

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

Flat 5, 21 Ballarat Street, Ellerslie, Auckland 1051

Applicant

Full Name

David Pal

Tenant

Respondents

Full Name

Street Smart Property Management Ltd as agent for Vince (or Vincent) Wong

Landlord

Order of the Tribunal**The Tribunal orders**

1. Street Smart Property Management Limited to pay David Pal the sum of \$470.44 immediately calculated as follows:

Insulation - compensation	\$300.00
Insulation - penalty	\$150.00
Filing fee	\$20.44
Amount payable by Landlord to Tenant	\$470.44

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

2. The Bond Centre to pay the bond of \$2,420.00 (3447876-008) to David Pal immediately.

(Sections 22 and 127(4)(a) Residential Tenancies Act 1986)

Reasons

[1] This tenancy was from 30 September 2016 to 1 September 2017. Mr Pal (the tenant) claimed his bond and compensation and a penalty as to insulation statements. The landlord did not file a claim, but Mr Pal agreed to hearing a small claim by the landlord for tidying the back garden at the end of the tenancy (\$40.00).

Insulation

[2] Mr Pal said that the tenancy agreement did not comply with requirements for disclosure of insulation under the Residential Tenancies Act 1986:

(a) In September 2016, at the start of the tenancy, the agent said that the tenancy property was “all insulated”; and the agent wrote “insulated” at the bottom of the front page of the tenancy agreement.

(b) In February 2017, when cleaning the ceiling, he opened the ceiling hatch and saw, in the roof space, that there was no insulation.

(c) At a later inspection, he told two of the landlord’s agents that there was no insulation; they admitted or agreed there was no insulation

(d) During the tenancy, the property was damp; he bought a second dehumidifier (\$299.00) to alleviate condensation; his electricity bills were higher; and he had a few colds, rather than the usual one.

[3] There was no dispute that the property had no insulation. For the landlord, it was said that:

(a) The agent at the start of the tenancy (who gave only a written statement) “did not discuss or mention” whether the property had insulation.

(b) The tenancy agreement stated that there was no insulation – the added word “insulated” was at the end of a list of chattels with adjacent circles ticked if they applied, but there was no tick next to “insulated”.

[4] From 1 July 2016, a new tenancy agreement must have an insulation statement, including details of insulation in ceilings, floors or walls (location, type, and condition) (Residential Tenancies Act 1986, section 13A(1A)); or why this could not be stated, for each location, and that the landlord had made all reasonable efforts to obtain the information (section 13A(1B), (1C)). It was an unlawful act not to comply with section 13A(1A) or for any statement to include anything that the landlord knew to be false or misleading (section 13A(1F)); and a penalty (exemplary damages) up to \$500.00 (schedule 1A) could be awarded if the landlord did the unlawful act intentionally and it was fair to order a penalty, given (a) the landlord’s intention in doing the unlawful act, (b) the effect of the unlawful act, (c) the tenant’s interests, and (d) the public interest (section 109(3)).

[5] On the evidence, the Tribunal preferred Mr Pal’s evidence that the agent said the property was “all insulated” as this was his direct evidence (compared to only the written statement of the first agent) and consistent with the tenancy agreement (“insulated”). The Tribunal disagreed that the tenancy agreement stated that there was no insulation – the word “insulated” was the past tense and implied that it had been done; and, at best for the landlord, was ambiguous and misleading.

[6] The Tribunal ordered the landlord to pay compensation of \$300.00 to Mr Pal:

(a) The landlord, by the word “insulated” on the tenancy agreement and the agent’s statements to Mr Pal at the start of the tenancy, misrepresented that the tenancy property was insulated when it was not.

(b) Mr Pal relied on these statements in entering into the tenancy agreement.

(c) The word and statements were misleading and caused financial loss to Mr Pal (higher electricity invoices, extra dehumidifier) and reduced the value to the tenancy to him.

(c) Given that electricity bills would only be higher in winter, Mr Pal had no actual invoices for this tenancy and previous tenancy and he obtained an asset when he bought the dehumidifier, reasonable compensation was \$300.00.

[7] The Tribunal ordered the landlord to pay a penalty of \$150.00 to Mr Pal:

(a) The word “insulated” in the tenancy agreement represented that there was insulation, but did not (as required by section 13A(1A)) state the location, type and condition of any insulation.

(b) The agent's statement on the tenancy agreement was an intentional act.

(c) The effect on Mr Pal was that the tenancy property had dampness, condensation and higher electricity bills; and his health was probably worse than if the property was insulated.

(d) There was a public interest in the promotion of public health benefits from accurate disclosure of insulation in tenancy properties.

(e) Taking into account all the facts, that disclosure requirements were new to the landlord as the law changed on 1 July 2016 and the maximum penalty (\$500.00, schedule 1A), the landlord should pay a penalty of \$150.00 to Mr Pal.

Garden

[8] The landlord said that Mr Pal did not leave the back garden reasonably tidy at the end of the tenancy and the landlord paid \$40.00 to put this right. Mr Pal said that he weeded and tidied the garden at the start of the tenancy and the end of the tenancy.

[9] A tenant must leave the property reasonably clean and tidy at the end of the tenancy (section 40(1)(c)(iii)). In the case of a garden, “reasonably tidy” was not such a high standard that the grounds were immaculate (Lal v Murphy TT Lower Hutt, 09/01644/LH, 23 November 2009) or prize winning, or such a low standard as to suggest that the property was unoccupied, a health hazard or a fire risk, but a standard that an average, reasonable bystander would consider reasonably tidy (Housing New Zealand v Holloway TT Auckland, TT 215/93, March 1993).

[10] The Tribunal found that the back garden was reasonably tidy at the end of the tenancy, having viewed the before and after photographs and accepting Mr Pal's straightforward evidence that he tidied and weeded. This claim was therefore dismissed.

Filing fee

[11] Mr Pal had significant success in his case. The landlord should therefore pay Mr Pal's filing fee of \$20.44 (section 102(4)).

Bond

[12] The landlord did not prove any claim against Mr Pal. The bond was therefore refunded to Mr Pal.