

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Dunedin

Tenancy Address

33 Luke Street, Ocean Grove, Dunedin 9013

Applicant

Full Name

Natalie Michelle Parry

Tenant

Respondents

Full Name

Vic Inglis

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. The application by Vic Inglis for compensation of \$3,519 and exemplary damages is dismissed.
(Section 78(1)(i) Residential Tenancies Act 1986)

2. Vic Inglis to pay Natalie Parry the sum of \$10,960.44 immediately calculated as follows:

| | |
|---|--------------------|
| Refund of rent | \$10,940.00 |
| Filing fee reimbursement | \$20.44 |
| Amount payable by Landlord to Tenant | \$10,960.44 |

(Sections 78(1)(d), 102(4)(a) & 137(4) Residential Tenancies Act 1986)

3. The Bond Centre to pay the bond of \$760.00 (35974160803) to Natalie Parry immediately.

(Sections 22 and 127(4)(a) Residential Tenancies Act 1986)

Reasons: Both parties appeared

Claims

1. At the end of her tenancy, N Parry the tenant sought a refund of her rent because she had discovered the downstairs part of the premises did not have a permit for the work undertaken to convert the space into living quarters. She had used a bedroom, bathroom, toilet, lounge, laundry and a foyer area in the downstairs.
2. The tenant also wanted a refund of the \$760 bond she had paid as she disputed the claims by the landlord.
3. The landlord cross applied for compensation of \$3,519 for replacement chattels, damages to a kitchen bench and furniture, cleaning and section tidy; and exemplary damages for removal of smoke alarms.

Law

4. Section 2 defines residential tenancies as meaning any premises used or intended for occupation by any person as a place of residence.
5. In *Anderson v FM Custodians Ltd* (2013) NZHC 243 the High Court found that premises that cannot lawfully be used as residential premises are excluded from the definition of "residential premises" in Act.
6. Section 137 prohibits any person entering into a contract that contravenes the provisions of the Act. Under subsection (2) requiring a person to make any such contract is an unlawful act.
7. Under section 137(4) all money paid for the tenancy, not being rent lawfully recoverable by the landlord, is recoverable as a debt due to the tenant by the landlord.

Discussion

8. The issue which must be determined is whether the premises could be lawfully used as residential premises during the term of the tenancy which began on 30 July 2016 and ended on 21 February 2017.
9. This issue has been considered by the Tribunal on numerous occasions recently and various decisions have been issued by different adjudicators. A helpful summary of these and the relevant law can be found in the case of *Pihama and Abbott v Yinwen*, Lower Hutt Tenancy Tribunal 4045048 and 4045152; a decision of Adjudicator Robertshawe dated 14 December 2016.
10. The recent decision of *Chief Executive of the Ministry of Business, Innovation & Employment v Silan*, Manukau Tenancy Tribunal 4057600; a decision of Adjudicator Hogan dated 15 March 2017 also considered the issue and confirmed that the Tribunal is bound by the *Anderson v FM Custodians* decision. I respectfully agree with that interpretation.

11. If the tenancy premises are not consented or permitted as required by law, then the Tribunal does not have jurisdiction to hear claims which it would usually consider under the Residential Tenancies Act.
12. The tenant provided a floor plan of the property and a Dunedin City Council Property Report which confirmed the only building permits for the property were for the erection of the dwelling in 1986 and addition of a porch in 1992.
13. Further the Report confirmed a certificate of acceptance for the bathroom, bedroom and living area in the existing ground floor space. The landlord provided a copy of this certificate which was issued on 28 March 2017.
14. I find during the term of the tenancy that the premises did not constitute "residential premises" within the meaning of the term in section 2. This is because the conversion of the downstairs area was not authorised by a building consent.
15. The fact that the landlord has now obtained a certificate of acceptance does not retrospectively make the tenancy lawful, because the consent was not issued until two months after the tenancy ended.
16. Having determined that the premises were unlawful I must look at what remedies are available.
17. Under section 137 the tenant is entitled to a refund of the rent she paid during the term of the tenancy.
18. Initially the tenant claimed rent of \$395 per week. However she agreed that the actual amount was \$380.00.
19. According to my calculations the term of the tenancy was 29 weeks and 4 days, which would total \$11,237.14.
20. However the only available evidence about how much rent was paid comes from a spreadsheet produced by the landlord. The amount was \$10,940. In the absence of any evidence disputing this I have refunded this amount.
21. On the other hand the landlord's application for compensation must fail because the tenancy was unlawful. The effect of the *Anderson v FM Custodians* decision means that premises that are not lawfully able to be residential premises are excluded under the Residential Tenancies Act, except to the extent that section 137 applies.
22. Therefore the Tribunal does not have jurisdiction to consider any of the landlords' claims and the tenant is entitled to a refund of her bond.
23. As the tenant is wholly successful in her claim the Tribunal must order that the other party pay her the filing fee paid for the application.