

AUSTRALIA / JUDGMENT

Kennedy v Caldareri

[2026] NSWCATAP 282**COURT**

Civil and Administrative Tribunal

DECIDED

04 September 2026

BEFORE

G Sarginson, Deputy President

CASE / FILE NUMBER

2026/00284159

Source: caselaw.nsw.gov.au · Research copy typeset by Esheria. Not court-issued or certified.

Source record

Civil and Administrative Tribunal New South Wales

Medium Neutral Citation: Kennedy v Caldareri [2026] NSWCATAP 282**Hearing dates:** 18 August 2026**Date of orders:** 4 September 2026**Decision date:** 04 September 2026**Jurisdiction:** Appeal Panel**Before:** G Sarginson, Deputy President

Decision: (1) The name of the respondent is amended from “Charles Caldereri” to “Charles Caldareri.”
(2) Leave to appeal is refused.
(3) Appeal dismissed.

Catchwords: LEASES AND TENANCIES – Residential Tenancies Act 2010 (NSW) – state of repair of premises – loss of amenity – assessment of compensation – significant new evidence not reasonably available at hearing – no error on a question of law or grounds for leave to appeal established

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)
Civil and Administrative Tribunal Rules 2014 (NSW)
Residential Tenancies Act 2010 (NSW)
Residential Tenancies Regulation 2019 (NSW)

Cases Cited:	Alexandria Landfill Pty Ltd v Transport for NSW (2020) 103 NSWLR 479; [2020] NSWCA 165 Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321; [1990] HCA 33 Azzopardi v Tasman QEB (1985) 4 NSWLR 139 at 155 BHP Billiton Ltd v Dunning [2013] NSWCA 421 Bimson, Roads & Maritime Services v Damorange Pty Ltd [2014] NSWSC 734 Bringinshaw v Bringinshaw (1938) 60 CLR 366; [1938] HCA 34 Collins v Urban [2014] NSWCATAP 17 Donohoe v Albulario [2025] NSWSC 9 Ellery v Commissioner of Police, NSW Police Force [2023] NSWCATAP 237 Halil v NSW Land and Housing Corporation [2023] NSWCATAP 72 Halil v NSW Land and Housing Corporation (No 2) [2023] NSWCA 1646 Hawkins v NSW Land and Housing Corporation [2026] NSWCATAP 121 Higgins v Commissioner of Police NSW Police Force [2025] NSWCATAP 31 Hu v Pender [2017] NSWCATAP 177 Jackson v NSW Land and Housing Corporation [2014] NSWCATAP 22 Kirk v Industrial Relations Commission of New South Wales (2010) 239 CLR 531; [2010] HCA 1 Kostas v HIA Insurance Services Pty Ltd (2010) 241 CLR 390; [2010] HCA 32 Lin v Westerman [2025] NSWCATAP 319 New South Wales Land and Housing Corporation v Orr (2019) 100 NSWLR 578; [2019] NSWCA 231 Noorishoja v Ayla Holdings Pty Ltd [2026] NSWCATAP 33 O'Brien v Women's Housing Company Limited [2026] NSWCATAP 3 Orr v Cobar Management Pty Ltd [2020] NSWCCA 220 Re Refugee Review Tribunal; Ex parte Aala (2000) 204 CLR 82; [2000] HCA 57 Resource Pacific Pty Ltd v Wilkinson [2013] NSWCA 33 Ros v Commissioner of Police [2020] NSWCATAP 70 Ryan v BKB Motor Vehicle Repairs Pty Ltd [2017] NSWCATAP 39 Starr v Johnson [2023] NSWCATAP 190 The Owners - Strata Plan No 2661 v Selkirk [2024] NSWSC 760 TNT Building Trades Pty Ltd v Baker [2023] NSWCATAP 178 Unique Commercial Property Group Limited v Cusumano [2024] NSWCATAP 204 Waterford v Commonwealth (1987) 163 CLR 54; [1987] HCA 25 Williams v Wang [2025] NSWCATAP 314 Wollondilly Shire Council v Styles [2024] NSWCATAP 104
Texts Cited:	None cited
Category:	Principal judgment
Parties:	Catherine Kennedy (Appellant) Charles Caldareri (Respondent)
Representation:	Appellant (self-represented) Respondent (self-represented)
File Number(s):	2026/00284159
Publication restriction:	Nil Decision under appeal
Court or tribunal:	Civil and Administrative Tribunal

