

ORDER

Ref No: R2014/26078/00

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL RESIDENTIAL TENANCIES LIST REGISTER OF PROCEEDINGS

APPLICANT(S):

Tenant

K [REDACTED] N [REDACTED]

RESPONDENT(S):

Landlord

Asian Pacific Property Investment Pty Ltd (ACN. 78936204)

RENTED PREMISES:

331E RYDGES RESIDENCES, PRESTON 3072

Application under *Residential Tenancies Act* 1997 restraining orders/injunctions Section 452,472

Direct registrar to amend the header to this order to remove the reference to tenant and landlord because the operation or otherwise of the Residential Tenancies Act 1997 has always been a threshold question in all proceedings between the parties.

The applicant's application for review is granted and the order dated 20 June 2014 in application R201424967 is set aside.

The Tribunal finds as follows:

The premises, known as 331E, 205 - 215 Bell St Preston, comprise a room in a complex known as Rydges Hotel and Sleep-and-Go.

The agreement entered into between the parties on or about 8 December 2013 is expressed as a Licence Agreement.

The rights and obligations of the parties to the Licence Agreement are consistent with the creation of a licence and not a lease or tenancy.

The Respondent has proved that the agreement between the parties is a licence and that the Residential Tenancies Act 1997 does not apply to the agreement (s.507).

The provisions of s.20 are not relevant as, although the Respondent conducts a business in licenced premises in the nature of a hotel or motel, the agreement between the parties is not a tenancy agreement.

The Tribunal orders that it has no jurisdiction under the Residential Tenancies Act 1997 and the application is struck out.

The orders dated 20 June 2014 in R201426078 and 12 June 2014 in R201424967 are set aside. Direct the registrar to provide a copy of this order to the police informing the police of the setting aside of the said injunctive orders.

The Tribunal further notes that the applicant withdrew application R201423532 in a document dated 10 June 2014 but commenced a second proceeding, R201424967, without first seeking the leave of the Tribunal.

The Applicant is prohibited from commencing any further application in the Residential Tenancies List of this Tribunal unless and until this order is set aside by order of the Supreme Court.

The Respondent does not seek an order for costs today but reserves the right to do so on notice to the Applicant.

Written Reasons to be provided in due course.



J Kefford, Member
08 July 2014

JK - 08/07/2014 11:44

KI [REDACTED] N [REDACTED]