

Order of the Tenancy Tribunal*Residential Tenancies Act 1986**Office of the Tenancy Tribunal***Tenancy Tribunal at Manukau****Tenancy Address**

269 Porchester Road, Takanini 2112

Applicant

Full Name

Usualii Hellastia Leota

Tenant

Respondents

Full Name

Mandeep Patanjali Pala

Landlord

Southern Asset Group Limited

Order of the Tribunal

The Tribunal hereby orders:

1. Mandeep Pala and Southern Asset Group Limited are to pay Usualii Leota the sum of \$10,240.00 immediately calculated as follows:

Costs to be paid to Tenant:

Full refund of all rent paid	\$9,240.00
Exemplary damages under section 137	\$1,000.00
Amount payable by Landlord to Tenant	\$10,240.00

(Sections 77(2)(k) and 78(1)(d) Residential Tenancies Act 1986)

Reasons:

1. Mr Pala signed Ms Leota up for a tenancy of a double garage at 269 Porchester Road, Takanini. The premises was let as a residential tenancy for \$330.00 weekly rent.

2. Mr Pala acknowledges that the double garage is not lawfully consented to be a stand-alone residential dwelling. He says that he purchased the property recently and the makeshift conversion of the garage into a residential dwelling was undertaken by a previous owner of the property.
3. The main house at 269 Porchester Road, Takanini is tenanted out separately to a third party. This claim is not concerned with the tenancy of that consented dwelling.
4. The High Court in *Anderson v FM Custodians Ltd* [2013] NZHC 2423 held that residential premises that cannot be used lawfully for residential purposes are outside the general provisions of the Residential Tenancies Act 1986 ('the Act') and any purported tenancy results in a prohibited transaction to which only section 137 of the Act applies.
5. The tenancy that Mr Pala has signed Ms Leota up for her residential occupation of the double garage is therefore unlawful and outside of the jurisdiction of the Tribunal.
6. The only provision that the Tribunal can consider and make appropriate orders on is found in section 137 of the Act which prohibits any person from entering into any transaction or make any contract that contravenes the provisions of the Act or which has the effect of directly or indirectly defeating, evading or preventing the operation of the Act.
7. By preparing and entering into the tenancy agreement of the double garage as a residential premises, Mr Pala has directly entered into a transaction and made a contract that contravenes the provisions of the Act or which has the effect of directly or indirectly defeating, evading or preventing the operation of the Act.
8. Section 137 (4) of the Act provides that all money paid and the value of any consideration paid by the tenant shall be recoverable as a debt due to the tenant by the landlord. The "rent" that Ms Leota has paid is not lawfully recoverable by the landlord as the premises let out were unlawful. Such rent paid totalling \$9,240.00 for the entire tenancy is therefore to be refunded by the landlord.
9. This brings to issue who is/are the landlord or landlords in the proceedings.
10. The landlord as stated on the tenancy agreement is Southern Asset Group Limited. However, it is Mr Pala who has personally acted in contravention of the Act and in breach of the prohibitions set out under section 137.
11. Accordingly I take a broader approach that the "landlord" in this proceedings who should be subject to the order for rent refund and exemplary damages are both Mr Pala and Southern Asset Group Limited.
12. I find that maximum exemplary damages is payable as Mr Pala has not only instigated an unlawful tenancy, he has also failed to provide a habitable premises to Ms Leota that is free from dampness nor has he properly maintained the premises to even a basic state. As the other claims fall outside the Tribunal's jurisdiction, I can only consider those "breaches" in relation to an award of exemplary damages under section 137(3) of the Act.
13. I therefore award Ms Leota the maximum sum of \$1,000.00 as exemplary damages in this case, alongside a full refund of all rent paid.