Jurisdiction:	Consumer and Commercial Division
Citation:	Not applicable
Date of Decision:	26 June 2026
Before:	D Ash, General Member
File Number(s):	2026/00103521

REASONS FOR DECISION

This is an internal appeal under s 80 of the Civil and Administrative Tribunal Act 2013 (NSW) (NCAT Act) from a decision of the Consumer and Commercial Division of the Tribunal dated 26 June 2026 in a dispute under the Residential Tenancies Act 2010 (NSW) (RT Act).

The decision under appeal involves an application by a residential tenant against the landlord for compensation, a rent reduction, and repairs. The Tribunal made an award of compensation of \$750 and a repair order of limited scope. The remainder of the tenant's claims were dismissed.

Written reasons were provided by the Tribunal.

The Notice of Appeal was lodged on 10 July 2026. The appeal has been lodged within the requisite time period under r 25(4)(b) of the Civil and Administrative Tribunal Rules 2014 (NSW) (NCAT Rules).

In this decision, the appellant is referred to as “the tenant” and the respondent is referred to as “the landlord.”

The Notice of Appeal contains a typographical error in the landlord's name, which has been corrected in this decision and its orders.

Background

The landlord self-manages the residential property the subject of the dispute, although he had a licensed real estate agent, Mr Rupolo, assist him in advertising the property. He also obtains advice from time to time from Mr Rupolo. Mr Rupolo attended the appeal hearing, but did not speak on behalf of the landlord nor was granted leave to represent the landlord in the appeal proceedings under s 45 of the NCAT Act.

The residential tenancy agreement between the parties commenced on or about 8 October 2024. The residential premises is a 3 bedroom house in a suburb of inner-west Sydney. The rent is \$820 pw. The tenancy remains on foot. The landlord asserts there are significant rent arrears and in the Reply to Appeal provided a copy of a money order of the Tribunal dated 9 July 2026 in the amount of \$12,502 for rent arrears to 8 July 2026.

On 12 March 2026, the tenant commenced the Tribunal proceedings that are the subject of this appeal.

The tenant relevantly sought the following orders:

Rent reduction from \$820 pw to \$720 pw until repairs to “air conditioner, leaking dwelling and dwelling porch/roofs” completed.

A further rent reduction to \$500 pw for an unspecified period due to “landlord’s non address and retaliatory eviction notice” and “health/safety hazards-dilapidated kitchen cupboards/tiles, clothesline, retaining wall, rear gate, windows & locks”.

Repairs to premises.

The application also referred to seeking “compensation” and that a notice to terminate issued by the landlord was retaliatory under s 115 of the RT Act.

The matter was listed for final hearing at the Tribunal on 19 June 2026.

Although neither party provided a sound recording or transcript of the hearing, the tenant stated that she provided documents and submissions to the hearing of 143 pages. A copy of those documents were provided in this appeal. The tenant also seeks to rely upon new documents that were not before the Tribunal. Those new documents will be referred to later in the decision.

Decision Under Appeal

The Tribunal’s orders and reasons are summarised as follows:

Landlord to pay the tenant compensation for “the back porch” in the amount of \$750.

Repairs to the plaster in the ceiling of a bedroom.

Completion of the “additional works referred to in the email of ACGS Project Pty Ltd...dated 23 March 2026 together with any regular maintenance or repairs now due for the air conditioning unit”.

Balance of tenant’s claims are dismissed.

The decision commenced with the following statement:

“A tenant of residential premises seeks a work order, a rent reduction order &/or an order for compensation in relation to a number of items.”

The Tribunal stated the repair “issues” the tenant relied upon arose:

“...from late September 2024...A roof issue was raised upon the January 2026 rain and this was the impetus for the current matter. While the tenant presses each of the six matters, her particular grievances are Issues 4 and 5”.

The six repair issues that were clearly raised by the tenant were as follows:

Stove

Back porch roof

Hot water system

Bedroom ceiling leak

Air Conditioning

Kitchen cabinetry and plumbing

Of those issues the Tribunal found as follows:

Stove

The stove was replaced by the landlord on 11 October 2024. The Tribunal accepted the tenant had complained to the landlord about the performance of the stove early during the tenancy, although no finding was made whether it was “days” or “weeks” into the tenancy. However, the Tribunal accepted that the landlord had provided a two week rent credit, which “addressed” and “dealt with the tenant’s claim for compensation or a rent reduction.

