IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGSCT 16

Small Claims Tribunals — Claim No 18915 and Counterclaim No 1307 of 2025

Between

JHK

… *Claimant*

And

(1) JHL
(2) JHM

… *Respondents*

JUDGMENT

[Landlord and Tenant — Covenants]

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JHK
v
JHL and another

[2026] SGSCT 16

Small Claims Tribunals — Claim No 18915 and Counterclaim No 1307 of 2025
Tribunal Magistrate Jared Kang Chern Wey
29 May, 5 June 2026

5 June 2026

Tribunal Magistrate Jared Kang Chern Wey:

1 At its simplest, this case concerns a security deposit. Its real difficulty—and one not infrequently seen in lease disputes that come before the Small Claims Tribunals ("SCT")—lies in the parties' incomplete understanding of what the tenancy gave and withheld.

2 Here, specifically, the parties did not really understand that a lease is not a loose permission to occupy another person's home among the owner's belongings. It confers, for its term and subject to its covenants, the right to possess the premises exclusively; the landlord is left principally with the reversion and the rights reserved by the agreement. The respondents appear to have proceeded on a different footing, treating parts of the unit as a continuing repository for their things while expecting the claimant to take responsibility for them. The claimant, in turn, appears to have treated the absence of an agreed

inventory as giving him a wider freedom over those things than the agreement allowed. The present claim and counterclaim are the result.

Background

3 The claimant was the tenant of [*address redacted*] (the "Property"). The respondents were the landlords. The parties entered into a residential tenancy agreement dated 21 July 2023. The tenancy was for a term of two years, starting 5 August 2023 and ending 4 August 2025, at a monthly rent of $4,000.

4 The rent was expressed in the tenancy agreement as comprising $2,700 for the premises, $1,000 for the hire of furniture, fixtures and fittings "therein at the property belonging to the Landlord as specified in the schedule annexed", and $300 for maintenance charges. The agreement also provided for a security deposit of $8,000, being two months' rent.

5 At the end of the tenancy, the respondents returned $5,235 of the security deposit and withheld $2,765. The claimant thus filed this claim seeking the return of that withheld sum. He later amended his claim to add further claims arising from the tenancy. The respondents resisted the claim *in toto* and filed a counterclaim.

6 On 29 May, I heard evidence from the claimant, both respondents, and one Mr K, the second respondent's brother-in-law. On 5 August 2025, after the lease ended, on behalf of the respondents, Mr K attended the final inspection and handover of the Property. The respondents' estate agent, Mr A, was also present at the handover but did not give evidence before me, though both sides relied heavily on messages, videos and recordings involving him.

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The parties' cases

7 The claimant's original case is that the respondents had no proper basis to withhold $2,765 from his security deposit. He says that no schedule (or agreed inventory) of "furniture, fixtures and fittings" (see [4] above) was even ever produced. He also says that the respondents left many personal items in the Property, used parts of it for storage, and later sought to treat those items as though they had formed part of an agreed inventory.

8 The claimant says that he returned the Property in good condition, subject at most to fair wear and tear. He relies especially on the final handover on 5 August 2025, which was attended by Mr A and Mr K. He says that Mr A accepted the Property as having been returned in satisfactory condition, and did not identify any damage or defects during their joint walkthrough of the Property. In this connection, the claimant also relies on cl 2(ll) of the tenancy agreement, which he says prevents the respondents from claiming for damage or defects not ascertained at the joint inspection.

9 Subsequently, the claimant amended his claim to seek an additional $5,855. This additional claim consists of five heads: first, $100 for handing over the Property late at the start of the tenancy; second, $4,800 for loss of usable space resulting from the items which the respondents left in the Property; third, $125 for delayed window and curtain cleaning which the claimant says the respondents were supposed to carry out before the tenancy commenced; fourth, $600 for the storage of beds and mattresses the claimant says the respondents left behind; and fifth, $230 representing the cost of disposing items which he says the respondents left behind. Together with the original claim of $2,765, the claimant seeks $8,620.

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10 The respondents' case is that the deductions were justified. They do not dispute that no agreed inventory of furniture, fixtures and fittings was ever prepared, signed, or appended to the tenancy agreement as a constituent contractual document. Their position, however, is that photographs and videos were taken instead, and that these sufficiently record both the condition of and items in the Property when the claimant's lease commenced.

11 On this footing, they say that the claimant improperly disposed of their queen-size bed and King Koil mattress without permission and also failed to return various household items. Beyond this, the respondents also allege that the claimant returned the premises in an unclean and damaged condition; that he moved items into the unit before the tenancy began and should thus pay for early occupation; and, that, although the tenancy officially ended on 4 August 2025, the claimant only handed over the Property on 5 August despite attempts being made by Mr A to arrange a handover on 4 August. For this, they claim one day's rent.

12 The respondents' pleaded total loss is $3,995. This comprises $800 in respect of early occupation; $1,000 for the bed and mattress which they say was improperly disposed of; $70 for other alleged missing or disposed items; $1,490 for damage and maintenance-related issues; $505 comprising $380 for general cleaning of the Property and disposal of a single bed frame and mattress left behind by the claimant, as well as $125 for window and grill cleaning; and $130 for the late handover. Before me, the respondents clarified that they were not claiming $3,995 in addition to the $2,765 already retained from the claimant's security deposit. Their case is that their total loss is $3,995, with credit to be given for the $2,765 already withheld.

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The issues

13 Stated at a high level of generality, three issues arise.

(a) First, whether the respondents have proved that they were entitled to retain the $2,765 from the claimant's security deposit, and if so, to what extent.

(b) Second, whether the claimant has proved his added claims beyond the deposit.

(c) Third, whether the respondents have proved any counterclaim against the claimant beyond what they have already retained.

14 It is useful at the outset to separate two related but distinct matters. The first concerns the respondents' right to retain the security deposit. The second concerns their counterclaim. The respondents may resist the return of the deposit to the extent that they prove proper deductions. But if they seek any further payment from the claimant, they must show that their total recoverable loss exceeds what they have already kept.

My decision

Preliminary questions of law or interpretation

15 Before turning to the three issues which need to be determined in order to dispose of this case, there are several questions of law or interpretation which would benefit from a separate, preliminary handling.

Who bears the burden of proving a right to the security deposit?

16 In cases involving disputes over security deposits, it is useful to begin with a simple question: is it for the tenant to prove that she is entitled to the

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return of the deposit, or is it for the landlord to prove that she is entitled to retain it? The exact answer will, of course, depend on the precise terms of the parties' tenancy agreement. That said, where such agreement takes its *typical* form, the latter is, in my view, the correct answer.

17 The security deposit clause in the parties' agreement reads:

> To pay a security deposit (the "Security Deposit") of SINGAPORE DOLLARS Eight Thousand Only (S$8000) equivalent of TWO (02) month(s) rent upon the signing of this Agreement. The Security Deposit is to be held by the Landlord as security for the due performance and observance of all covenants or conditions of this Agreement and such Security Deposit shall be refundable within fourteen (14) days free from interest at the end of the tenancy but otherwise the same or part thereof shall be used by the Landlord to offset any payments owing by the Tenant without prejudice to the right of the Landlord to recover all monies which may become due or payable by the Tenant under this Agreement. This Security Deposit shall not be used by the Tenant to offset the rental payment whether fully or partially during the currency of this Agreement.

