

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating Application Starting a Representative Proceeding under Part IVA Federal Court of Australia Act 1976 - Form 19 - Rule 9.32
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File Title:	JONNINE JAYE DIVILLI v HOUSING AUTHORITY & ANOR
Registry:	VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.

Form 19
Rule 9.32

**Originating application starting a representative proceeding
under Part IVA of the Federal Court of Australia Act 1976**

No. of 2024

Federal Court of Australia
District Registry: Victoria
Division: General

JONNINE JAYE DIVILLI

Applicant

HOUSING AUTHORITY

First Respondent

And

STATE OF WESTERN AUSTRALIA

Second Respondent

To the Respondents

The Applicant applies for the relief set out in this application.

The Court will hear this application, or make orders for the conduct of the proceeding, at the time and place stated below. If you or your lawyer do not attend, then the Court may make orders in your absence.

You must file a notice of address for service (Form 10) in the Registry before attending Court or taking any other steps in the proceeding.

Time and date for hearing:

Place: Federal Court of Australia

Date: 19 August 2024

Signed by an officer acting with the authority of
the District Registrar

Filed on behalf of: Jonnine Jaye Divilli, Applicant
Prepared by: Rory John Walsh
Law firm: Slater and Gordon Lawyers
Tel: (03) 9190 0590 Fax: (03) 9600 0290
Email: Rory.Walsh@slatergordon.com.au
Address for service Level 35, 530 Collins Street, Melbourne Victoria 3000

Details of claim

On the grounds stated in the accompanying Statement of Claim, the Applicant claims for themselves and on behalf of the Group Members:

1. For breach of contract:
 - a. damages or statutory compensation under s 15(2)(c) of the *Residential Tenancies Act 1987 (WA)(RTA)*;
 - b. for any ongoing breach of a Tenancy Agreement at the time of judgment, an order under s 15(2)(a)(ii) of the RTA or for specific performance by the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor each of such Tenancy Agreement;
2. For claims under the Australian Consumer Law (Schedule 2 to the *Competition and Consumer Act 2010*) and/or as applied by s 19 of the *Fair Trading Act 2010 (WA)*(together the **ACL**):
 - a. a declaration pursuant to s 21 of the *Federal Court of Australia Act 1976 (Cth) (FCA Act)* that during the Relevant Period the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor, contravened s 61 of the ACL;
 - b. damages pursuant to s 267(4) of the ACL;
 - c. an order for compensation pursuant to s 267(2) and (3) of the ACL;
3. For unconscionable conduct:
 - a. a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that during the Relevant Period the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor engaged in conduct that contravened s 21 of the ACL;
 - b. a declaration pursuant to s 21 of the FCA Act and/or s 237 of the ACL that any rental arrears agreement in contravention of s 21 of the ACL was invalid and of no legal effect;
 - c. an injunctive order pursuant to s 232(1) of the ACL that the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor not engage in any of the conduct referred to in Section F of the Statement of Claim;

- d. damages pursuant to s 236 of the ACL;
 - e. in the alternative to c. – an order for compensation pursuant to s 237 of the ACL.
4. For excessive rent, order under s 32(4) and (5) of the RTA that from a specified day and until 6 months after the date of the order, the rent payable in respect of the premises under the residential tenancy agreement shall not exceed the amount that is just and meritorious for each Housing;
 5. Under s 83(a) of the RTA or in restitution, for the action for money had and received – an order for payment to each affected Claimant of monies paid by that Claimant to which the Authority or the State of Western Australia, whichever was lessor or taken to be the lessor, had no lawful entitlement;
 6. Interest according to statute;
 7. Costs, having regard to s 24 of the RTA;
 8. Such further or other relief as the Court may deem appropriate.

Questions common to claims of Group Members

The questions of law or fact common to the claims of the Applicant and Group Members are:

1. whether the Group Members were tenants within the meaning of the RTA or had a right of occupancy in respect of Housing (as defined);
2. whether the Authority and, or, the State of Western Australia, was the lessor, or deemed to be the lessor, in respect of Claimants' Tenancy Agreements;
3. whether the conduct of the Authority and, or, the State of Western Australia, in offering, making or performing or purportedly performing its obligations as landlord was for the purposes of the ACL:
 - a. conduct in the course of carrying on a business;
 - b. conduct in trade or commerce withing the meaning of the ACL and/or;
 - c. supply of services to the Tenants and / or Notified Occupants;