In respect of any claim for compensation under s 187(1)(d) of the RT Act, the Tribunal stated that the tenant had a limitation period of 3 months to bring proceedings in the Tribunal, unless time was extended under s 41 of the NCAT Act. The Tribunal was not satisfied that time should be extended.

Back Porch Roof

The Tribunal found that, from the commencement of the tenancy, there was “a gap between the house proper and the sheeting for the back porch which allowed rain onto the porch which affected amenity particularly during heavy rain.”

The back porch roof was satisfactorily repaired by the landlord on 5 March 2026.

The tenant “reported it a number of times” until February 2025, and in January 2026 had informed the landlord that she had obtained a quotation from a licensed roofer to “make good the landlord’s earlier attempt to address the issue”.

In respect of loss of amenity, although “amenity was clearly impacted during heavy rain,” there was “little in the way of evidence as to want of use” and “the major concern of the tenant was not want of use, but the failure of the landlord to address the issue in a manner satisfactory to the tenant.”

The Tribunal found there were no complaints by the tenant to the landlord regarding repairs to the back porch roof in the period from May 2025 to January 2026.

The Tribunal awarded the tenant “compensation” of \$750 for the loss of amenity to the back porch roof, for the 3 month period between 12 December 2025 and 12 March 2026. The Tribunal was not prepared to extend time beyond that 3 month period in circumstances where the tenant had been aware of the breach by the landlord regarding the condition of the roof affecting the back porch since the commencement of the tenancy, but had not taken Tribunal proceedings until 12 March 2026.

Hot Water System

The Tribunal found the hot water system was replaced on 16 October 2024. No compensation or rent reduction was awarded, as the rent credit given by the landlord in October 2024 was sufficient.

Bedroom Ceiling Leak

The Tribunal referred to the landlord’s evidence of an email from “a roofer” dated 7 June 2026 that set out an inspection and work to the roof. That work involved replacing a broken tile, cleaning out gutters, and sealing visible cracks. The email stated the roof was in “good condition.”

The Tribunal stated that the tenant had asserted the email was “untruthful and incorrect.” The Tribunal was not satisfied that the email and the information contained in the email was incorrect.

The Tribunal found the roof was repaired on 5 March 2026. However, there was unrepaired holes and discolouration in the ceiling occasioned by water leaking from the roof prior to 5 March 2026.

The Tribunal made a repair order in respect of the ceiling, and commented that, notwithstanding the landlord had asserted the tenant had previously denied access for repairs (which the tenant had denied), the order was “patently for the benefit of both parties.”

The Tribunal found that the tenant had not informed the landlord of the leaking roof until January 2026. Earlier reports to the landlord were about the porch roof leak and the state of disrepair of the air-conditioning. On 30 January 2026, a roofer engaged by the landlord had attended; there has been a dispute; and subsequently the tenant had engaged her own roofer to attend the premises.

The Tribunal was not satisfied the tenant had established an entitlement to compensation or a rent reduction in circumstances where the tenant had “refused access to roofers from at least 30 January” until the repairs were conducted on 5 March 2026.

Air Conditioning

The Tribunal found the landlord engaged a technician to conduct work on the air conditioning system in late 2024. On 11 December 2024, a filter was replaced. However, due to the conduct of the tenant and the tenant's failure to allow unfettered access the repair works had not been completed.

The Tribunal made a work order for repairs to the air conditioning system. However, it found:

"...the tenant is not entitled to any compensation or a rent reduction. On the face of things, the landlord has been ready, willing and able to perform the work. Like the ceiling, the making of a work order operates to encourage and protect both parties. It is the...only reasonable remedy."

Kitchen Cabinetry & Plumbing

The Tribunal stated that the "state of the cabinetry" was raised with the landlord in 2024, but was not "pressed much" since then.

In respect of plumbing, the Tribunal stated that tenant raised plumbing issues "from time to time." The Tribunal referred to an invoice of a plumber engaged by the landlord dated 12 March 2026 where taps in the kitchen and bathroom were replaced.