18 The effect of this clause—which, in general shape and formulation, is stock-standard in short-term leases—is threefold. First, the respondents as landlords were not barred in principle from claiming more than the deposit ultimately retained. Second, they were obliged to refund the deposit subject to deductions for "payments owing" by the tenant. Third, and most importantly for present purposes—and, indeed, for all landlords who regard themselves entitled on the basis of similarly-drafted clauses to make deductions from their tenants' security deposits—they had to prove the sums said to be owing.

19 The third point follows naturally from the clause itself. The deposit was not paid to the respondents absolutely. It was held as security for the tenant's "due performance and observance" of the tenancy covenants. It was refundable unless there were "payments owing" by the tenant. Therefore, once the claimant proved that the deposit was paid and that part of it was not returned—which is

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rarely disputed—it was for the respondents to show why that part could be retained. Put another way, the respondents were the parties asserting that the contractual default position of refund had been displaced. They therefore bore the legal burden of proving the basis for that displacement.

20 There may, however, be one possible issue with this view. In a decision of the High Court not long ago, *Wingcrown Investment Pte Ltd v Mannepalli Gayatri Ram* [2023] 5 SLR 583 ("*Wingcrown*"), the court stated at [35] that the "burden of establishing [fair wear and tear] lay on the defendant as the tenant". Read in isolation, that sentence may appear to support the view that, once a landlord says there is damage, it is the tenant who bears the legal burden of proving that the premises were returned in good condition, subject only to fair wear and tear for which no deduction can be made. I know of at least one case which came before the SCT wherein the landlord sought to argue,[1] relying on *Wingcrown*, that the tenant should bear such burden.

21 This argument was not accepted in that case. The tribunal distinguished *Wingcrown*, in substance, on two bases. First, the contractual setting was different. The case before it involved a residential tenancy agreement under which the security deposit remained refundable unless the landlord proved a breach, whereas *Wingcrown* concerned a reinstatement obligation under a sale and purchase agreement with no analogous refundable security-deposit clause. Second, the nature of the occupation was different. The defendant in *Wingcrown* was not a tenant under a tenancy agreement, but a purchaser who had been given early possession before the sale failed.

[1] SCT/17212/2024 and SCT/CC/1284/2024.

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22 Although these bases for distinguishing *Wingcrown* from cases like the present are sound, I do not think they are necessary. *Wingcrown* can, and in my view should, be understood more simply. To appreciate how, we need to start with a basic premise of proof: she who asserts must prove. The party who asserts that a contractual obligation exists, that it has been breached, and that loss has followed from that breach bears the legal burden of proving those matters. If that is proved, and the other party then says that an exception applies, it will ordinarily be for that other party to prove the facts necessary to bring herself within the exception. That is all, I would suggest, *Wingcrown* decided.

23 The salient facts of *Wingcrown* are straightforward. The case concerned the failed sale and purchase of a condominium unit. The plaintiff was the vendor and developer; the defendant was the purchaser. The defendant was allowed to take early possession of the unit before completion, but later failed to complete the purchase in breach of contract. The plaintiff then commenced proceedings to recover possession of the property and to seek damages arising from that failure (*Wingcrown* at [1]–[2] and [5]–[8]).

24 In earlier proceedings—that is, prior to those forming the subject of the judgment in *Wingcrown*—the plaintiff had obtained a declaration that the sale and purchase agreement had been validly terminated on 17 August 2021. The court had also ordered that the plaintiff was entitled to enter into possession, that the defendant deliver possession within one month, and that the defendant pay outstanding maintenance charges, late-payment interest, and damages for breach of contract, with the relevant sums to be assessed (*ibid* at [9]). When the defendant failed to deliver up possession within the time ordered, he sought an extension of time. That extension was granted, but the court also found him liable for the costs of handover and the costs arising from the plaintiff's attempts

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to take possession, with quantum again left to be decided at the assessment of damages hearing (*ibid* at [10]–[11]).

25 The reported judgment was only concerned with assessing the damages claimed by the plaintiff, which comprised various heads of loss, including legal costs, reinstatement costs, damages flowing from a delayed sale and purchase, interest on shareholders' loans, and unnecessary expenses (*ibid* at [15]–[20]). The court's statement on fair wear and tear—that the "burden of establishing [fair wear and tear] lay on the defendant as the tenant"—only arose in the course of its analysis of the claim for reinstatement costs. That claim was based on cl 5A.2.3 of the sale and purchase agreement. In substance, that clause provided that if the defendant breached the relevant conditions, if the sale and purchase was not completed, or if the agreement was terminated, the defendant was to reinstate and restore the property to the plaintiff's satisfaction, at the defendant's sole cost and expense, to its original state and condition as at the vacant possession date, fair wear and tear excepted (*ibid* at [30]).

26 The structure of this clause is unexceptional. It prescribed an obligation to be fulfilled by the defendant (*ie*, "to reinstate and restore the property … to its original state and condition") and carved out a small exception to the standard agreed (*ie*, "original state and condition" *except* for fair wear and tear). As such, if the plaintiff wanted to hold the defendant liable for damages resulting from the alleged breach of this clause, it followed that they would *first* have to show that the obligation arose, that the defendant had not performed it, and that its losses followed from such non-performance. It would not have been enough if the plaintiff had merely asserted differences between the property's original condition and its condition upon return, alleged losses suffered as a result, and contended that the onus then lay on the defendant to prove that such differences

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were attributable to fair wear and tear, failing which the defendant ought to be held liable for the alleged losses.

27 On the facts of *Wingcrown*, however, this anterior threshold did not detain the court. It was undisputed that no reinstatement or restoration works had been done by the defendant before he delivered up possession. According to the plaintiff's evidence, the property had been delivered up in a "bad state". The plaintiff thus engaged its own contractors to carry out the reinstatement works. The defendant did not dispute that costs were incurred for those works. His argument was narrower; he only argued that the quantum should be adjusted because he had not been given sufficient opportunity or time to carry out the reinstatement works himself and, had more time been permitted, he could "probably" have done so (*ibid* at [31]).

28 The court rejected that argument. The documentary evidence showed that the defendant had been given at least three opportunities between August 2021 and February 2022 to carry out reinstatement works (*ibid* at [32]). The court also found that the defendant had "stoutly resisted" the plaintiff's demands to deliver up possession, had made no effort to carry out any reinstatement or restoration works, and had not shown that any COVID-19-related restrictions prevented him from making appropriate arrangements to do so (*ibid* at [33]–[34]). Nor had he adduced evidence of any lower or more competitive costing for the works eventually carried out. By contrast, the court was satisfied that the plaintiff had obtained quotations from different contractors, and that the corresponding invoices were not shown to be unreasonable, inflated, or unnecessary (*ibid* at [36]).

