

## **Order of the Tenancy Tribunal**

*Residential Tenancies Act 1986*

*Office of the Tenancy Tribunal*

### **Tenancy Tribunal at Dunedin**

#### **Tenancy Address**

Room 6, 67 Carroll Street, Dunedin Central, Dunedin 9016

#### **Applicant**

Full Name

Timothy James Innis

Tenant

#### **Respondents**

Full Name

Brent Matthews

Landlord

#### **Order of the Tribunal**

The Tribunal hereby orders:

1. Brent Matthews to pay Timothy Innis the sum of \$810.44 immediately calculated as follows:

Costs to be paid to Tenant:

refund bond	\$290.00
exemplary damages for non lodgement	\$500.00
Filing fee reimbursement	\$20.44

**Amount payable by Landlord to Tenant** **\$810.44**

(Sections 78(1)(d), 102(4)(b) and 109 Residential Tenancies Act 1986)

#### **Reasons: Both parties appeared**

1. Although the tenant did not have notice of the claim against him filed by the landlord on 1 September 2017, the tenant agreed to both matters being determined by the Tribunal at the hearing.

*Claim*

2. Following the end of his tenancy on 9 May 2017 the tenant wanted a refund of his bond of \$290, exemplary damages for non lodgement of the bond and for the state of the premises when the bathroom was being renovated and compensation for lack of internet for six weeks.
3. The landlord cross applied for the bond as compensation for the tenant having been convicted of cultivating cannabis in the premises in 2014.

*Non lodgement of bond*

4. The landlord agreed that the tenant had paid a bond of \$290 in 2014 and that he had failed to lodge it because he forgot. He confirmed he was aware that for a boarding house tenancy any bond exceeding one weeks rent was required to be lodged.
5. If I am satisfied that the landlord intentionally failed to lodge the bond, which I am, and that it would be just and equitable to require the landlord to pay a sum in the nature of exemplary damages then I can make an award accordingly.
6. Exemplary damages under the Act are different from compensation. The provision of such damages is designed to punish and deter; *Attorney-General (Commissioner of Crown Lands) v Little Bo Peep Sheep Company Ltd* (HC CIV 2010-412-134).
7. In making an award of exemplary damages I need to consider the four matters set out in section 109(3).
8. First the intent of the landlord - I am not persuaded by the evidence of the landlord that he forgot to lodge the bond. Rather I consider, taking into account the evasive nature of his evidence on the matter, that he deliberately did not lodge the bond and in all likelihood does not lodge any of the bonds for his boarding house tenancy.
9. Second the effect of the unlawful acts - the landlord has held \$290 in his account for three years. This means a loss of income to the Bond Centre. The tenant has been denied the benefit of the Bond Centre holding the bond while any claim against him has been dealt with.
10. Third the interests of the tenant against whom the unlawful acts were committed - when his attempts to sort out the matter with the landlord were unsuccessful the tenant had to make an application to the Tribunal for a refund of his bond. This has led to an escalation of the dispute between the parties and a cross application on the part of the landlord.
11. Fourth the public interest - the legislation provides for bond money to be used to pay for the dispute resolution procedures under the Act. Non payment of bonds is therefore a loss and against the public interest. The public should be able to rely on landlords to comply with the legislation and when they do not the public should expect some censure.

12. The amendments to the legislation in 2010 increased the maximum exemplary damages for non lodgement of the bond from \$750 to \$1,000. This clearly signals an important element of public policy inherent in the legislation for such breaches, which the Tribunal must be mindful of.
13. Taking all the circumstances into account I consider the breach by the landlord is very serious and warrants a reasonable award of exemplary damages, which I have set at half the maximum.

#### *State of Premises*

14. Section 45(1)(b) provides that a landlord shall provide and maintain premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes.
15. The issue for the tenant was that during the renovations of the bathroom he was unable to shower at the premises for a month and had to use another toilet which he believed was in an unacceptable condition.
16. In *Barfoot & Thompson v Casey* DC Auckland CIV-2005-004-001762 the Court considered the obligations imposed on a landlord by section 45(1)(b). The Court felt that the section incorporated the minimum standards of fitness for houses as set out in the Housing Improvement Regulations 1947 and the Health Act 1956.
17. Minimum standards in the Housing Improvement Regulations include, among other matters, that every house shall have a bathroom which must include a shower or bath. A toilet can be in the bathroom or provided separately as long as it complies with Local Authority rules.
18. In the case of a boarding house bathroom facilities are shared.
19. I am satisfied that the landlord failed to provide a functioning bathroom for at least one week and possibly a month during the renovations; but that he provided an alternative toilet.
20. However I accept the evidence of the landlord that he attempted to provide alternative arrangements for the tenant.
21. In addition the tenant has provided no objective evidence about the state of the toilet.
22. Taking all the circumstances into account I do not consider an award of exemplary damages is appropriate in the circumstances.

#### *Compensation for lack of internet*

23. The tenant argued that the internet was faulty for a period of six weeks, until the landlord provided a new router.

24. On the other hand the landlord suggested that the internet kept fluctuating and was only offline for four days after he changed providers and had fibre installed.
25. While it is possible that the internet was offline for more than the four days agreed to by the landlord there is no objective, compelling evidence to support it is probable this was the case. Therefore the tenant's claim in regard to the internet fails.

*Compensation for conviction*

26. The landlord wanted compensation in the form of the bond for the tenant having been convicted of cultivating cannabis in the premises. He suggested that the tenant had used his electricity and may have caused damage to the premises.
27. The landlord's claim fails. He has provided no evidence, apart from the fact of the conviction, to support his claim, in particular for any increase in electricity consumption.
28. The tenant was dealt with in the District Court three years ago in relation to the cultivation. The Tenancy Tribunal has no jurisdiction to further punish the tenant just because of the fact of the conviction.
29. Rather the landlord must prove the tenant has breached the tenancy agreement or legislation and that as a result of the breach quantifiable costs have been incurred.
30. I am satisfied that the tenant has been largely successful in the claims brought to the Tribunal and therefore consider it appropriate that the landlord pay the filing fee.