

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

36d Seddon Street, Glenholme, Rotorua 3010

Applicant

Full Name

William Ripia

Tenant

David John Bosley

Tenant

Respondents

Full Name

Gillianne Meek

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Gillianne Meek to pay William Ripia and David Bosley the sum of \$1,350.44 immediately calculated as follows:

Compensation lack of hot water	\$560.00
Compensation lack of use of garage	\$770.00
Filing fee reimbursement	\$20.44

Amount payable by Landlord to Tenants \$1,350.44

2. Alternatively, the amount payable by the landlord to the tenants in Order 1 may be paid by way of deduction from rent owed.
3. The landlord is to make the garage weathertight immediately so it is fit for the purpose of storage of the tenants' car and possessions.
4. Leave is reserved for the tenants to come back to the Tribunal for consideration of an award of further compensation for any additional period the garage cannot be used.
5. All other of the tenants' applications are dismissed.

(Sections 77(2)(i) Residential Tenancies Act 1986)

Reasons:

Background facts

1. From 11 July 2017 the tenants Mr Repia and Mr Bosley rented the two bedroom house from ETB Realty Limited as agent for Gillianne Meek the owner.
2. On 1 September 2017 the tenants applied for orders for compensation and works orders in respect of dampness and mould in the two back bedrooms; and the lack of reliable thermal heating for hot water and heating. On 28 September 2017 the claim was amended to include compensation and a work order in respect of the leaking garage.
3. By Order of 26 October 2017 the landlord was ordered to obtain a building report to identify the source of the dampness; resolve the unreliable hot water heating source; and fix the leaking garage.
4. On 7 December 2017 the outcome of that work was considered along with hearing the claims for compensation.
5. Ms Carol London the agent at ETB Realty Limited represented the landlord. Both tenants attended the hearings.

Issues

6. The issues for me to determine in respect of each of the matters (dampness, lack of hot water, and garage) are:
7. Has the landlord breached her obligation to provide and maintain the premises in a reasonable state of repair and in accordance with any legislation relating to building, health and safety?
8. If so, what compensation should be awarded?
9. Should any further work orders be made?

Dampness/Mould in bedrooms

10. The tenants say that they have been unable to properly use the two bedrooms due to dampness and mould, and have had to shift their beds away from the wall and store clothing at one end of the room. In support the tenants provided photographs of large areas of mould on the bedroom walls which they regularly wipe off. These rooms are located along the southern facing back wall of the property. The tenants contend that during the winter months they were woken at night with rain water overflowing the guttering against the back wall of the house. They believe the dampness and mould is as a result of some water ingress through rotting and poorly painted weatherboards.
11. The landlord says that there is nothing structurally wrong with the house, that the weather boards are sound and there is no water ingress. In support they provided a brief email report from a builder Ray Lichtwark dated 20 October 2017 which concluded that '*most of the problem*

is from moisture generated from inside'; that 'the inside of the back wall of main bedroom is damp at floor level; 'from under floor there are no water stains on the timber below the wall'; 'there are no obvious signs of moisture coming in from the top'. Mr Lichtwark suggests 'that you get Jordan to cut a small hole in the plaster board behind the bed to inspect the bottom plate.'

12. The tenants present as being diligent tenants who comply with their obligations to ventilate the property regularly, by opening windows and doors in the afternoon when Mr Bosley arrives home from work. The bathroom fan is always used with the small high bathroom window left open at all times because it is secure. I cannot find any failure by them in regards to taking the appropriate steps to avoid dampness and mould from appearing.
13. As a result, at the October hearing the Tribunal ordered the landlord to obtain a building report which identifies the cause of the dampness and mould in the two bedrooms, and how it can be rectified.
14. On 17 November 2017 Mr Lichtwark conducted an inspection "to check for possible moisture entering thru external walls". It included checking the moisture content in the walls by cutting a hole in the plaster of the wall in each of the two bedrooms. The report found that the exterior weather boards, the roofing, the wooden window frames and aluminium sashes were all in good condition. There were no signs of moisture currently or historically and the moisture content was well within the acceptable range for a timber framed structure.
15. The report concludes that the dampness must be as a result of condensation from normal living, and found mainly in the two bedrooms because they are the coldest rooms in the house being on the south side with little sun during the winter months. The landlord asserts that the condensation forming in the bedrooms may be heightened as a result of the thermal heating in other rooms.
16. A landlord has an obligation to provide and maintain the premises in a reasonable state of repair and to comply with all requirements in respect of buildings, health and safety legislation as it relates to the premises (sections 45(1)(b) and (c) of the RTA). And the Housing Improvement Regulations 1947 provide that every house shall be free from dampness (reg 15).
17. The tenants have the onus of proving their claim that the landlord has breached her obligation on the balance of probabilities, that is more likely than not. There is clearly mould developing on the bedroom walls. The tenants contend that the moisture content is likely to be higher in the winter months than now, that the weather boarding is in poor condition and somehow water is creating the dampness and mould.
18. The independent builder's report persuades me that there is no structural defect in the house creating dampness. While the tenants assert that the exterior wall is not waterproof and the paint job inferior they have not provided any independent expert evidence that counters the landlord's builder's report. There is insulation in the ceiling and under the floor as required to be in place by mid-2019. There is no insulation in the walls but this is not a legal obligation.
19. In the end there is insufficient proof to find the landlord in breach of its obligation to keep the house free from dampness. Based on all the evidence provided it is more likely that the condensation and mould appearing is from normal living in the house. This claim then fails.