The Tribunal was not satisfied the tenant had proved that the landlord had breached his obligations under ss 63 and 65 of the RT Act in respect of the condition of the kitchen cabinetry and the plumbing.

General Comments

The reasons refer to the "heated" dispute between the parties since the commencement of the tenancy and the "sense of deep disagreement" between the parties. The reasons also refer to the tenant forming a view that the landlord had engaged "unqualified or rude people" to perform repairs and the tenant's subjective belief that she could refuse access or engage her own tradespersons "not always, but from time to time."

The Tribunal's reasons did not address the tenant's claim under s 115 of the RT Act. It appears that issue was to be separately determined with the landlord's termination application. The landlord's proceedings were considered separately and are not the subject of the decision under appeal.

Conduct of the Appeal

The landlord lodged a Reply to Appeal with the Appeal Registry on 27 July 2026.

The tenant lodged a large volume of documents.

The tenant's documents were (a) a 143 page bundle lodged on 12 May 2026; and (b) a 27 page bundle lodged on 11 June 2026. A further copy of the 27 page bundle was lodged on 5 August 2026. As discussed previously, the tenant also attached documents and submissions to the Notice of Appeal. Over 95 pages of material were attached to the Notice of Appeal.

No sound recording and transcript of the hearing were provided by the tenant. The procedural directions made at the Call Over of the appeal 29 July 2026 by Blake PM make clear that if what occurred at the hearing is being relied upon by the appellant, the appellant must provide with the appeal documents and submissions a sound recording of the hearing and a typed copy of the relevant parts.

The tenant stated that due to technical difficulties with her computer, she could not download the sound recording of the hearing and prepare a transcript.

The landlord's appeal submissions were lodged on 16 July 2026. They are constituted by a 1.5 page submission and a copy of an Appeal Panel decision involving the tenant from 2022.

Both parties were ready to proceed and neither party sought an adjournment. The appeal hearing was challenging. The Appeal Panel carefully, and repeatedly, explained to the parties that the grounds of appeal did not warrant a new hearing under s 80(3) of the NCAT Act and that this was an appeal where the tenant bore the onus of establishing either (a) an error on a question of law in the decision or the way the hearing was conducted; and/or (b) that leave to appeal should be granted.

Despite that, both parties (but predominantly the tenant) saw fit to engage in venomous personal criticism and accusations against each other. In particular, the oral submissions of the tenant (which reflected her copious written submissions) deployed repetitive strident language. The landlord, Mr Rupolo, and tradespersons engaged by the landlord were accused repeatedly of dishonesty and harassment. The scope of the alleged dishonesty extended to the landlord putting "false documents" before the Tribunal.

The tenant also insinuated that the Tribunal Member had not independently determined the proceedings based on alleged comments made by the Member at the hearing. However, as discussed previously, no sound recording or transcript was provided, nor was a ground of appeal identified of actual or apprehended bias.

Both parties submissions sought to re-argue the case below and describe their tenancy dispute generally, rather than focussing upon whether there was an error on a question of law or grounds for leave to appeal.

The Appeal Panel acknowledges that tenancy disputes can be emotionally charged and that self-represented litigants can have difficulty focussing upon the real legal issues in dispute.

However, it is inconsistent with the obligations of parties under s 36(3) of the NCAT Act to use an appeal hearing (or a Tribunal hearing at first instance) to make unfounded serious accusations against another party, or otherwise as an opportunity to emote subjective grievances and beliefs employing colourful language that only clouds the identification and resolution of the real legal issues in dispute. In the proceedings at first instance, the critical issues involved the state of repair of the premises, in the context of what the landlord knew, or should reasonably have known, about the need to repair the premises.

The Appeal Panel accepts that the applicant has a genuine belief that the landlord and persons acting with or on behalf of the landlord have behaved with mendacity. However, the documentary evidence provided by the tenant in the appeal does not establish the serious allegations made, nor has the tenant provided a transcript and a sound recording of the evidence of the hearing. It is easy to make serious allegations, but they require clear and compelling evidence for grave legal findings to be made (*Bringinshaw v Bringinshaw* (1938) 60 CLR 366; [1938] HCA 34).

