancy of "residential premises", but the freedom is subject to the restrictions imposed by Part 3 Division 2 of the Act. A residential tenancy agreement differs in some respects from a lease at common law, because, for example, an agreement granting a non-exclusive right of occupation, falls within the meaning of "residential tenancy agreement" such that a licence agreement may also fall within the ambit of the definition of "residential tenancy

agreement": s. 13(3)(a) of the Act.

The essential elements of a "residential tenancy agreement" are an agreement that:

Identifies the parties to the agreement;

Identifies the land or premises or part of the premises the subject of the agreement, and the land or premises or part of the premises, are to be used or intended to be used as a residence;

Enables the commencement and duration of the term to be clearly ascertained;

**Enables the rent, or the "value" from the tenant to the grantor, to be ascertained;
and**

Is an agreement which would otherwise fall within the definition of "residential tenancy agreement" and is not excluded by the exemptions provided for within the Act or provided for by regulation (see ss. 8 and 12 of the Act and the Residential Tenancies Regulation 2010 (NSW)).

The need for certainty about the duration of the residential tenancy agreement may sometimes cause difficulty in Tribunal proceedings. One of the reasons the Tribunal rejected the Owner's submission that there was a residential tenancy agreement was because "There was no discussion about the period of the agreement": see at [22.b] in the Tribunal's reasons. It may be useful to observe that while the existence of a periodic "residential tenancy agreement", may appear to infringe against the rule that the duration of the term must be ascertained, or be ascertainable, at the commencement of the residential tenancy agreement, such agreements can be treated in the same manner as a periodic tenancy at common law, as involving a succession of terms, which in retrospect are deemed under a legal fiction to have been part of the original term, so as not to infringe the said rule. (See A. Moore, S. Grattan and L. Higgs Australian Real Property Law 7th ed., Thomson Reuters at [14.60], in relation to periodic tenancies at common law). A periodic "residential tenancy agreement" need not arise purely on the basis of a discussion about the period of the agreement. A periodic "residential tenancy agreement" may arise in a number of ways, such as after a fixed term has expired (see s. 18 of the Act) or from express agreement or by implication, for example, from the manner in which rent is paid. It will normally be necessary, in determining whether the parties intended a periodic agreement to arise, or should be assumed to have intended a periodic agreement to arise, to consider all the surrounding circumstances.

Contrary to the Tribunal's finding on 10 March 2026 that there was no residential tenancy agreement in place, both parties to the appeal panel hearing, maintained, as they had done before the Tribunal below, that a residential tenancy agreement was in place. The evidence that was before the Tribunal (such as the Owner's text message about the tenancy agreement not being for the whole house, the oral evidence in Ms. Baker's supplementary witness statement that the Owner often referred to himself as the Occupier's 'landlord' and the Occupier as the 'tenant', and the Occupier's banking records showing the ongoing debit from her account for "rent") tends to suggest that both the Occupier and the Owner conducted themselves, or at least

regarded themselves, to be in the legal relationship of landlord/tenant, rather than being in an informal domestic arrangement. The Owner contended for a residential tenancy agreement that commenced in June 2022. The Occupier contended for a residential tenancy agreement that commenced in July 2024.

As to [17] in the Tribunal's reasons, it is true, as submitted by Ms. Tarleton that *Godecke v Kirwan* (1973) 129 CLR 629 is a vendor/purchaser case, but the case also contains dicta relating to the test whether there is a concluded agreement for lease capable of a specific performance decree, and it may be that the Tribunal was making an analogy by reference to those parts of *Godecke*. In any event, the Tribunal did nonetheless identify the essential elements of a residential tenancy agreement at [17] in its reasons. In our view, there was no error of law in the Tribunal's decision, insofar as the Tribunal determined the Owner's claim that there was a residential tenancy agreement made in June 2022.

The Tribunal was correct to reject the Owner's submission that a residential tenancy agreement was formed in June 2022. In our view, the fundamental reason why the Owner's submission should have been rejected was that his evidence did not establish any agreement. He had sent a text message on 18 June 2022 to the Occupier. The text message could have constituted an offer, for the purposes of the law of contract, but there was no acceptance of that offer by the Occupier. The Occupier's evidence was that she never received the text message. There was no evidence of any words or conduct on the Occupier's part to establish a final and unqualified expression of assent to the terms of the Owner's 18 June 2022 text message: *Tucker v Godfrey* (1862) 1 SR (NSW) (L) 292.

The Owner's submission that the payment of rent of \$50 per fortnight from July 2024 was "an eventual transfer of funds labelled as rent", is not, in our view, an assent by the Occupier to the terms of the Owner's offer. There was a significant gap in the parties' dealings. The Owner's offer was, it will be recalled, rent at \$150 per week, starting from the Monday after 18 June 2022. The amount of rent which the Occupier later paid in 2024 (\$50 per fortnight), and the passage of time between the June 2022 text message and the later payment by the Occupier of rent (July 2024), shows a non-correspondence of the purported acceptance with the offer. There was no evidence to suggest that the payment of rent of \$50 per fortnight from July 2024 referred back to the offer made in the 18 June 2022 text message. We do not accept that the Occupier's so-called "eventual" conduct means that the Tribunal should have found that there was an implied agreement between the Owner and the Occupier, of the sort contended for by the Owner.