29 It was in that context that the court stated that the burden of establishing fair wear and tear lay on the defendant as the tenant (*ibid* at [35]). It is therefore

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clear that the point was not that a claimant may just assert damage and require the defendant to disprove it. The plaintiff in *Wingcrown* had already established the relevant contractual obligation, the defendant's non-performance of that obligation, and the factual basis for saying that reinstatement works were required. Fair wear and tear arose *only* as an answer to that already-engaged and unfulfilled obligation. Thus, if the defendant wanted to contend that any of the damage which the plaintiff had to rectify was the result of fair wear and tear—for which he should not be held liable—it was for him to adduce evidence to that effect. He, however, did not.

30 *Wingcrown* must therefore be read in sequence. It does not relieve a claimant of the legal burden of first proving the obligation relied on and its non-performance. It simply recognises that, once those matters are proved, a defendant who invokes fair wear and tear as an exception must prove the facts necessary to bring herself within it. That is a materially different proposition from the use which the landlord in the other SCT case (see [20] above) sought to make of *Wingcrown*; namely, that in every residential tenancy deposit dispute a landlord may retain the tenant's money by asserting damage and then put the tenant to proof that the damage was fair wear and tear.

31 As stated at [22], while the tribunal in that case was correct to reject the landlord's contention by distinguishing *Wingcrown* from cases like the present, those distinctions were not, strictly speaking, necessary. Properly understood, *Wingcrown* is an entirely orthodox application of ordinary principles governing proof in a breach of contract claim. Nothing said therein provides any support for the broader proposition for which it was invoked.

32 Indeed, if one adapts the structure of reasoning employed in *Wingcrown* to a residential tenancy deposit dispute, the analysis unfolds in much the same

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way. The landlord must first prove the contractual obligation relied upon, the facts said to constitute a breach of that obligation, and the basis upon which the deposit may be applied in consequence. If those matters are established, and the tenant responds that the condition complained of was attributable to fair wear and tear rather than any breach, the evidential burden then shifts and falls upon the tenant to prove the facts necessary to make good that answer. The burden associated with fair wear and tear therefore arises only after the landlord has first established a *prima facie* entitlement to retain all or part of the deposit.

33 *Brown v Davies* [1958] 1 QB 117—which *Wingcrown* cited at [35] in support of the proposition that the burden of establishing fair wear and tear lay on the defendant as the tenant—proceeds in much the same way. In that case, the landlord sued for possession on the basis that the tenant had broken his tenancy obligations. The tenant had covenanted, among other things, to use and occupy the premises in a fair and tenantable manner, to keep the interior clean and in good repair and condition, and to keep the garden properly. The landlord's case was supported by evidence. The tenant had failed to do decorative repairs for some years, had allowed the garden to become a "jungle", and the condition of the premises was described in some detail (see *Brown v Davies* at 122–123 and 127–128).

34 It was against that evidential background that Lord Evershed MR stated that if proof was given that the tenant was not keeping the premises in a fair and tenantable manner, and was not keeping the interior clean, repaired and decorated, the tenant had to, at the least, establish that the matters complained of were attributable to reasonable wear and tear and nothing else (*ibid* at 127). The court then concluded that there was ample evidence for the first-instance judge's finding that the tenant had failed to perform his obligations and had failed, putting it the other way round, to prove an excuse founded upon fair wear

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and tear (*ibid* at 128–129). *Brown v Davies*, therefore, also does not assist a landlord who has done no more than assert that the tenant caused damage. It assists only after the landlord has first proved the relevant obligation and the facts amounting to breach. At that stage, a tenant who says that the matter complained of falls within a fair wear and tear exception must prove the facts necessary to make good that answer.

35 I therefore do not regard *Wingcrown* as undermining the position which follows from the security deposit clause in the present case. It, in fact, supports the same sequence of proof. The respondents, having retained the claimant's deposit, had to justify that retention. If they proved that the claimant breached the tenancy agreement and that loss flowed from that breach, the claimant might then have to prove an answer such as fair wear and tear, pre-existing condition, consent, waiver, or some other matter. But that second stage arises only after the landlord has first crossed the threshold of proving a contractual basis to keep the tenant's money.

What standards apply when landlords seek to establish a breach?

36 This brings me to a related but distinct point. Once it is accepted that the landlord bears the legal burden of justifying the retention of a security deposit, the next question is what exactly the landlord must prove the tenant did wrong. That question cannot be answered by reference to the landlord's private standards of housekeeping, care, or fastidiousness. It must be answered by reference to the tenancy agreement, objectively interpreted and applied to the facts proved.

37 A tenant's deposit is security for her *performance* of the agreement. It gives the landlord a readily accessible source of funds—without needing to file a claim—to offset losses suffered as a result of tenant defaults, such as damage

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caused to the landlord's property. In the case of the clause applicable here (see [17] above), this should be obvious from the phrase "for the due performance and observance of all covenants or conditions of this Agreement". Retention of the deposit, or any part of it, thus requires *non-performance* or *breach* of the agreement on the tenant's part. These are legal thresholds, not matters of personal preference. Landlords who incline towards the latter view—or worse still, estate agents who egg them on to such view—should promptly disabuse themselves of such misbelief.

38 To be clear, parties are free to negotiate and settle on whatever threshold of satisfactory performance they privately and collectively find reasonable. That is, in fact, encouraged. But once a legal dispute arises, it is not enough for a landlord to say that the premises were not returned in the condition she would have preferred, or that the tenant fell short of how the landlord would have kept her own home. The question is whether the tenant failed to perform an obligation imposed by the tenancy agreement, whether that failure caused loss, and whether the sum retained fairly corresponds to that loss. This distinction matters because, as deposit disputes in the SCT regularly show, landlords often treat the security deposit as a fund available to vindicate their own standards, often exacting ones, of how the premises ought to have been kept. That is not what a security deposit is for.

39 Instead, a landlord who wishes to establish breach on the part of her tenant should be able to identify the clause relied on. A general assertion that the unit was "not properly maintained", "dirty", "damaged", "not like before", or "not returned in good condition" does not, without more, identify a breach. Although those phrases may adequately describe a landlord's dissatisfaction, they do not necessarily state the contractual obligation said to have been broken. A proper claim should identify the relevant clause, explain what that clause

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required, state the facts said to constitute non-performance, and show the loss caused by that non-performance.

40 Many terms of the tenancy agreement in the present case may be used as illustrations. If, for example, the landlord had sought to rely on cl 2(g), which required the tenant to keep the interior of the premises, including the sanitary and water apparatus, furniture, doors and windows, in good and tenantable repair and condition, the landlord would have needed to identify the particular part of the premises or item said not to have been kept in that condition. The landlord should also explain, by evidence, what the condition was at the start, what the condition was at the end, why the difference amounted to breach rather than fair wear and tear or ordinary deterioration, and what loss resulted. Another example is cl 2(q), which prohibited the tenant from removing items, furniture or fittings except with prior written permission. If the landlord had wanted to rely on this clause, it would have needed to identify the item removed, establish that the item belonged to the landlord, show that it was present and within the scope of the tenancy, prove that prior written permission was not given, and prove the value or loss claimed.