Grounds of Appeal

The grounds of appeal, as elaborated upon in the written submissions, are prolix. As the tenant is a self-represented litigant, the grounds need to be considered in substance, although not to the extent of denying procedural fairness to the other party or otherwise inventing a ground of appeal that has not been raised.

The Appeal Panel is not required to undertake a partisan analysis of lengthy, unstructured assertions and misconceptions with a view to ensuring a self-represented litigant has not missed some arguable point. Rather, the task is to “fairly and justly identify the nub of what was sought to be argued” (*Halil v NSW Land and Housing Corporation (No 2)* [2023] NSWCA 1646 at [62]-[63] and the authorities discussed therein). The grounds of appeal are summarised as follows, without reference to the derogatory comments directed to the landlord:

Failure to consider tenant’s evidence and arguments.

“Insufficient compensation” for non-use of back porch and bedroom 3.

Inadequate reasons.

Insufficient time provided at the hearing to address issues.

Decision against the weight of evidence.

Significant new evidence now available that was not available at the hearing, being text messages from the previous tenants who complain about the state of repair of the premises during the period of their tenancy, and the landlord’s inaction.

Scope and Nature of Appeals

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

An appeal under s 80(1) of the NCAT Act from a final Tribunal decision is focussed upon whether the appellant has established an error on a question of law; or otherwise (if leave to appeal is sought) leave to appeal is granted based upon the evidence and submissions before the Tribunal and the manner in which the Tribunal hearing was conducted. In certain circumstances, fresh or further evidence can be admitted (*Ros v Commissioner of Police* [2020] NSWCATAP 70 at [29]-[43]).

The Appeal Panel has a discretion to conduct a new hearing if grounds of appeal warrant it (s 80(3) NCAT Act). In this matter, no application was made under s 80(3) of the NCAT Act. In any event, the grounds of appeal do not warrant a new hearing under s 80(3) of the NCAT Act.

An appeal is not simply an opportunity for a dissatisfied or aggrieved party to re-argue the case they put at first instance: *Ryan v BKB Motor Vehicle Repairs Pty Ltd* [2017] NSWCATAP 39 at [10].

Error on a Question of Law

What is an error on a question of law was extensively discussed by the Appeal Panel in *Unique Commercial Property Group Limited v Cusumano* [2024] NSWCATAP 204 (Cusumano) at [25]-[40]. An error on a question of law is an appeal made as of right and does not require leave. A mixed error of fact and law requires leave to appeal.

In Cusumano at [33], the Appeal Panel stated the categories of questions of law are “not closed”; and at [37] stated:

“[37] What constitutes a question of law is vexed and context dependent in the sense that the distinction between matters of fact and of law may turn on the circumstances in which the question arises: Targeted Property Investments Pty Ltd v Look Up Technologies Pty Ltd (No 2) [2023] NSWSC 416 at [33(4)], citing Thomas and Naaz [2023] NSWCA 40 at [52] and Da Costa v The Queen (1968) 118 CLR 186 at 194; [1968] HCA 51.”

It is unnecessary for the purpose of this decision to set out all the examples of an error on a question of law that were discussed in Cusumano.

However, an error on a question of law may arise in the circumstances including the following:

Failure to provide procedural fairness at the hearing (*Donohoe v Albulario* [2025] NSWSC 9 at [36]-[39]; *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531; [2010] HCA 1 at [60]; *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82; [2000] HCA 57 at [41] (Gleeson CJ), [142] (Kirby J) and [170] (Hayne J));

No jurisdictional power to make an order (*Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82; [2000] HCA 57; at [163] (Hayne J));

A constructive failure to exercise jurisdiction, in the sense of a failure to consider a “substantial, clearly articulated argument relying upon established facts” that was within the jurisdiction of the Tribunal to determine (see e.g. *Alexandria Landfill Pty Ltd v Transport for NSW* (2020) 103 NSWLR 479; [2020] NSWCA 165 at [8]-[12] and [413]; *Resource Pacific Pty Ltd v Wilkinson* [2013] NSWCA 33 at [1] and [9]).

Applying the wrong legal principle (identified in isolation to the factual findings) which materially affected the outcome (*Bimson, Roads & Maritime Services v Damorange Pty Ltd* [2014] NSWSC 734 at [38]-[53] (*Bimson*)). However, the wrong application of the correct legal principles to the facts is an error of mixed fact and law for which leave to appeal is required under s 80(2)(b) of the NCAT Act (*TNT Building Trades Pty Ltd v Baker* [2023] NSWCATAP 178 at [42]-[43] and the authorities cited therein).

