

AUSTRALIA / JUDGMENT

El-Azzi v Bahsa

[2026] NSWCATAP 45**COURT**

Civil and Administrative Tribunal

DECIDED

18 February 2026

BEFORED Goldstein, Senior Member
Dr K M George, Senior Member**CASE / FILE NUMBER**

2025/00143817

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Civil and Administrative Tribunal New South Wales

Medium Neutral Citation:	El-Azzi v Bahsa [2026] NSWCATAP 45
Hearing dates:	20 August 2025, 13 November 2025 and 28 January 2026
Date of orders:	18 February 2026
Decision date:	18 February 2026
Jurisdiction:	Appeal Panel
Before:	D Goldstein, Senior Member Dr K M George, Senior Member
Decision:	(1) Mr J. El-Azzi is granted leave to amend his Notice of Appeal to rely on one ground of appeal, a failure to provide procedural fairness (2) The Appeal is dismissed
Catchwords:	APPEALS - Amendment
Legislation Cited:	Civil and Administrative Tribunal Act 2013 Residential Tenancies Act 2010
Cases Cited:	Stevanovski v CLK Plumbing Pty Ltd [2017] NSWCATAP 180
Texts Cited:	None cited
Category:	Principal judgment
Parties:	Joe El-Azzi (Appellant) Adel Bahsa (First Respondent) Mary Sultana (Second Respondent)

Representation:

Solicitors:	CH-Earnest (Appellant) Mr P Ahearn – Agent (Respondents)
File Number(s):	2025/00143817
Publication restriction:	Nil Decision under appeal
Court or tribunal:	Civil and Administrative Tribunal
Jurisdiction:	Consumer and Commercial Division
Citation:	N/A
Date of Decision:	3 April 2025
Before:	P Lewis, General Member
File Number(s):	2024/394951 and 2024/423649

REASONS FOR DECISION The appellant appeals against a decision given on 3 April 2025 in two residential tenancy matters. The appellant was the landlord, and the respondents were the tenants under a residential tenancy agreement. The Tribunal Member described the issues in the proceedings before him as being: do the respondents owe rent and an unpaid water bill to the appellant; and is compensation payable by the appellant to the respondents. Ultimately the Tribunal member found that the respondents owed the appellant \$5,834.97 and that the appellant owed the respondents \$8,700.00. After deducting the amount owed by the respondents to the appellant, the Tribunal member found that the appellant owed the respondents \$2,865.03. An order in their favour in that amount was made. The appellant appeals against that order. We find that the appeal was made within the required time. The appellant's grounds of appeal were: '1 - The decision for the compensation is based on assumption and not evidence as per section 26. The GUTTERS were not leaking inside the house. 2 - The tenant has access to the trades men and contacted them directly and all urgent repairs were dealt with in a promptly matter.

3. - The tenant had the ventilation panels blocked, the fan off and the windows closed in the bathroom and in the house. 4 - The tenant has vacated after the tribunal orders were made and left with damages and arrears.' The Notice of Appeal indicated that the appellant applied for leave to appeal. because the Tribunal decision was not fair and equitable, was against the weight of evidence and because significant new evidence was now available that was not reasonably available at the time of the hearing. In their Reply to Appeal the respondents stated: 'THE LANDLORD HAS NOT PUT FORWARD ANY GROUNDS FOR LEAVE TO APPEAL.' For various reasons, the parties applied and obtained adjournments of the appeal hearing. Nothing turns on that. At the hearing we granted leave for the parties to be represented. We decided that it was an appropriate order to make because the parties were clearly unable to present their respective cases due to issues regarding health and/or literacy in English as a second language. At the hearing on 28 January 2026 the solicitor for the appellant applied to

amend the appellant's grounds of appeal to refer to one ground only, namely that the appellant was denied procedural fairness because the Tribunal member denied his request for an adjournment made at the hearing. The respondents opposed the application. Despite the respondents' opposition to the appellant's application to amend, we will allow the application because the substance of the application relates to matters which were discussed at the hearing where the respondents were represented by Mr Ahearn of the Southern Sydney Tenants' Advice & Advocacy. In addition, in our view the new ground of appeal must be considered by reference to the transcript of the hearing which was filed in the Appeal Panel on behalf of the respondents by Ms Sut of the Southern Sydney Tenants' Advice & Advocacy service. These two factors lead us to conclude that the respondents will not suffer prejudice as a result of the amendment because first, their representative at the appeal hearing was present at the first instance hearing and therefore is in a position to know from his own knowledge what occurred. Secondly, the transcript was prepared on behalf of the respondents. Their representative at the appeal hearing had ready access to it. We will make an order that the appellant has leave to amend his Notice of Appeal to rely on a single ground of appeal, namely: 'Denial of procedural fairness due to the refusal of a request for an adjournment for the purpose of cross examining the agent who signed the condition report tendered at the hearing.' Section 80(2) of the Civil and Administrative Tribunal Act 2013 ('CAT Act') states: 'Any internal appeal may be made:

- (a) in the case of an interlocutory decision of the Tribunal at first instance—with the leave of the Appeal Panel, and
- (b) in the case of any other kind of decision (including an ancillary decision) of the Tribunal at first instance—as of right on any question of law, or with the leave of the Appeal Panel, on any other grounds.' We accept that an assertion that there was a denial of procedural fairness is a question of law which may be raised as of right. It was conceded on behalf of the respondents that it was during the hearing on 3 April 2025 that an ingoing condition report was given to the Tribunal Member by the respondents. We have examined the transcript of the hearing filed by the respondents. After the report was provided during the cross examination of Mr Bahsa, Mr Ahearn stated that the tenants' copy was signed by the agent, who ceased acting for the appellant shortly after signing the report. This led to the appellant's solicitor agreeing to the report going into evidence when he stated: 'Mr Arraj: I will, say, I'm agreeable to tendering it on the basis that I don't know about the authenticity of this document but I'm happy to submit it.' Shortly afterwards after discussing the condition report and its lateness the following exchange occurred: 'Mr Arraj: I'm about to head on things that I need to attend to, unfortunately member. I think, I mean I did allocate 3 hours plus travel time. I've now been presented with a report that I can't verify any shape or form of authenticity, and I would like the opportunity to be able to verify it, on the basis of I can't Member: How would you verify it? Mr Arraj: I would like to have the agent come in, to give evidence. Member: So is that an indirect request for an adjournment? Mr Arraj: That's correct. Member: Really.' After this exchange there was discussion of the appellant's position as regards the report and the fact that the hearing time allocated to the proceedings, which

were part heard, was coming to the end. At one point the Tribunal member suggested that the report might be tendered as evidence of the fact that it was given to the respondents, but not as evidence of the truth of its content. After discussion between the appellant's solicitor and the Tribunal Member the following exchange occurred: 'Member: Can I ask Mr Ahearn, is that a clean copy of the condition report without any later markings, any writings or. Mr Ahearn: (UNCLEAR 3:04:44) Member: It's a nice clean copy Mr Ahearn: Yep, as I understand Member, it's not my copy, it's the Tenants' copy. Member: What I can do for you is, Mr Arraj: (UNCLEAR 3:05:03), on this basis, if I can just make Member: Well, what would you say, I can get a photocopy of it. And I can follow up, make your own inquiry, I'm not going (UNCLEAR 3:05:17) Mr Arraj: If I can look at it and make a proceed. I just took a look at it and I'm happy to proceed (UNCLEAR 3:05:21)' The cross examination of Mr Bahsa continued on the condition report, and generally. As regards the condition report, Mr Bahsa stated that he couldn't read the report which his representative stated was due to literacy issues. Mr Bahsa's evidence in cross examination was, among other things, that he was told that that the appellant would 'fix' certain things. Although the production of the condition report by the respondents during the course of the hearing was unsatisfactory, we find that the appellant's solicitor, having the opportunity to consider his position after requesting an adjournment in an indirect way, decided that he could proceed by continuing the cross examination of Mr Bahsa on the condition report. The Tribunal member referred to the condition report in his Reasons for Decision as being given to him: 'to receive in evidence by agreement between the parties' We find that such a statement was justifiable given the appellant's solicitors agreement to the tender of the condition report. The Tribunal member's reasons concerning the respondent's compensation claim turned on his acceptance of the respondent's evidence. The Tribunal member stated: 'Having heard the oral evidence of Mr El Azzi and Mr Bahsa, where their evidence on a particular point about the condition of the property or it's maintenance conflicts, I prefer the evidence of Mr Bahsa because of his demeanour and credibility relative to that of Mr El Azzi In *Stevanovski v CLK Plumbing Pty Ltd* [2017] NSWCATAP 180 the Appeal Panel stated at [30] – [31]: 'That there has been a denial of procedural fairness does not necessarily mean that the appellant succeeds on this appeal. If it were to be concluded by the Appeal Panel that the denial of procedural fairness made no difference to the outcome of the proceedings, the appeal on that ground would be dismissed (*Re Refugee Tribunal; Ex parte Aala* (2000) 204 CLR 82; [2000] HCA 57 at [4], Gleeson CJ. All that the appellant needs to show in order to succeed on the appeal because of a denial of procedural fairness is that the denial deprived him of the possibility of a successful outcome. In order to negate that possibility it would be necessary for the Appeal Panel to find that a properly conducted application could not possibly have produced a different result (*Stead v State Government Insurance Commission* (1986) 161 CLR 141 at 145 and 147; [1986] HCA 54).' Determination of the appeal Because the appellant's solicitor, after seeking an adjournment for the purposes of cross examining the agent who signed the condition report, elected to proceed with the cross examination of the respondent Mr Bahsa and cross examine on the condition report, we find that there was no denial of procedural fairness by the Tribunal. The appellant was legally represented and elected to continue with

his cross examination rather than to press for the adjournment. If we are wrong in the finding in the preceding paragraph, we find that the cross examination of the agent would not have made a difference to the outcome because the Tribunal member did not rely on the condition report in finding for the respondents on their compensation claim which was based on ss52 and 63 of the Residential Tenancies Act 2010 (NSW). He preferred the oral evidence of Mr Bahsa. In addition, the respondents relied on evidence other than that which was in the condition report in support of their claims. For the reasons provided we will make an order dismissing the appeal.

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 DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated. Decision last updated: 18 February 2026

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Prepared on 25 October 2026 · Esheria