41 Ultimately, each clause does its own work in terms of setting legally-binding standards and expectations; the scope of each clause must be interpreted according to its own words; and, thus, the potential breach of any clause must be assessed by reference to the particular obligation said to have been broken, rather than by reference to some broader notion of how the tenancy ought to have been conducted. The broader lesson flowing from this is equally important. Many residential tenancy agreements are prepared from stock forms. There is nothing inherently wrong with that. Stock forms are useful starting points. But they are not substitutes for thought. They often contain clauses which are inapplicable, incomplete, awkwardly drafted, or insufficiently tailored to the

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premises and the parties' actual expectations. Estate agents who facilitate such agreements should appreciate that simply filling in names, dates, rent and deposit amounts is not the same as ensuring that the agreement records what the parties truly intend and understand.

42 If, for example, a landlord wants professional cleaning rather than ordinary cleaning, that should be stated. If a landlord wants a particular standard of return, that standard should be stated. If certain furniture is to be used only in a particular way, or not used at all, that should be stated. If certain items are merely being left in the premises for storage and do not form part of the letting, that should be stated. If any part of the premises is to remain reserved to the landlord, that too should be stated. These expectations should be put in the proposed terms so that the tenant may consider them, reject them, accept them, or negotiate them. That is what contracting is for.

43 Tenants must also read proposed tenancy terms with care. It will rarely be a good answer, after a dispute has arisen, for either side to say that they did not think about how a clause might be read. Contractual interpretation is an objective exercise. Courts and tribunals are concerned with what the agreement means, not with what one party privately assumed it would mean. Parties who wish their expectations to have legal effect must therefore take care to express them in the agreement before it is signed. The task of a court or tribunal—once a dispute has arisen—is to apply the agreement parties made, not to rewrite it after their relationship has broken down.

44 I therefore approach the deductions in this case on that basis. The respondents must identify the contractual obligations on which they rely, prove the facts said to constitute breach, and prove the loss said to justify the sums retained. The claimant must answer any such case which is made out. But the

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analysis begins with the agreement, not with either side's unexpressed expectations of what the tenancy should have involved.

What was the proper interpretation of cl 2(ll) in the present case?

45 As mentioned at [8] above, the claimant relied on cl 2(ll) of the parties' tenancy agreement to resist the various bases on which the landlords explained why part of his security deposit had been retained—as well as their further counterclaims—on the grounds that such bases had not been properly raised during the joint handover inspection. Clause 2(ll) reads:

> For the avoidance of doubt, the Tenant shall deliver the said Premises to the Landlord after a joint inspection by both parties and/or their respective agents, and thereafter, save for such damage and/or defects ascertained at the said joint inspection, the Tenant shall not be liable to the Landlord nor shall the Landlord have any claim against the Tenant in respect of any other damage to the said Premises.

46 The clause appears in the part of the tenancy agreement dealing with the tenant's obligation to yield up the premises. Its function is therefore fairly clear. It is meant to give practical and evidential significance to the handover inspection. Once possession is returned to the landlord, the tenant no longer controls the premises and may no longer be able to verify or answer later allegations about its condition. The clause thus sensibly directs attention to what was identified at the joint inspection.

47 There are, however, two possible uncertainties. The first concerns the meaning of the word "ascertained". The clause does not define the term, and it is capable of bearing more than one interpretation. At one end of the spectrum, "ascertained" might mean that the parties reached a common agreement at the inspection that particular damage or defects existed and that the tenant was responsible for them. A slightly less demanding interpretation might require

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agreement only that the damage or defects existed, leaving questions of responsibility or quantum for later determination. Another interpretation is that damage or defects are "ascertained" if they are identified, observed, or brought to the attention of both parties during the inspection, even if their significance remains disputed. Yet another possibility is that the term refers simply to matters that can objectively be established from the inspection itself, whether through direct observation, photographs, videos, or other contemporaneous records, regardless of whether either party accepted liability—or even the existence of the alleged damage or defect—at the time.

48 The second uncertainty concerns formality. One possibility is that damage or defects are only "ascertained" if they are recorded in a written list prepared during the inspection and signed or acknowledged by both parties or their agents, even if liability or quantum is disputed. For example, writing giving effect to such acknowledgment might read: "The parties acknowledge that the items listed below were identified during the joint inspection conducted on [date]. The Tenant does not admit liability for any listed item, and the Landlord does not waive any claim in respect of it. The parties agree only that these matters were observed and brought to the Tenant's attention during the inspection." Another possibility is that no particular formality is required, provided it can be proven that the damage or defects alleged had in fact been identified at the *time* of the joint inspection.

49 In my view, cl 2(ll) creates a temporal cut-off point for the identification of issues which may subsequently be characterised as "damage or defects" and for which the tenant may be held responsible. The operative words are "save for such damage and/or defects ascertained at the said joint inspection". Objectively construed, those words merely require that the relevant issue being taken by the landlord have been identified or discovered at the *time* of the joint inspection.

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They do not require the tenant to have accepted the characterisation of the issue as a "damage or defect" (as an example, the landlord may well identify a stain, crack, or dent at the joint inspection which the tenant contends is more properly attributable to fair wear and tear rather than damage), much less specific liability therefor. This reading is reinforced by what the clause does not say. It does not say that only matters "agreed", "acknowledged", "accepted", or "recorded and signed by both parties" may later be pursued. Those would have been natural words to use if the parties had intended the joint inspection to operate only as a record of agreed liability. They, however, were not used.

50 On this construction of cl 2(ll), a landlord may not, after taking back possession following the joint inspection, identify entirely new issues and then attribute them to the former tenant. That would defeat the evident purpose of having a joint inspection at all. However, where an issue was identified during the joint inspection, discussed at that inspection, or captured in photographs or videos generated as part of that inspection, cl 2(ll) does not bar a later claim merely because the tenant disputes whether the issue is properly characterised as damage or a defect, whether she ought to be held responsible for it, or whether the proposed cost of rectification is necessary or reasonable. Those are distinct questions. The anterior question under cl 2(ll) is simply whether the issue was ascertained at the joint inspection.

51 The same approach resolves the question of formality. Clause 2(ll) does not require a written handover list, signatures, or acknowledgements. It would no doubt have been better practice for the parties in this case to have prepared a written list of the issues identified at handover, if only to avoid the very dispute that later arose. But that is not what the language of the clause suggests is required. All that it requires is that the relevant issue be ascertained at the joint inspection. The landlord is thus confined to issues contemporaneously identified

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at that inspection, but may prove what was so identified by any reliable evidence connected with the inspection, including photographs, videos, notes, messages, or testimony (though, of course, objective evidence will naturally be of a higher quality than witness accounts).

52 Consistent with this approach, it bears noting that there was no dispute between the parties that Mr A took many photographs and videos of the Property during the joint inspection. Both parties accepted that those photographs and videos reflected the state of the Property at the time of that inspection. To the extent that particular items, alleged damage or defects were captured in those materials, they may therefore assist in determining what was ascertained during the joint inspection for the purposes of cl 2(ll).

Which clause applies to missing or disposed movable items?

53 The interpretation of cl 2(ll) does not, however, resolve every part of the present dispute. As would be evident from the respondents' case, parts of their justification for retaining a portion of the claimant's security deposit—as well as parts of their counterclaim for sums beyond that—concerns movable items said to have been improperly removed, disposed of, or not returned. That raises an entirely different contractual question.

