

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

29 Constable Street, Newtown, Wellington 6021

Applicant

Full Name

Jodie Wolrich

Tenant

Adam Robieson

Tenant

Respondents

Full Name

Kanji Bhula

Landlord

Rasik Bhula as agent for Kanji Bhula

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. The term of the fixed term tenancy of Jodie Wolrich and Adam Robieson of 29 Constable Street, Newtown, Wellington 6021 is reduced with the effect that it shall now terminate on Sunday 17 September 2017.

(Section 56 Residential Tenancies Act 1986)

2. Kanji Bhula and Rasik Bhula to pay Jodie Wolrich and Adam Robieson the sum of \$220.44 immediately calculated as follows:

Costs to be paid to Tenant:

Filing fee reimbursement	\$20.44
--------------------------	---------

Exemplary damages for non lodgement of bond	\$200.00
---	----------

Amount payable by Landlord to Tenant	\$220.44
---	-----------------

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

Reasons:

1. **Background:** This is a fixed term tenancy that named Kanji Bhula as the landlord. However, the agreement was negotiated and signed by his son, Rasik Bhula and he managed the tenancy on behalf of his father, who is now elderly and unable to manage the tenancy. For all intents and purposes, I find that Rasik was acting as the landlord or at the very least as an authorised agent for Kanji Bhula as landlord. Rasik Bhula attended the hearing.
2. **Application:** The tenants, Ms Wolrich and Mr Robieson, have applied to terminate the fixed term tenancy on the basis that the landlord has breached the tenancy agreement by failing to install insulation as agreed. They also seek exemplary damages for the landlord's failure to lodge the bond with the Bond Centre as required. I deal with each of the claims in turn.
3. **Issues concerning Rasik Bhula's authority:** Mr Rasik Bhula explained that although he was acting on behalf of his father in negotiating the terms of the tenancy, signing the tenancy agreement and then managing the tenancy, he did not have any detailed knowledge of the Residential Tenancies Act 1986 ("the RTA") and he did not fully understand the rights and obligations of a landlord. In that regard, the issues between the landlord and the tenants in this case have arisen from his ignorance of the law. Unfortunately, as I explained at the hearing, ignorance of the law is not an excuse that can entirely mitigate any breaches.
4. **Non-lodgement of bond:** Rasik Bhula acknowledged that he did not lodge the bond with the Bond Centre until 4 September 2017, almost 4 months after the tenancy started. He explained that the bond was paid into his father's account (which the tenants were instructed to do) and he has no authority over the account and did not know that the bond needed to be lodged with the Bond Centre. When he was later told about the obligation, he sent the bond lodgment forms to the tenants for signing and lodged the Bond with the Bond Centre.
5. Failure to lodge a bond within 23 working days after payment is made is an unlawful act under section 19 RTA, for which the Tribunal may consider awarding exemplary damages of up to \$1,000 under section 109 RTA if satisfied that the unlawful act was committed intentionally. In determining whether exemplary damages ought to be imposed the Tribunal must then consider the intent of the landlord when committing the unlawful act; the effect of the unlawful act; the interests of the tenant and the public interest. Exemplary damages are not designed to be compensatory but to be a fine or penalty to punish and deter and to mark disapproval of the conduct.
6. It can be easy for a landlord to claim that failure to lodge the bond was an oversight or that, in the case of an inexperienced landlord, he did not know of his obligations. However, as I have already noted ignorance of the law does not entirely mitigate the breach. In this case, payment of the bond into the landlord's bank account should have been noticed promptly and dealt with, just as payment of rent into that account was no doubt identified. It is also particularly important that a landlord takes reasonable care and has processes in place to ensure that monies into their account are tracked and allocated correctly. Accordingly, I find that the landlord here failed to take the steps required of a reasonably prudent landlord to identify payment of the bond and lodge it with the Bond Centre. I also find that such a failure here was an intentional act because the landlord ought to know that non lodgement of the bond will occur if reasonable care is not taken. It is also of significant public interest that landlords comply with their obligations under the RTA.

7. After considering the factors in s109, I find that an award of exemplary damages is justified. However, I consider that the landlord is unlikely to repeat the breach and there is no evidence of previous breaches. An award at the lower end of the scale is therefore appropriate of \$200.
8. **Breach of the tenancy agreement:** I am satisfied on the evidence that the landlord breached the tenancy agreement by failing to install insulation at the property within a reasonable time frame and as specifically agreed. The landlord initially arranged for the insulation to be installed on 26 July 2017 but later advised the tenants that the work would not proceed. Rasik Bhula explained that his father, and other family members, subsequently advised him that they did not wish to install insulation as had been agreed with the tenants and they instructed him not to proceed with it. However, I find in the circumstances that Mr Rasik Bhula and Mr Kanji Bhula are bound by the terms of the tenancy agreement signed with the tenants and the provisions of the RTA.
9. The landlord also advised the tenants that he intended to give them 90 days notice to terminate the tenancy at some stage so that the property could be fully renovated. The landlord subsequently acknowledged that he was not entitled to terminate the fixed term tenancy on 90 days notice.
10. A notice under section 56(1)(b) of the RTA giving the landlord at least 14 days to remedy the breach and install the insulation was served on the landlord.
11. The breach was not remedied within the required period.
12. The nature or extent of the breach is such that it would be inequitable in the circumstances to refuse to terminate the tenancy. The tenants were specifically promised that certain remedial work would be carried out at the premises including insulation. On the basis of those promises they entered into the tenancy. While the landlord did carry out some of the agreed remedial work, the landlord confirmed that he now has no intention of installing the insulation. Accordingly, I find that the tenancy ought to be terminated under s 56 RTA. A right to cancel the tenancy agreement is also available to them under section 7(2) Contractual Remedies Act 1976, on the basis that the landlord has repudiated the contract by making it clear that he does not intend to perform his obligations under it.
13. The tenants seek, and are granted, termination as at 17 September 2017 to allow them sufficient time to vacate the premises and find another tenancy.
14. I note that the tenants did not seek compensation for the landlord's breach of the tenancy agreement and the inconvenience and any losses caused by the termination of the fixed term tenancy. However, there is nothing to stop them bringing a further application for compensation, should they wish to do so.
15. **Filing fee:** As the tenants have succeeded with their application, the landlord is to reimburse them with the filing fee paid.