Making a factual finding where there was no evidence at all to substantiate the factual finding: *Kostas v HIA Insurance Services Pty Ltd* (2010) 241 CLR 390; [2010] HCA 32 at [91] per Hayne, Heydon, Crennan and Kiefel JJ. However, a wrong finding of fact does not amount to an error of law: *Waterford v Commonwealth* (1987) 163 CLR 54; [1987] HCA 25 per Brennan J; *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321; [1990] HCA 33 at [83]-[89]. An erroneous finding of fact, including the drawing of an inference or the erroneous failure to find a fact or failure to draw an inference, which is perverse in the sense that it is contrary to the overwhelming weight of the evidence, is not an error of law: *Azzopardi v Tasman QEB* (1985) 4 NSWLR 139 at 155 per Glass JA.

Leave to Appeal

The circumstances in which the Appeal Panel may grant leave to appeal from decisions made in the Consumer and Commercial Division are limited to those set out in cl 12(1)(a)-(c) 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:

The decision of the Tribunal under appeal was not fair and equitable; or

The decision of the Tribunal under appeal was against the weight of evidence; or

Significant new evidence has arisen (being evidence that was not reasonably available at the time the proceedings under appeal were being dealt with).

In *Collins v Urban* [2014] NSWCATAP 17 (*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 the appellant establishes that it may have suffered a substantial miscarriage of justice in the sense explained above, the Appeal Panel retains discretion whether to grant leave under s 80(2) of the NCAT Act. The appellant must demonstrate something more than the Tribunal was arguably wrong (*BHP Billiton Ltd v Dunning* [2013] NSWCA 421 at [19] and the authorities cited therein).

The discretion to grant leave to appeal was discussed by the Appeal Panel in *Collins v Urban* at [82]-[84]. It is usually appropriate to grant leave only in those matters that involve issues of principle; questions of general public importance; an injustice which is reasonably clear, in the sense of going beyond what is merely arguable; or the Tribunal has 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, it would be in the interests of justice for it to be reviewed.

Consideration

The principles regarding the obligations of a landlord under the RT Act regarding the state of repair of premises has been considered and discussed in many Appeal Panel decisions.

In *Williams v Wang* [2025] NSWCATAP 314 (Wang) the Appeal Panel stated at [45]:

“[45] It is well established that:

- (1) Provided Tribunal proceedings were filed before the end of the tenancy, a failure of a landlord provide premises fit for habitation, or to keep and maintain premises in a state of good repair, may provide the basis for a finding that the rent is excessive, and a reduction in rent ordered under s 44(1)(b) of the RT Act (e.g. *Roberts v NSW Aboriginal Housing Office* [2017] NSWCATAP 9 (Roberts) at [111]-[124]; *A L Lindsay & Co Pty Ltd v Stickel* [2023] NSWCATAP 195 (Stickel). Orders under s 44(1)(b) of the RT Act cannot be made for a period exceeding 12 months (s 44(6) RT Act)).
- (2) A tenant can also separately claim compensation or damages under ss 187(1) and 190 of the RT Act for a landlord's breach of its obligation to keep and maintain premises in a state of good repair; or provide premises fit for habitation; or fail to provide quiet enjoyment. That can include damages or compensation for goods or belongings of a tenant damaged by mould (e.g. *Yang v NSW Land and Housing Corporation* [2016] NSWCATCD 37 at [63]).
- (3) If a claim for damages or compensation is made under ss 187(1) and 190 of the RT Act, that claim is subject to applicable limitation provisions in Reg 39(9) of the Residential Tenancy Regulation 2019 (NSW) (RT Regulation). That limitation period can be extended under s 41 of the RT Act.
- (4) If there is a rent reduction under s 44(1)(b) of the RT Act and an award of compensation or damages under s 187(1) of the RT Act, the Tribunal must be careful not to 'double compensate' (*Makowska v St George Community Housing Ltd* [2021] NSWSC 287). However, there is discretion regarding the assessment of an appropriate remedy, with loss of amenity (including loss of the use and enjoyment of the premises) an important consideration (Stickel at [107]-[108]). Damages can also be awarded in a lump sum amount for distress, anxiety, and inconvenience (e.g. *Hyndes v Maddak Pty Ltd* [2021] NSWCATAP 302).”