54 A missing item may, of course, be noticed during a handover inspection. But the legal question raised by a missing item is not sensibly characterised as whether there was "damage" or a "defect" *in the premises*, which is the natural way one would construe the scope of cl 2(ll). In the parties' tenancy agreement, "Premises" is used to refer principally to the demised property itself. That property may be let together with furniture, fixtures and fittings, but the agreement still distinguishes between the premises on the one hand, and the "items, furniture and/or fittings" within it on the other.

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55 That distinction is important. After all, a chipped wall, stained floor, scuffed ceiling, or cracked window is quite naturally described as damage or a defect in the "premises". By contrast, it is awkward to describe a missing kettle, mattress, racket, bolster, utensil, or loose household item in the same way. Where the latter is concerned, it is more natural to frame the issue as whether the tenant was entitled to remove, dispose of, destroy or fail to return the item in the first place. That question is much better addressed by cl 2(q). In full, this clause provides that the tenant is:

> Not to remove from the Premises any of the items, furniture and/or fittings except with the prior written permission of the Landlord and to replace any and all such removed items, furniture and/or fittings with similar articles of at least equal value or, if the Landlord so requires, pay to the Landlord the value of any of the items, furniture and/or fittings (or part thereof) which may be destroyed or damaged (reasonable wear and tear and damage by accidental fire excepted).

56 Several consequences follow. First, where the complaint is that an item was removed, disposed of, destroyed or damaged, the landlord should identify the item and explain why it falls within cl 2(q). This is especially so where, as here, the tenancy agreement contemplated an agreed inventory of furniture, fixtures and fittings, but it is not disputed that none was produced. Clause 2(q) should not be treated as a general device by which every loose object left in the premises automatically becomes the tenant's contractual responsibility. The landlord must still show that the item was hers, that it was present in the premises, and that it was within the scope of the items, furniture or fittings which the tenant was not entitled to remove without permission.

57 Second, if those matters are proved, the tenant will ordinarily face difficulty if the item was removed or disposed of without the landlord's prior written permission. That is because cl 2(q) says precisely that such prior written permission is required. A tenant may still seek to answer the claim by showing,

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for example, that the item was never part of the tenancy arrangement, that the landlord had waived the need for writing, or that the landlord had otherwise consented in a way which makes it unfair to insist on strict compliance. But those are answers to a case first made out under cl 2(q). They do not arise merely because the landlord says that an item is missing.

58 Third, even where liability is established, quantum remains to be proved. Clause 2(q) does not give the landlord an automatic right to recover the original purchase price of every removed, destroyed or damaged item. The clause speaks of replacement with similar articles of at least equal value, or payment of the value of the item if the landlord so requires. That requires attention to the item's nature, age, condition, use, and available evidence of value.

59 I therefore analyse the respondents' complaints about missing or disposed items under cl 2(q). The absence of an agreed inventory will matter to that analysis, because it affects what the respondents can prove about the items said to have been supplied with the tenancy. But it is not conclusive either way. The respondents still have to prove the items and the loss. The claimant, if such proof is given, must then show why he was nevertheless entitled to remove or dispose of them, or why no sum is properly recoverable.

Issue #1: Whether the respondents proved their right to retain the deposit

60 With the answers to the foregoing preliminary questions in mind, I now turn to whether the respondents have proved their right to retain the $2,765 withheld from the claimant's security deposit. This sum comprised four heads of deduction: $700 for the queen-size bed and King Koil mattress; $70 for other alleged missing or disposed items; $505 for cleaning and disposal; and $1,490 for repairs and maintenance. These are the items which the respondents must prove in order to justify their retention of the $2,765.

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61 The first two deductions—$700 for the queen-size bed and King Koil mattress, and $70 for other alleged missing or disposed items—should be considered together at the outset. Both are, in substance, missing-item deductions. They therefore fall to be analysed under cl 2(q), which requires that the respondents show that the relevant items were theirs, that they were present in the Property, that they were items, furniture or fittings which the claimant was not entitled to remove or dispose of without prior written permission, that such permission was not given, and that the sum claimed reflects a proved value or loss.

62 That brings one immediately to the absence of an agreed inventory. The tenancy agreement contemplated that furniture, fixtures and fittings would be set out in a schedule annexed to the agreement. Unfortunately, no such agreed inventory was produced. The respondents do not dispute this, though they tried to say that the claimant's early movement of his belongings into the Property obstructed the preparation of an agreed inventory. I do not accept that this assists them in any material way. The point was made at a high level of generality and did not establish that there was any real obstruction which genuinely prevented the preparation of an inventory. At most, it may explain why the task became less convenient. It does not change the contractual position. No agreed inventory was ultimately prepared, and that is the state of affairs with which the parties must now reckon.

63 To reckon with that state of affairs, the respondents—to their credit—adduced photographs and videos of the Property at the commencement of the lease. Photographs and videos may, of course, assist. They may show that an item was present in the Property at a particular point in time. They may also show, to some extent, the general condition of the Property. However, they are not the same thing as an agreed inventory. They do not necessarily show

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whether a particular item formed part of the letting, whether it was merely left behind for the respondents' convenience, whether the claimant accepted responsibility for it, or what value should be attributed to it. The absence of an agreed inventory thus makes the respondents' case more difficult, especially for small movable items.

64 That said, the absence of an agreed inventory is not a complete answer to every missing-item deduction. It did not, in my view, give the claimant total liberty to remove or dispose of the landlords' belongings left in the Property after the tenancy commenced. If the evidence is sufficiently clear that an item belonged to the landlords, was present in the premises, formed part of the letting, and was removed or disposed of by the tenant without the written permission required by cl 2(q), the landlord may still make a deduction.

65 I should emphasise that the requirement that the item formed part of the letting is important. It is not enough for the respondents to show that an item belonged to them and was left in the Property. A landlord may leave personal property behind for any number of reasons. She may have intended it to be used by the tenant. She may have intended it to be stored for her own convenience. She may simply have failed to move out properly. Only the first of these would ordinarily supply a contractual basis for saying that the tenant assumed responsibility for the item as part of the tenancy. The absence of an agreed inventory therefore matters because it makes it harder to tell which of these possibilities is the true one.

66 With that in mind, and after considering the evidence adduced by the parties, I allow the $700 deduction for the queen-size bed and King Koil mattress. I begin with whether these items formed part of the letting. Related to this question, the claimant's evidence was that, at the initial viewing on 19 July

2023, before the tenancy agreement was signed on 21 July 2023, he told Mr A that he wanted only the single bed and the king-size storage bed, and did not want the queen-size bed because it occupied almost the whole of a small common room. That was, on his account, part of the pre-contractual discussion about what he wanted to remain if he took the Property.

67 However, after the tenancy agreement was signed, and when he returned to the Property on 29 July 2023, he discovered that the king-size bed was no longer in the master bedroom. He says he then asked Mr A about this, because the king-size bed was, according to him, one of the items he had wanted. Later, on 29 August 2023, he asked Mr A whether a king bed and mattress would be ordered, or whether he should buy one and deduct the cost from rent. Mr A replied that the owner would not be providing the king mattress and that the claimant would have to buy his own.