Further, we do not agree with the Owner's submission that the Tribunal's decision, to reject the Owner's claim that there was a residential tenancy agreement made in June 2022, was not fair and equitable because it did not take into account the significant hardship the Owner was suffering by virtue of being a mortgagor, paying the mortgage over the Property, and the utilities for the Property, despite not living in the Property, and having to pay for his own alternative accommodation. Leave to appeal is not granted because of any overarching situation of unfairness and inequity in which a party finds itself as a consequence of the Tribunal's decision. The party seeking leave to appeal has to impugn a decision of the Tribunal, and

demonstrate that the appellant “may have suffered a substantial miscarriage of justice” on the basis, agitated for in this case by the appellant Owner, that the decision was not fair or equitable. The Tribunal’s decision that there was no residential tenancy agreement made in June 2022, does not involve a substantial miscarriage of justice. It is difficult to see how the Tribunal could ever have come to the conclusion that the Occupier impliedly accepted the 18 June 2022 offer by her “eventual” payment of a rent, more than two years later, in a very different amount, and at a different payment interval, to that proposed by the Owner.

We are not satisfied that there was an error of law by the Tribunal in dismissing Tribunal proceedings 2026/00040841. We are also not satisfied that there was a substantial miscarriage of justice or that there was an injustice which is reasonably clear warranting leave on the basis that the Tribunal decision under appeal was not fair or equitable. We refuse leave to appeal.

As to the Owner’s submission that the Tribunal should have made an order for possession of the premises, in favour of the Owner, as an “other person” (s. 187(1) of the Act) and even if the Owner is not the landlord under the residential tenancy agreement the Owner claimed was made between himself and the Occupier, we do not agree with that submission. Amongst other things, there are a number of facts that would have had to be determined before a possession order could be contemplated. Once the Tribunal had found there was no residential tenancy agreement, made its order under s. 64 of the NCAT Act, and then dismissed the balance of the proceedings before it, it is hard to see how the Tribunal could have made a possession order in favour of the Owner as an “other person”.

The Owner’s appeal was lodged outside the time when the appeal should have been lodged: cl 25(4)(b) of the Civil and Administrative Tribunal Rules 2014. The Owner’s notice of appeal should have been lodged within 14 days of the Owner being notified of the Tribunal’s decision.

The appeal panel has the power to grant an extension of the time for the lodgement of the notice of appeal: s. 41 of the NCAT Act. The principles applicable to our decision to grant an extension of time to lodge the notice of appeal are set out in *Jackson v NSW Land and Housing Corporation* [2014] NSWCATAP 22 at [22].

Applying these principles, in this case, the delay is lengthy and the Owner’s prospects of success on his appeal are low, for the reasons explained above. However, we accept Ms. Tarleton’s explanation, on behalf of the Owner, for the delay in lodging the notice of appeal, which was that the Owner had been exploring other legal avenues to attempt to regain possession of the Property in circumstances where the Tribunal had made its decision, rejecting the existence of any residential tenancy agreement between the Occupier and the Owner. On the issue of prejudice, we also accept that the Occupier had herself already lodged her own notice of appeal against the Tribunal’s decision of 10 March 2026. The Occupier’s notice of appeal squarely raised the question whether or not a residential tenancy agreement had been made between the Owner and the Occupier, so there was a substantial overlap in the two appeals and the Occupier’s appeal meant that it was likely that both the Occupier and the Owner would both have to appear at an appeal panel hearing to consider the question whether a residential tenancy agreement was made and

the other orders which the Occupier sought from the appeal panel. We have decided that it is appropriate to grant the Owner an extension of time to lodge the notice of appeal.

We turn next to the Occupier's appeal.

We refer again to the Tribunal's reasoning at [24] – [26] in its decision, (explained above in these reasons for decision) in deciding to reject the Occupier's claim that there was a residential tenancy agreement. The Tribunal's reasons show first, the importance to its reasoning process that the Occupier denied an agreement concluded in July 2024: see [24.(a)] in the Tribunal's reasons. Again, at [26] in the reasons, the Tribunal placed weight on the "extent of disagreement between the parties."

The mere fact that the Owner had "denied" the Occupier's claim of a verbal agreement, was not a sufficient basis for the Tribunal to reject the Occupier's case. Yes there was "disagreement" between the parties but the Tribunal had to resolve the disagreement on the evidence.

In her witness statement, the Occupier had in direct and clear terms, explained that in July 2024, there was a verbal agreement that she would pay rent of \$50.00 per fortnight. The Occupier gave evidence of the steps she took on the faith of that verbal agreement, such as establishing a direct debit and then paying the Owner \$50.00 for rent each fortnight, and on an ongoing basis. There does not appear to have been any cross-examination of the Occupier to challenge her evidence that a verbal agreement had been made between her and the Owner. It was central to the Occupier's case before the Tribunal that an oral agreement existed. The first order that the Occupier had sought in her application before the Tribunal was an order that an oral tenancy existed.