The principles applicable to the landlord's scope of duty to keep and maintain premises in a reasonable state of repair having regard to the rent payable, age of the premises and life expectancy of the premises are discussed in Wang at [46]-[55]. The duty of the landlord under ss 63 and 65 is to complete the repairs within a reasonable period of time after having actual or constructive knowledge of the need to repair.

A tenant refusing to give reasonable access to a landlord so that repairs can be conducted is relevant to whether there has been a withdrawal of goods, services or facilities under s 44(1)(b) of the RT Act (Halil v NSW Land and Housing Corporation [2023] NSWCATAP 72 at [139]-[142], which was not disturbed by the Supreme Court decision in Halil v NSW Land and Housing Corporation (No 2) [2023] NSWSC 1646).

Further, on the separate (but often closely related) issue of whether a tenant is entitled to compensation under s 187(1)(d) of the RT Act for a landlord's purported breach of ss 63 and 65 of the RT Act, the actions of a tenant in refusing to allow reasonable access so that repairs can be conducted is relevant to whether the actions of the tenant are the cause of the damage or loss, such that the tenant is not entitled to compensation. Analogous principles are discussed in the context of the award of damages for failure of an owners corporation to keep common property in a state of good repair by Leeming JA in The Owners- Strata Plan No 2661 v Selkirk [2024] NSWSC 760 at [127]-[141].

In the context of the principles previously discussed, the appeal grounds are now addressed.

Failure to Consider Evidence and Arguments

Failure to consider a claim, defence, or legal argument that was raised genuinely and in substance at the hearing is a constructive failure to exercise jurisdiction that can constitute an error on a question of law (Lin v Westerman [2025] NSWCATAP 319 at [64]-[67] and the authorities discussed therein).

In this matter, the majority of the reasons focus upon the issues of whether the landlord breached ss 63 and 65 of the RT Act such that the Tribunal should award compensation under s 187(1)(d) of the RT Act, and the preliminary issues of whether the tenant had commenced Tribunal proceedings within the relevant limitation period and whether the limitation period should be extended.

There is little reference in the reasons to whether there was a reduction or withdrawal of goods, services and facilities such that a rent reduction should be awarded under s 44(1)(b) of the RT Act. However, there is some reference to that issue in the reasons. The tenant has not provided a sound recording and transcript of the hearing, and her failure to do so does not assist her in the appeal (Noorishoja v Ayla Holdings Pty Ltd [2026] NSWCATAP 33 at [47] and the authorities referred to therein).

The Appeal Panel is not satisfied that the tenant has established an error on a question of law in respect of the claim under s 44(1)(b) of the RT Act. The reasons are sufficient to demonstrate consideration of s 44(1)(b) of the RT Act separately to the consideration of whether breach of the landlord's duty under ss 63 and 65 of the RT Act has been established such that compensation should be awarded under s 187(1)(d) of the RT Act, and whether the claims involving s 187(1)(d) of the RT Act fall within the relevant limitation period.

The tenant's other arguments regarding the factual findings made and alleged insufficiency of compensation are matters that require leave to appeal, and will be addressed in that context.

Insufficient Compensation

This is a ground that requires leave to appeal. Nothing raised by the tenant constitutes an error on a question of law.

Inadequate Reasons

Whether reasons are sufficient at law may, or may not, raise a question of law. Question of fact and, generally, mixed questions fact and law do not constitute questions of law: *Wollondilly Shire Council v Styles* [2024] NSWCATAP 104 (Styles) at [23]. A question of law does not depend on facts not found by the decision-maker whose decision is the subject of the appeal: *Orr v Cobar Management Pty Ltd* [2020] NSWCCA 220 at [48], [109].

Depending on the particular circumstances of the appeal, inadequate reasons may, or may not, constitute an error on a question of law giving an appeal as of right, or constitute an error of mixed fact and law that requires leave to appeal (Styles at [31]-[32]; *Higgins v Commissioner of Police NSW Police Force* [2025] NSWCATAP 31 at [15]; *Ellery v Commissioner of Police, NSW Police Force* [2023] NSWCATAP 237 at [17]; *Starr v Johnson* [2023] NSWCATAP 190 at [48]).