68 Those facts do not, in my view, carry the claimant as far as he needs to go. They show that he wanted the king-size bed and that there was unhappiness when it was not provided. They also show that he did not want the queen-size bed. But the question for present purposes is whether the queen-size bed and King Koil mattress formed part of the furniture left with the Property under the tenancy, or whether they were merely personal property left behind by the respondents without any contractual significance.

69 On balance, I am satisfied that they formed part of the letting. The tenancy agreement contemplated that furniture, fixtures and fittings were being hired together with the Property. The queen-size bed and King Koil mattress were large and obvious items of furniture. They were present at the start of the tenancy. They were not hidden in a cupboard, placed in a storage box, or kept in some corner where a tenant might fairly say that he did not even know what

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had been left behind. The claimant knew they were there. Indeed, his own evidence was that he objected to them precisely because they occupied too much space.

70 The claimant's position is ultimately that, because he did not ask for the queen-size bed and King Koil mattress, and because no inventory was signed, he was not responsible for them. I do not accept that proposition. A furnished tenancy is not limited only to furniture positively requested by the tenant. In the absence of an agreed inventory, the question is one of proof. On the evidence before me, these items were sufficiently connected with the letting of the Property to fall within cl 2(q).

71 The remaining question is whether the claimant was entitled to dispose of them. He says that the first respondent told him orally that he could do so and does not dispute that no written permission was ever sought or obtained. I do not accept that this is enough. For one, the first respondent denied ever granting such permission orally; but, more importantly, cl 2(q) required prior *written* permission. This was not a minor household object whose status was obscure. It was a bed and mattress. If the claimant wished to rely on permission to dispose of them, especially where the agreement required writing, that permission should have been recorded.

72 I therefore find that a deduction for the queen-size bed and King Koil mattress should be allowed. As to quantum, the respondents deducted $700. They say the purchase price was about $1,300. The claimant, on the other hand, suggested that similar used items could be obtained for much less. Neither figure can be accepted at face value. The original purchase price is not the value of a used bed and mattress after the passage of time and use. Equally, the claimant's reference to cheaper second-hand listings does not prove the value of these

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particular items. Doing the best I can on the evidence, I am satisfied that $700 is a fair allowance. It reflects the fact that the items were substantial pieces of furniture belonging to the respondents, while making sufficient allowance for age, use, depreciation, and the limited evidence of precise value.

73 I do not, however, allow the deduction for the other alleged missing or disposed items. These included tennis rackets, bolsters, protectors, utensils and other similar household items. Unlike the queen-size bed and King Koil mattress, these were smaller movable items, and the evidence did not clearly establish whether they were even present in the Property at the commencement of the tenancy or actually missing at the end of the tenancy. Nor did the evidence show whether they objectively formed part of the letting; were forgotten and left behind; were stored in the Property for the respondents' own convenience; or were later collected by the respondents or their representatives during the tenancy. Accordingly, cl 2(q) cannot be used to hold the claimant liable for the value of these items and I disallow the corresponding $70 deduction.

74 I next turn to the $505 deduction for cleaning and disposal. This requires a different analysis. These complaints concern the condition in which the Property was returned, and therefore require me to consider cl 2(ll) first. The condition of the Property at handover was the subject of the joint inspection. Mr K's evidence was that cleaning issues were discussed during the inspection, and the handover photographs and videos also recorded aspects of the Property's condition. Thus, on my interpretation of cl 2(ll) set out at [45]–[52] above, I find that the respondents clear the cl 2(ll) threshold for this head of deduction as the issues had in fact been "ascertained" at the joint inspection.

75 The substantive obligations then arise from the tenancy agreement itself. Clause 2(g) required the claimant, among other things, to clean all windows and

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glass panels in the Property. Clause 2(kk) required him to arrange for a "thorough cleaning" of the Property before returning it. The claimant's evidence is that his helper cleaned the Property. I accept that some cleaning was done. However, that does not necessarily mean that the claimant had arranged the "thorough cleaning" required by the agreement, or that no further cleaning or disposal work was reasonably required.

76 In this connection, I accept Mr K's evidence, to the limited extent necessary, that the Property was not as clean as it should have been, and that the grills and bathrooms had not been properly cleaned. This evidence is also broadly consistent with the objective handover materials. The photographs and videos do not support the claimant's position that the Property was returned in a condition which left no room for further cleaning or disposal work. They also support the respondents' position that a single bed and mattress belonging to the claimant remained in the Property at handover. I therefore allow a deduction for cleaning and disposal. Although the respondents did not adduce detailed objective documentary evidence, such as invoices or receipts, to prove the precise amount claimed, I am satisfied on the evidence before me that a deduction of $505 for cleaning and disposal is reasonable in the circumstances. I therefore allow a deduction in that amount.

77 I turn, finally, to the fourth head of deduction: the $1,490 for repairs and maintenance. This head requires me, again, to return to cl 2(ll). The respondents may rely only on damage or defects "ascertained" at the joint inspection. I am satisfied that at least some of the matters under this head meet that requirement. Mr K's evidence was that the UV dryer rack, the wall fan, the tap issues and related matters were raised during the inspection. The claimant's response, on that evidence, was generally not that these items were working, but that he had not used them.

78 That response is insufficient. The claimant took over the Property as a whole, including its fixtures and fittings. He was not entitled to decide for himself that, because he did not use a particular fixture, he need not concern himself with whether it worked or whether it had to be returned in proper condition. The tenancy agreement catered for precisely such issues through the "30-day Problem-Free Period" in cl 2(e). If the claimant had inspected the UV dryer rack during that period, found that it was already defective, and informed the respondents in writing, that would have been a strong answer to this part of the respondents' case. However, he did not do so.

79 That, however, does not mean that the respondents recover the full amount claimed. The respondents claim $500 for the automatic UV dryer rack. What the evidence establishes is that the UV dryer rack was not functioning at handover and had not been reported as defective during the Problem-Free Period. What the evidence does not establish is that the claimant caused the motor failure by any act, default, neglect or omission. Clause 2(f) therefore supplies the appropriate measure. This clause provided that, after the Problem-Free Period, the claimant was responsible for minor repairs and replacement of parts up to $200 per item, with any excess to be borne by the landlord unless the need for repair was due to the tenant's act, default, neglect or omission. I therefore only allow $200 for the UV dryer rack, not $500.

80 I also allow the smaller repair items which were sufficiently identified and modestly quantified. These are $40 for the wall fan, $60 for the utility toilet faucet, $20 for the water filter tap, and $40 for the entrance light or bulb. These defects were either directly identified at the joint handover or sufficiently connected to the contemporaneous handover materials. They also fall within the kind of minor repair or replacement obligation contemplated by cl 2(f).

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81 The balance of the $1,490 repair and maintenance deduction, however, I find not to have been proved. This concerns, in substance, the claims for sofa or chair staining, cabinet damage, and painting. Even assuming these matters were sufficiently captured in the handover materials, I am not satisfied that the respondents proved that they were properly deductible from the security deposit. The photographs and quotations do not reliably distinguish tenant-caused damage from fair wear and tear, pre-existing condition, humidity, age, or ordinary preparation for re-letting. This is especially so for the painting claim, given that there is evidence suggesting that issues with the walls had already surfaced near the start of the tenancy.

