

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

*Residential Tenancies Act 1986*

*Office of the Tenancy Tribunal*

### **Tenancy Tribunal at Rotorua**

#### **Tenancy Address**

28b Island View Road, Western Heights, Rotorua 3015

#### **Applicant**

Full Name

Richard Johnson

Tenant

#### **Respondents**

Full Name

Eves Realty Limited

Agent

Ivan and Jill Sherburn as trustees of the Sherburn Family Trust

Landlord

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

The Tribunal hereby orders:

1. Richard Johnson to pay Eves Realty Limited. Ivan Sherburn and Jill Sherburn as trustees of the Sherburn Family Trust the sum of \$927.14 immediately (paid from bond) calculated as follows:

|  |                 |
|--|-----------------|
| Rent arrears to 29.8.17                                      | \$1,077.14      |
| Exemplary damages no insulation statement                    | \$150.00        |
| <b>Amount payable by Tenant to Landlord (paid from bond)</b> | <b>\$927.14</b> |

2. The Bond Centre to pay the bond of \$1,160.00 (3007694-007) apportioned as follows:

|   |          |
|---|----------|
| Eves Realty Limited, Ivan Sherburn and Jill Sherburn as Trustees of Sherburn Family Trust | \$927.14 |
| Richard Johnson   | \$232.86 |

3. The landlord's application for termination, and the tenant's applications for damages for a retaliatory notice, are withdrawn at their request.

(Sections 77(2)(q) and 109(3) Residential Tenancies Act 1986)

4. The tenant Richard Johnson's other application is dismissed.

(Sections 22 78(1)(i), and 127(4)(a) Residential Tenancies Act 1986)

**Reasons:**

1. Richard Johnson rented the tenancy premises from 10 February 2017.
2. On 25 August 2017 the landlord applied for orders terminating the tenancy, rent arrears, filing fee and refund of bond.
3. On 28 August 2017 Mr Johnson cross applied for orders for compensation and exemplary damages for a retaliatory notice, compensation for not changing the landlord's contact name in to the agent's name, and exemplary damages for not providing an insulation statement in the tenancy agreement.
4. At today's hearing, the landlord advised that Mr Johnson left the premises on 29 August 2017 so the application for termination of the tenancy is withdrawn.
5. Mr Johnson says that landlord has placed the premises on the market for sale so he no longer wishes to proceed with his claim that the termination notice was retaliatory. So that application is also withdrawn.

*How much rent is owed at the end of the tenancy?*

6. Based on the rent statement provided I am satisfied that rent of \$1,077.14 is owed to 29 August 2017. Although Mr Johnson says that 4 weeks rent of \$1,160.00 is owed I only award the lesser amount claimed.

*Did the landlord fail to advise the Bond Centre of the landlord's new contact details?*

7. Mr Johnson says that the bond form was never changed in to the name of the new property manager Eves Rentals as required under section 21A of the Residential Tenancies Act 1986.
8. Where a landlord changes his contact address or address for service in respect of a bond held he must give notice to the Bond Centre within 10 working days of that change. Mr Sherburn had initially managed the tenancy himself, and incorrectly lodged the bond in the name of Rotorua Investments Limited as landlord. On 28 March Mr Johnson notified him of this error and the contact details were changed in to Mr Sherburn's name.
9. Eves Rentals took over management of the tenancy from 11 July due to Mr Sherburn having difficulty communicating with Mr Johnson, and because he was about to travel overseas. The bond contact details were eventually changed in to the agent's name on 6 September well after the 10 working days timeframe, so there is a breach by the landlord of this obligation.
10. In order to award compensation, the tenant must have incurred a loss from the landlord's failure to change the name of the contact person. Mr Johnson decided that he would withhold 4 weeks rent equivalent to the amount of bond held so that he would not incur any delay at the end of the tenancy in obtaining refund of his bond. Mr Johnson himself acknowledged this is a

breach of his obligation to pay rent when due. So he has not suffered any loss, and has committed a breach of a tenant's fundamental obligation so there is no basis for the award of compensation. In addition, this breach is not an act for which exemplary damages can be awarded.

11. This claim is dismissed.

*Is the tenant entitled to an award of exemplary damages for failure to make an insulation statement?*

12. A landlord must provide a signed statement about the insulation in the premises in all tenancy agreements entered in to from 1 July 2016 (section 13A(1A)-(1F) RTA). Breaching this obligation is an unlawful act for which exemplary damages up to a maximum of \$500 may be awarded.
13. The tenancy agreement does not provide an insulation statement so there is a clear breach and an unlawful act has been committed. In determining the amount of exemplary damages to award I must first be satisfied that the act was intentional and then, that it would be just to do so having regard to the factors set out in section 109(3) RTA.
14. The agent says the failure to provide the insulation statement was as a genuine mistake and miscommunication between her and the owner. She had responsibility initially only to let the property then the owner resumed responsibility for its management and as a consequence it was missed.
15. It is easy to say that the omission is an oversight but landlords should be fully aware of and ensure such statements are included as a matter of course in all their tenancy agreements, for example by way of a blank template which would act as a reminder. The statement is required regardless as to whether a full professional insulation assessment has been conducted. The use of agents should assist rather than detract from a landlord's compliance with this legal obligation. Particular care must be taken when there is involvement of both agent and owner so that such errors are not made, and even though not the desired consequence, I find the result is intended.
16. As regards the s 109(3) factors I do not find any underhand or malicious intent. The landlord subsequently took steps to obtain a full insulation assessment on 16 August.
17. The effect on Mr Johnson is unclear. Mr Johnson says he was told by Ms Picard the Eves agent who let the property to him that it was insulated and on that basis signed up. I think it more likely that Ms Picard did not make such a verbal statement because she had only had the property under her management for the week preceding the start of the tenancy and the owner then took over control. Mr Johnson also never raised any concerns about mould or dampness during the tenancy in spite of communication by email with Ms Picard as regards other repair work.
18. However there is a strong public interest in landlords completing the insulation statement so that the landlords become aware of start preparations to have rental premises compliant with the new insulation requirements by 1 July 2019. I therefore consider it just to award \$150 exemplary damages.
19. Finally I must record that as the hearing was concluding Mr Johnson inappropriately and

aggressively interrupted the agent as she was explaining the difficulties in communicating with him about such issues as the insulation statement. His conduct gave powerful reinforcement to the complaints made by the agent in her dealings with Mr Johnson. She had just noted that she felt threatened by his behaviour, when Mr Johnson unleashed a barrage of profanities towards her which then turned on to me. In spite of being asked to stop, Mr Johnson continued as he packed up his papers and left the hearing room as security assistance was called. This conduct is in the nature of contempt as outlined under section 112 RTA. But as he left the hearing of his own volition I did not need to invoke his exclusion under s112(2) RTA.

*Should the filing fee be reimbursed?*

20. As both parties have been partially successful I do not consider it appropriate to reimburse the filing fee.