In this matter, the reasons meet the "minimum characteristics" for sufficiency identified in *New South Wales Land and Housing Corporation v Orr* (2019) 100 NSWLR 578; [2019] NSWCA 231 at [65]-[77]. The reasons do not have to address every piece of evidence or every matter submitted by the tenant. Reasons do not have to be perfect, but rather, adequate. No error on a question of law is established by reason of the adequacy of the reasons, such as any constructive failure to exercise jurisdiction or denial of procedural fairness.

In respect of the issue of whether time should be extended under s 41 of the NCAT Act for the tenant to claim compensation for the purported breaches of ss 63 and 65 of the RT Act, the reasons do not mention the test in *Jackson v NSW Land and Housing Corporation* [2014] NSWCATAP 22 (Jackson) at [22]. However, when the reasons are read fairly, and in context, the Appeal Panel is not satisfied that the Tribunal failed to consider or correctly apply the test in Jackson.

Insufficient Hearing Time

The applicable authorities are discussed in *O'Brien v Women's Housing Company Limited* [2026] NSWCATAP 3 at [136]-[147] and [163]. In the absence of a sound recording and transcript of the hearing, and in the context of prolix documents and submissions of the tenant, no denial of procedural fairness is established by reason of the duration of the hearing. The tenant has not established the Tribunal did not give her a reasonable opportunity to be heard.

Decision Against the Weight of Evidence

This is a ground that requires leave to appeal.

The tenant must establish not merely that it is probable a different outcome should have been reached, but that “the evidence in its totality preponderates so strongly against the conclusion found by the Tribunal at first instance that it can be said that the conclusion was not one that a reasonable Tribunal Member could reach” (*Collins v Urban* at [77(2)]; *Hu v Pender* [2017] NSWCATAP 177 at [17]).

The documents that were before the Tribunal and the evidence and submissions of the tenant (as best they can be deduced without a sound recording or transcript of the hearing) do not satisfy the applicable legal test. At best, a different Tribunal Member may have reached a different and more favourable outcome for the tenant. That is not sufficient to obtain leave to appeal.

The Appeal Panel has also considered whether the decision is fair and equitable. The tenant has failed to establish it is not fair and equitable. The Tribunal did not obviously apply a wrong principle of the law to the facts, or make factual findings that were not open to the Tribunal on the evidence before it.

Significant New Evidence

The significant new evidence the tenant seeks leave to rely upon is text messages from former tenants critical of the landlord. Those messages were received by the tenant in the period of approximately June 2025 to October 2025, well before the Tribunal hearing. The tenant's explanation of why those documents were not before the Tribunal was unpersuasive. The tenant asserted that she had issues regarding her telephone, and also did not seek to rely upon the messages because the former tenants would draw the ire of the landlord against them.

The “new evidence” that the tenant seeks to rely upon is not significant new evidence that was not reasonably available to the tenant prior to the Tribunal hearing in June 2026, and the Appeal Panel does not grant leave to rely upon it in the appeal (*Hawkins v NSW Land and Housing Corporation* [2026] NSWCATAP 121 at [81]-[87]). The tenant had the ability to adduce that evidence at the hearing if she chose to.

Further, the opinions of the former tenants about the condition of the premises and the conduct of the landlord whilst they were tenants has limited, if any, relevance to the state of repair of the premises during the current tenancy. The focus of the proceedings was whether the landlord had breached his duty to keep and maintain premises in a reasonable state of repair during the current tenancy, not a previous tenancy.

Insufficient Compensation

The tenant has failed to establish anything more than the legal and factual findings of the Tribunal were arguably wrong. That is insufficient to obtain leave to appeal.

Conclusion

No error on a question of law or grounds to grant leave to appeal have been established.

ORDERS

The name of the respondent is amended from “Charles Caldereri” to “Charles Caldareri.”

Leave to appeal is refused.

Appeal dismissed.

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:

04 September 2026

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.caselaw.nsw.gov.au/decision/1a06aac43a7f916890835120>

CASE PAGE <https://chat.esheria.ai/case-law/australia/kennedy-v-caldareri-2026>

Prepared on 29 October 2026 · Esheria