82 The respondents therefore prove only $360 out of the $1,490 repair and maintenance deduction. That comprises $200 for the UV dryer rack, $40 for the wall fan, $60 for the utility toilet faucet, $20 for the water filter tap, and $40 for the entrance light or bulb.

83 Drawing the strands together, the deductions proved under the original $2,765 retention are as follows: $700 for the queen-size bed and King Koil mattress; $505 for cleaning and disposal; and $360 for repairs and maintenance. The respondents have not proved the $70 deduction for other alleged missing or disposed items, nor the remaining balance of the repair and maintenance deduction. The proved deductions therefore total $1,565. It also follows that the respondents have not proved an entitlement to retain the full $2,765 deducted and—subject to my decision on the third issue (see [96] *et seq* below) which concerns whether the respondents have proved any further entitlement beyond the amount retained—the excess withheld is $1,200.

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Issue #2: Whether the claimant proved his added claims

84 I turn next to the claimant's added claim for $5,855. This claim was introduced after his original claim for the return of the $2,765 withheld from the security deposit. It comprised five heads: $100 for late handover at the start of the tenancy; $4,800 for loss of usable space; $125 for delayed window and curtain cleaning; $600 for storage of beds and mattresses; and $230 for disposal costs. I dismiss this added claim in full.

85 First, the $100 claim for late handover at the start of the tenancy is not proved. The tenancy was to commence on 5 August 2023. The claimant says that formal handover occurred only in the evening of that day. Even if that is accepted, he did not prove that possession had been wrongfully withheld from him in a manner giving rise to a monetary claim. His own evidence was that he had been allowed to move belongings into the Property before 5 August 2023. That sits uneasily with the suggestion that he had been kept out of the Property in any legally meaningful sense.

86 Second, the $4,800 claim for loss of usable space—which the claimant derived using his estimation that the landlords' belongings occupied around 5% of the usable space in the Property for the entire tenure of the lease warranted a proportionate reduction in rent (*ie*, 5% × $4,000 per month × 24 months)—is also not proved.

87 Properly understood, this head is a claim for monetary compensation arising from the respondents having allegedly retained, for their own benefit, part of the Property which had been let to the claimant. Certainly, there is a real legal point beneath the complaint. A landlord who grants a lease should not, without agreement, continue using part of the demised premises as storage space. If that happens, the tenant may, in an appropriate case, have a claim.

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However, that claim still has to be proved as a claim for loss suffered as a consequence of the landlord's breach. It is not enough to show that some of the landlord's items were present in the Property.

88 The first difficulty is that the claimant has not proved an actionable breach with sufficient precision. The evidence does show that the respondents left various items in the Property. That is not, by itself, enough. The claimant had to go further and show what specific part of the demised premises was retained by the respondents for their own benefit, whether this was done without his agreement, for what period it continued, and how it interfered with the possessory interest which the lease conferred on him. The evidence does not allow me to make those findings with the necessary confidence.

89 The items complained of were also not all of the same character. Some appear to have been furniture or fittings said by the respondents to have been left for the claimant's use. Some appear to have been loose personal items. Some may have been stored in cabinets. Some were later disposed of. Some may have been collected during the tenancy. In the absence of an agreed inventory, and given the way in which both sides dealt with the Property during the tenancy, the evidence does not establish a clear and continuing retention of 5% of the Property by the respondents throughout the entire 24-month term.

90 In any event, even if I were to assume in the claimant's favour that some actionable breach had been proved, the claim still fails on quantum. The proper measure would be the loss suffered by reason of the respondents' breach; in other words, the difference between what the claimant should have received under the tenancy and what he in fact received. The claimant's calculation does not measure that difference. It assumes that because the rent was $4,000 per

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month, and because he estimates that 5% of the usable space was affected, he is entitled to $200 per month for 24 months. That approach is too crude.

91 Rent is not a simple price per square foot of empty space. It reflects a range of matters: the location of the Property, the development, the layout, the facilities, the term, the market at the time, the fact of exclusive possession, the condition of the premises, and, in this case, the extent to which furniture, fixtures and fittings were supplied. Even if a tenant is deprived of some portion of usable space, it does not follow that damages can be calculated by applying the same percentage to the monthly rent. The claimant produced no valuation evidence, no reliable measurement of the space allegedly affected, no evidence of the duration for which the same space was affected, and no other objective basis on which I could fairly assess the sum of $4,800. This head of claim is therefore dismissed.

92 Third, the $125 claim for delayed window and curtain cleaning is not proved as an outstanding loss. The claimant's evidence was that the cleaning was eventually arranged and that the relevant amount was deducted from rent. If that is correct, the financial loss was already accounted for during the tenancy. If, instead, the claim is for the claimant's own inconvenience, or for the time spent by his helper, wife or himself in cleaning while waiting for the respondents' arrangements to be completed, the evidential and contractual basis for the sum claimed is insufficient. Delay alone—especially of a task like this—does not translate automatically into an entitlement to damages.

93 Fourth, the $600 claim for storage of beds and mattresses and the $230 claim for disposal costs also fail. These heads suffer from similar difficulties. The $600 storage figure is notional. It was calculated by attributing a percentage of rent to space said to have been occupied by the respondents' items for a

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limited period. For the same reasons given at [86]–[91] above, that is not an appropriate measure of loss. The claimant did not prove what loss he suffered by storing those items, beyond the inconvenience already addressed.

94 The disposal claim is even more difficult. I have found that the claimant was not entitled to dispose of the queen-size bed and King Koil mattress without the respondents' prior written permission. He cannot turn the cost of doing so into a recoverable claim against the respondents. As for the other alleged disposal expenses, including the $30 said to have been paid to his helper, the evidence does not sufficiently prove either the amount incurred or the legal basis on which the respondents must reimburse it.

95 It follows that the claimant's added claim for $5,855 is dismissed in full.

Issue #3: Whether the respondents proved their counterclaim

96 I turn finally to the respondents' counterclaim. As noted at [12] above, the respondents clarified that their pleaded sum of $3,995 represented their total alleged loss. It was not a claim for $3,995 on top of the $2,765 already retained. On that footing, and given my findings on the first issue, the remaining matters requiring consideration are the parts of the respondents' case which were not already included in the original retention: an additional $300 now sought for the queen-size bed and King Koil mattress, $800 for early occupation, and the $130 for late handover at the end of the tenancy.

97 I do not allow the additional $300 for the queen-size bed and King Koil mattress. I have already allowed $700 for those items. The respondents' case for a higher amount rests largely on the alleged purchase price of about $1,300. For reasons already given, that is not the present value of the items after age and use. The evidence does not justify any further sum.

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98 I also do not allow the $800 claimed for the claimant's early occupation. The respondents' own evidence was that they consented, through Mr A, to the claimant placing items in the Property before the tenancy formally began. Their complaint is that far more items were moved in than they were expecting. One can understand why they were unhappy. The respondents likely assumed that the request would involve only a limited quantity of belongings being placed in the Property temporarily before the commencement of the tenancy. Instead, a substantially larger volume of items was moved in, with professional movers engaged. However, if the respondents wished to limit what could be moved in, they could and should have made those limits clear. They could also have refused consent altogether, or made consent conditional on payment of an early occupation or storage charge. They did neither. Nor did they instruct Mr A to supervise the move-in and ensure compliance with any restrictions. In those circumstances, they cannot retrospectively convert their dissatisfaction with the extent of the early move-in into a contractual entitlement to payment. No early occupation or storage charge was agreed, communicated at the time, or demanded when the tenancy began. The claim surfaced only after the deposit dispute arose. I therefore reject it.