The Tribunal did not engage with the Occupier's evidence about the July 2024 verbal agreement, the steps taken to implement the agreement and the absence of any cross-examination of the Owner on the point. The Tribunal failed to respond to a substantial, clearly articulated case, based on established facts. In the Tribunal not responding meaningfully to this central element of the Occupier's case, there is an error of law in the Tribunal's decision in determining the Occupier's case, being one of the errors of law illustrated in *Unique Commercial Group Pty Ltd v Cusumano* [2024] NSWCATAP 204 at [25]-[40] esp. at [30]-[32].

At [24.(b)] in the Tribunal's reasons, the Tribunal accepted that the payment of rent could be indicative of a tenancy agreement but added "such payments can be made under "an informal sharing arrangement." However, the Occupier had, in clear terms in her witness statement, stated that she and the Owner had decided to "formalise our living arrangement" in around July 2024 and then made a verbal agreement. There was, it would appear, no cross-examination to challenge the Occupier on that evidence. The Tribunal did not engage with the Occupier's evidence about the decision to formalise the then-existing living arrangement. In the Tribunal not responding meaningfully to this element of the Occupier's case, there is an error of law in the Tribunal's decision in determining the Occupier's case. As mentioned above too, there was other evidence before the Tribunal (such as the Owner's text message about the tenancy agreement not being for the whole house, the Occupier's evidence in the supplementary witness statement

about how the Owner referred to himself and the Occupier as ‘landlord’ and ‘tenant’ respectively, and the Occupier’s bank records showing the payments of ‘rent’) tending to suggest that both the Occupier and the Owner conducted themselves, or at least regarded themselves, to be in the legal relationship of landlord/tenant, rather than being in an informal sharing arrangement. The payment of rent was not the only potential indicator of the existence of the legal relationship, of landlord and tenant under a residential tenancy agreement, that was before the Tribunal.

At [24.(c)] in the Tribunal’s reasons, the Tribunal stated that there was no evidence of exclusive occupation of part or all of the premises having been given to the Occupier by agreement of the parties. Under the Act, an agreement may still be a residential tenancy agreement even if the agreement does not grant a right of exclusive possession to part or all of the premises: s. 13(3)(a) of the Act. The Tribunal therefore appears to have misapplied the law and accordingly, made an error on a question of law: *Unique Commercial Group Pty Ltd v Cusumano* [2024] NSWCATAP 204 at [25]-[40]. We note too that there was evidence in this case that the Occupier’s bedroom in the premises had a deadbolt installed, which may lead to the inference that the Occupier did have a right of exclusive possession to part of the premises.

The Occupier has established errors of law by the Tribunal in its finding that there was no residential tenancy agreement concluded around July 2024. The Occupier’s appeal must be allowed. The Occupier’s application in the Tribunal will need to be remitted to the Tribunal for determination according to law.

No party sought a costs order and we make no order as to the costs of the appeal proceedings.

Orders

The Appeal Panel makes the following orders:

The application for the name of the appellant in proceedings 2026/00111719, and the name of the respondent in proceedings 2026/00231142, not to be published, but instead to be referred to by a pseudonym, is refused.

Pursuant to s. 64(1)(c) of the Civil and Administrative Tribunal Act 2013 (NSW), order that the parties to these appeal proceedings are prohibited from publishing the evidence provided by Ms. Baker as part of appeal panel proceedings 2026/00231142 and 2026/00111719 and in the documents lodged by Ms. Baker as part of appeal panel proceedings 2026/00231142 and 2026/00111719, relating to:

any medical conditions which Ms. Baker may be experiencing, or any disability which Ms. Baker may be experiencing;

the other legal proceedings, involving Ms. Baker and Mr. Rowell, which are referred to, beginning at p. 45 in the bundle of documents attached to Ms. Baker’s notice of appeal, and elsewhere in the written material Ms. Baker and Mr. Rowell relied upon in appeal panel proceedings 2026/00231142 and 2026/00111719.

Pursuant to s. 41 of the Civil and Administrative Tribunal Act 2013 (NSW), extend to 3 June 2026 the time for Mr. Rowell to lodge his notice of appeal in appeal proceedings 2026/00231142.

In appeal panel proceedings 2026/00231142, dismiss the appeal by Mr. Rowell against order 1 in Tribunal proceedings 2026/00040841 and to the extent that may be necessary, refuse Mr. Rowell leave to appeal against order 1 in Tribunal proceedings 2026/00040841.

In appeal proceedings 2026/00111719, the appeal is allowed against order 1 of the Tribunal's decision in Tribunal proceedings 2026/00060650.

Order 1 of the Tribunal's orders in Tribunal proceedings 2026/00060650 is set aside.

The proceedings are remitted to the Consumer and Commercial Division of the Tribunal for hearing and redetermination by a differently constituted Tribunal on such evidence as the parties file and serve in accordance with the directions and orders that become applicable for that hearing.

There is no order as to costs of appeal panel proceedings 2026/00231142 and 2026/00111719.

I hereby certify that this is a true and accurate record of the reasons for decision of the Civil and Administrative Tribunal of New South Wales.

Registrar

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