Hot water supply/Thermal heating

20. The tenants complain they were without a reliable and consistent supply of hot water and heating due to the thermal heating not always working. The only source of water heating was the thermal system. They provided a chronology of the days without hot water which records 6 full days and 14 part days without hot water up to the first hearing on 28 September (by 13 September the heating was working again).
21. Ms London says that she was only informed twice two weeks apart of water heating issues and she says she responded immediately by calling the owner and a plumber and making contact with the bore committee who managed the bore for the thermal heating system. She understood the problem was temporarily resolved and did not hear further from the tenants until the September tribunal hearing.
22. After the 28 September hearing the thermal heating failed again so at the 26 October hearing the landlord was ordered to ensure there was a reliable and constant hot water supply. On 6 November the installation of an electric hot water cylinder was finished to provide an alternative source of heating the water. And the cause of the thermal heating failure was eventually identified, the funding between the four owners agreed, and the heat exchanger tank for the four properties was replaced. So the problem of lack of heating and hot water supply has now been fully rectified and no further work orders are required.
23. Under the Housing Improvement Regulations 1947, adequate means of heating water must be provided (reg 9(2)). So for a period the landlord was in breach of this obligation. The landlord is only required to provide and maintain the premises in a "reasonable" state of repair and can only attend to repairs once the tenants have notified them of the need to do so as required under s40(1)(d) RTA. Thus the standard is not absolute and is to be assessed objectively. The issue then is whether the landlord once notified of the problem dealt with their obligations in a reasonable time frame.
24. The tenants insist that they sent many texts to the agent notifying them of the lack of hot water. They have not provided me with any supporting documentary evidence such as copies of transcripts of texts sent. However I think it more likely that the tenants did notify the agent more than twice but there may have been a misunderstanding as to when the problem was temporarily resolved and recurred. But it is insufficient for a landlord to simply engage a contractor and then not ensure that the work has been completed promptly and to a satisfactory standard.
25. The tenants went without hot water for an extended period of time and were put to considerable inconvenience having to shower elsewhere over a period of 20 days up to 13 September and again in early October. Given the duration of the period without hot water before the hot water cylinder was installed and the thermal heat tank replaced, I find the landlord in breach and compensation should be awarded. I have taken in to account that the landlord has now fixed the problem in awarding \$560.00 (equivalent to two weeks rent).

Garage

26. The tenants say that the garage has never been able to be used to store their car or belongings because it leaks. Ms London maintains she was never told about the garage until the hearing on 28 September. The evidence establishes that she issued a work order to

Radford Roofing Limited on 17/10/17 and reissued it on 25/10/17.

27. At the final hearing the tenant provided photographs of puddles and water stained floor and walls, and light showing through the rafters of the roof. The garage is clearly still not water proof despite the roofer carrying out work to the guttering, so is still unable to be used for any storage. As the obligation is for a landlord to **provide** the premises, including facilities such as the garage (s2 facilities definition and s45(5) RTA), in a reasonable state of repair, the landlord should have known its condition when let in July.
28. A proper inspection conducted at the start of the tenancy would have brought this to the attention of the landlord from the outset. While the tenant has an obligation to notify the landlord as soon as possible of the need for repairs, the landlord must provide the premises in a workable condition. The leaking garage did not arise during the tenancy. It was let in the poor state. And I think it more likely that the tenants notified the agent of the need to repair the garage.
29. So I find the landlord in breach of this obligation. The weekly rent is \$280 for a two bedroom house. I have assessed compensation for the lack of use of the garage based on one eighth of the weekly rent of \$280 being \$35 per week. 22 weeks at \$35 is \$770 to 12 December 2017. I have calculated it to the end of the rent week after the last hearing.
30. The landlord is to ensure that the garage is usable and weather tight immediately. Should the garage still not be usable then leave is reserved for the tenants to bring this matter back before the Tribunal for consideration if further compensation should be awarded.

Filing fee

31. As the tenants have been largely successful with their claim, it is appropriate to award them reimbursement of the filing fee.