

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Wellington

Tenancy Address

36a Newman Terrace, Thorndon, Wellington 6011

Applicant

Full Name
Amy Brittain

Tenant

Respondents

Full Name
Oxygen.co.nz Ltd as agent for Ed Bosson and Neryn Bereton

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Oxygen.co.nz Ltd as agent for Ed Bosson and Neryn Bereton to pay Amy Brittain the sum of \$514.94 immediately, the sum being the filing fee of \$20.44 and a refund of \$494.50 for the release fee Ms Brittain paid to it.

(Sections 45(1) and (1A) and 109 Residential Tenancies Act 1986)

2. The tenancy agreement between Oxygen.co.nz Ltd as agent for Ed Bosson and Neryn Bereton and Amy Brittain for 36a Newman Terrace, Thorndon, Wellington 6011 shall be canceled with termination of the tenancy effective on 23 August 2017.

(Section 85 Residential Tenancies Act 1986, section 7 Contractual Remedies Act 1979)

Reasons:

1. The applicant is the tenant and the other party is the Landlord under a tenancy agreement dated 28 February 2017 in relation to the premises at 36a Newman Terrace, Thorndon, Wellington 6011.
2. The tenancy agreement provides for a fixed term tenancy to 27 February 2018.

3. The tenancy agreement specified that an Insulation Statement is attached to the tenancy agreement. There was no Insulation Statement attached, nor was it provided to the tenant.
4. The tenant repeatedly asked for the Insulation Statement.
5. In July 2017 the Landlord did provide the tenant with an insulation statement. This statement certified that there was no insulation.
6. Since June 2016, an insulation statement is compulsory on all new tenancy agreements signed. A landlord who does not make a complete insulation statement is committing an unlawful act and may be liable for a penalty of up to \$500.00
7. The tenant submits that if the Insulation statement had been attached to the tenancy agreement, she would never have entered into the tenancy agreement and she requests that the tenancy end on 23 August 2017.
8. Whilst I am unable to find that it is more likely than not she would not have entered into the tenancy if she had received the insulation statement prior to entering into the tenancy agreement, it is clear that the Landlord is in breach of this requirement by not providing a statement until a significant period after the tenancy had commenced.
9. I am to determine each dispute according to the general principles of law relating to the matter and the substantial merits and justice of each case, but shall not be bound to give effect to strict legal rights or obligations or technicalities (section 85(2) of the Act).
10. Given the Landlords failure, and that when the insulation statement was given it provided there was no insulation, I find the tenant is entitled to cancel the Tenancy Agreement for the date she has requested. Whilst she applied for reduction of fixed term under section 66 of the Act, I find it more appropriate to rely on section 85 of the Act and section 7 of the Contractual Remedies Act 1979 to effectively reduce her fixed term.
11. Further, I find the tenant is to be reimbursed the release fee of \$494.50, as this Order supercedes the Landlord conditional agreement to release the tenant.
12. I considered whether to award the tenant exemplary damages for the Landlords failure to provide an insulation statement with the tenancy agreement. I have decided exemplary damages are not appropriate in this matter as this is the Landlords first time before the Tribunal for this issue and I accept it will not repeat this failure again.
13. I have dismissed the tenants claims of \$1,144.00 for her relocation costs and dismissed her claim for refund of the letting fee of \$340.00.