4. whether the terms in operation at law for all Tenancy Agreements contain the terms implied by the RTA section 42, 43, 44 and section 45;
5. whether the terms in operation at law of the Tenancy Agreement for all Relevant Tenancies contained following obligations:
 - a. the Health & Safety term as defined at the paragraph 15(i) of the Statement of Claim;
 - b. the Secure Housing term, as defined at paragraph 15(ii) of the Statement of Claim;
 - c. the Repair term, as defined at paragraph 15(iii) of the Statement of Claim;
 - d. the Reasonable Comfort term, as defined at paragraph 15(iv) of the Statement of Claim; and
 - e. the Repair Systems term, as defined in paragraph 15(v) of the Statement of Claim;
6. whether the Health and Safety term required that the Authority, or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 20(a) to (kk) of the Statement of Claim;
7. whether the Secure Housing term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 23(a) to (c) of the Statement of Claim;
8. whether the Repair term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 26(a) to (f) of the Statement of Claim;
9. whether the Reasonable Comfort term required that the Authority or the State of Western Australia, whichever was the lessor or deemed lessor, ensure in relation to each Claimant's premises any one or more of the matters identified in paragraph 29(a) to (j) of the Statement of Claim;
10. whether the Authority and the State of Western Australia operated the Authority Repair System as pleaded in paragraph 31 of the Statement of Claim;
11. whether the matters pleaded at 32 in relation to the Authority Repair System were true;

12. whether the Authority or the State of Western Australia, whichever was the lessor or deemed lessor breached the Repair Systems term as pleaded in paragraphs 34 of the Statement of Claim;
13. whether each Group Member was a consumer for the purposes of s 61 of the ACL;
14. whether it was an implied guarantee of the Tenancy Agreements in respect of the services of the Authority and, or, the State of Western Australia in providing the Housing that the Housing would be reasonably fit for use as a dwelling or of a nature, quality, state or condition that tenant might reasonably expect from a dwelling (**the ACL Guarantee**);
15. what principles or considerations are relevant to the assessment of whether, and if so how, the Authority and, or, the State of Western Australia breached any of the alleged terms referred to in Question 5;
16. what principles or considerations are relevant to the assessment of whether, and if so how, the Authority and, or, the State of Western Australia breached the ACL Guarantee;
17. what are the applicable principles for assessing the damages and/or statutory compensation recoverable in respect of any breach of an alleged term referred to in Question 5;
18. what principles apply in assessing the compensation recoverable by Claimants in respect of the contravention of the ACL Guarantee;
19. whether the Claimants have the Class Attributes;
20. whether the Execution Circumstances included the circumstances identified at paragraph 46;
21. whether the Monopoly Conditions included the conditions identified at paragraph 12;
22. whether the Authority, and, or the State of Western Australia knew or expected, or ought reasonably to have known or expected:
 - a. the Class Attributes;
 - b. the Execution Circumstances;
 - c. the Monopoly Conditions;
23. whether the Authority and, or, the State of Western Australia engaged in the conduct alleged in paragraph 52 to 56 of the Statement of Claim;

24. whether by the conduct alleged in paragraphs 52 to 56 of the Statement of Claim, the Authority and, or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;
25. what principles apply in assessing the compensation recoverable by group members in respect of unconscionable conduct as alleged in paragraphs 52 to 56 of the Statement of Claim;
26. whether the Authority and, or, the State of Western Australia engaged in conduct alleged in paragraphs 58 to 60 of the Statement of Claim;
27. whether by the conduct alleged in paragraph 58 to 60 the Authority and, or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;
28. what principles apply in assessing the compensation recoverable by Group Members in respect of unconscionable conduct as alleged in paragraph 58 to 60 of the Statement of Claim;
29. whether the Authority and, or, the State of Western Australia engaged in conduct alleged in paragraph 62 to 65 of the Statement of Claim;
30. whether by the conduct alleged in paragraph 62 to 65 the Authority and, or, the State of Western Australia engaged in unconscionable conduct in contravention of the ACL;
31. what principles apply in assessing the compensation recoverable by group members in respect of unconscionable conduct as alleged in paragraph 62 to 65 of the Statement of Claim;
32. whether the matters identified in paragraph 69, if established, amounted to a significant reduction in the chattels or facilities provided with Housing;
33. whether the amount of rent that could lawfully be collected from each Overpayment Subgroup member was the amount as defined in paragraph 71 of the Statement of Claim;
34. whether, if the Authority and, or, the State of Western Australia collected rent in excess of lawful amounts, the Authority and/or the State of Western Australia has
 - a. no lawfully entitlement to retain; and, or
 - b. been enriched by retainingeach Rent Overpayment from each Overpayment Subgroup member;
35. what principles apply in assessing the remedial relief recoverable by each Overpayment Subgroup member in respect of each such Rent Overpayment.

Representative action

The Applicant brings this application as representative parties under Part IVA of the *Federal Court of Australia Act 1976*.

The Group Members to whom the proceeding relates are the persons identified in paragraph 2 of the Statement of Claim.

Applicant's address

The Applicant's address for service is:

Place: Slater and Gordon, Level 35, 530 Collins Street, Melbourne, Vic, 3000

Email: Rory.Walsh@slatergordon.com.au

The Applicant's address is [REDACTED] Yurmulun Community, Western Australia, 6728.

Service on the Respondents

It is intended to serve this application on all Respondents.

Date: 19 August 2024



Signed by Rory John Walsh

Lawyer for the Applicant