

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Tauranga

Tenancy Address

275 Dickson Road, Papamoa Beach, Papamoa 3118

Applicant

Full Name

Sasha Thomson

Tenant

Alexis Sarah Rolleston (nee Seon)

Tenant

Respondents

Full Name

Prime Rentals Limited

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Prime Rentals Limited to pay Sasha Thomson and Alexis Rolleston the sum of \$770.44 immediately for:
 - a. exemplary damages of \$750.00 for breach of duties on receipt of bond.
 - b. filing fee reimbursement of \$20.44

(Section 19 and 109 Residential Tenancies Act 1986)

Reasons:

1. The tenants claim exemplary damages for non lodgement of bond within the required time, and the filing fee.
2. Both Ms Thomson and Ms Rolleston attended the hearing. Mr Steve Warburton represented the landlord Prime Rentals Limited.

Did Prime Rentals commit an unlawful act?

3. Failure to lodge a bond within 23 working days of its receipt is an unlawful act for which exemplary damages up to a maximum of \$1,000.00 may be awarded (sections 19(1)(b) and (2) and Schedule 1A Residential Tenancies Act 1986).
4. It is not disputed that an unlawful act was committed. The tenancy started on 14 October 2014 nearly 3 years ago. On 13 October 2014 the tenants paid the bond of \$1,500.00 to Prime Rentals. Tenancy Services acknowledged receipt of the bond from Prime Rentals by cheque on 31 August 2017.
5. Mr Warburton says that a cheque was written out on 1 January 2015 but never presented by the Bond Centre so it went stale and by an administrative oversight another cheque was never issued until the transfer of management to another agent this year. Even had that cheque been presented Prime Rentals was still well outside the required 23 working days of receipt for lodging the bond.

Should exemplary damages be awarded?

6. I must be satisfied that the act was intentional and then have regard to the factors set out in section 109(3) RTA in determining if it is just to award exemplary damages: the public interest; the effect of the unlawful act; the intent of the landlord; and the interests of the tenant.
7. I do not accept that a professional property management company would not have identified that \$1,500 had not been debited from their account for bond. At the very least it should have been identified when completing annual accounts. There was plenty of opportunity and time to rectify this problem. So I find the failure by Prime to be intentional.
8. There is a strong public interest in deterring landlords from holding tenant's money in breach of a fundamental obligation. The length of time outside the legal requirement is an aggravating factor but slightly mitigated by the bond now being lodged. Ms Thomson was shocked and greatly concerned when upon receipt of the letter from Tenancy Services in September this year, she discovered the bond had not been lodged until this year. This anxiety is understandable given it was only identified as a result of the change in management of the tenancy.
9. Prime Rentals is well aware of its obligation and has in the past had exemplary damages awarded against it of \$450 for the same unlawful act (Order 4020832 dated 30 May 2016).
10. Taking all these factors in to account I consider it just to award \$750.00 in exemplary damages.

Should the filing fee be reimbursed?

11. As the tenants have been wholly successful with their claim, I must reimburse the filing fee.