99 The $130 for late handover at the end of the tenancy stands differently. The tenancy ended on 4 August 2025, but the final handover only took place on 5 August. The question is whether the evidence shows that this was merely an agreed or accommodated inspection date, or whether the claimant had in substance failed to yield up the Property by the contractual end date. In my judgment, the objective correspondence supports the latter view.

100 The starting point is the claimant's exchange with the first respondent on 2 August 2025. The claimant asked the first respondent whether "the final handover of the house on the 5th" should be done to Mr A or to another agent.

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The first respondent replied that "[Mr A] said final [hand]over is on 4th". That response put the claimant on notice that, from the respondents' side, the final handover was expected on 4 August.

101 The claimant's reply is significant. He said: "I told him 5th. Officially 5th evening that[']s when I got the handover. I am still packing. If I move out on 4th, I will handover on same day." This, plainly, was not an acceptance that the Property would be yielded up on 4 August 2025. It was an explanation that the claimant had told Mr A the handover would be on 5 August, coupled with a conditional statement that if he moved out on 4 August, he would hand over on that day. The conditional nature of that statement matters. It shows that, as at 2 August, the claimant was not committing to final handover on 4 August.

102 The claimant's exchange with Mr A on 4 August 2025 points the same direction. In the evening, Mr A asked the claimant what time he could hand over "tomorrow". The claimant replied that there were a "last few items to move tomorrow before full cleaning done" and that "4 pm should be good". Mr A then responded on that basis, saying "Ok see u", asking to be informed early if there were changes, and saying "See u at 4 pm". The important point is that, by the evening of 4 August, the claimant himself was still saying that there were items to move the next day before cleaning was complete. The Property had therefore not yet been yielded up.

103 The position became even clearer on 5 August 2025. Shortly after midnight, the claimant messaged the first respondent to say that he would be handing over to Mr A "later today". Later that morning, he messaged Mr A to say: "Let's meet at 5pm on the safer side." Mr A agreed. This again shows that the handover remained a future event on 5 August 2025. It was not a case where

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the claimant had fully yielded up the Property on 4 August, and the respondents' agent simply chose to inspect it later.

104 I accept that the parties were communicating through Mr A, and that Mr A accommodated the eventual timing of the handover. I also accept that the respondents did not, at that moment, tell the claimant that one further day's rent would be charged. However, accommodation as to the logistics of packing up, cleaning, and moving out does not—without more—waive the respondents' entitlement to rent where the Property had not been yielded up by the end of the specified contractual term. The contemporaneous correspondence shows that the movement of remaining items, completion of cleaning, and final handover were still outstanding on 5 August 2025. The claimant therefore did not hand back the Property by 4 August. Since the daily equivalent of the $4,000 monthly rent is approximately $130, I allow the respondents' claim for one day's rent in that amount.

105 The respondents' total proved entitlement is, accordingly, $1,695. This comprises the $1,565 proved in respect of the first issue and the further $130 for late handover. Since the respondents had already retained $2,765, there is no further net sum due from the claimant to the respondents. Their counterclaim is accordingly dismissed.

Conclusion

106 In the result, the claimant succeeds only in part. The respondents were entitled to retain $1,695 from the security deposit, but no more. Since they retained $2,765, they must refund the difference of $1,070 to the claimant. The claimant's added claim for $5,855 is dismissed; the respondents' counterclaim is also dismissed. I therefore order the respondents to pay the claimant $1,070

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within 14 days from the date of this judgment, that is, by 19 June 2026. I make no order as to costs or disbursements.

107 I end with one practical observation. The central difficulty in this case—as alluded at the outset—was the parties' general misapprehension of what the granting of a lease actually entails. The dispute over the security deposit was, as far as it appeared to me, merely the legal form in which that deeper difficulty eventually manifested itself.

108 That misapprehension was particularly evident in the respondents' oral evidence. They appeared to proceed on the basis that, because certain items did not obstruct the living space, because the claimant could still access the areas in which those items were stored, or because they occupied only a limited amount of space, there was no real difficulty in those items remaining in the Property during the tenancy. Indeed, the respondents went so far as to place some emphasis on the fact that a particular storage cabinet was built by them, and that certain items were kept there for their own reasons.

109 That way of looking at the matter is understandable at a human level. The respondents had lived in the Property. They had purchased things for it. They had built or arranged parts of it. They had then moved overseas, leaving behind items which they continued to regard as theirs, and which they expected to be preserved for them. However, that is precisely where the legal difficulty begins. Once a lease is granted, the premises are no longer simply the landlord's home into which a tenant has been temporarily allowed. They are the demised premises over which the tenant has been granted exclusive possession for the term, subject *only* to the rights reserved by the agreement.

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110 It follows that a landlord who wishes to retain use of any part of the premises must make that reservation clear. The same applies to items which the landlord contemplates leaving behind. If those items are not to form part of the letting, the landlord should remove them, store them elsewhere, dispose of them herself, or reach an express agreement with the tenant about what is to be done with them. If the tenant is to keep them, use them, preserve them, refrain from using them, return them, or bear responsibility for them, that too should be stated. Silence is a poor way to allocate property rights.

111 That is especially so where, as here, the written agreement itself contemplated an inventory. The inventory should have identified what furniture, fixtures and fittings were being supplied with the Property. It should also have distinguished those items from personal belongings which the respondents merely wished to leave behind for their own convenience. Had this been done, the respondents would have known what they were entitled to expect the claimant to preserve and return. The claimant, equally, would have known what he was not free to remove or dispose of.

112 This would likely have avoided much of the present dispute. To the extent I have accepted the respondents' case, the claimant may well not have acted as he did if the status of the relevant items had been made plain at the outset. To the extent I have rejected the respondents' case, they may well not have advanced claims which later failed if they had first confronted whether the items or expectations relied on had ever been made part of the tenancy. The absence of clarity injured both sides, though in different ways.

113 The claimant's error was the converse of the respondents'. He appeared to think that the absence of an agreed inventory gave him a broad practical liberty over whatever the respondents had left behind. That was wrong. A lease

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gives possession. It does not transfer ownership of the landlord's belongings. If an item is plainly the landlord's property and falls within the tenancy arrangement, the tenant must deal with it according to the agreement. In this case, cl 2(q) required prior written permission before such items, furniture or fittings could be removed.

114 The proper lesson is therefore a simple one. A lease changes the legal relationship between the parties. It gives the tenant possession. It leaves the landlord with the reversion and the rights reserved by the agreement. Everything else must be stated with care, especially where the landlord's former home is becoming another person's leased premises. If parties leave such matters to assumption, they should not be surprised when, at the end of the tenancy, each side discovers that the assumption was its own.

Jared Kang Chern Wey
Tribunal Magistrate

The claimant in person;
The respondents in person.

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