

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Hamilton

Tenancy Address

18 Teafields Court, Huntington, Hamilton 3210

Applicant

Full Name

Jaewon Heo

Tenant

Respondents

Full Name

Action Property Rentals Ltd

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. The application for a work order is dismissed.

(Section 78(1)(i) Residential Tenancies Act 1986)

2. Action Property Rentals Ltd will provide adequate heating to the premises within 7 days of the date of this order.

(Section 78 Residential Tenancies Act 1986)

Reasons:

1. Both parties and appeared at the hearing. This is a current tenancy which began on 8 January 2018.
 2. This was an application by Mr Heo and Ms Kwon for a work order to install a heat pump in the premises.
 3. Mr Heo and Ms Kwon believed that there was a heat pump in the premises when they signed the tenancy agreement with Action Property Rentals Ltd, APL, but when they arrived to move in they discovered there was not one.
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4. The property was advertised with no mention of a heat pump/air-conditioning unit.
5. Mr Heo and Ms Kwon moved from Wellington to Hamilton. They had set aside one day to view a lot of rental premises. They did not notice at the time of their 15-minute inspection that there was no heat pump.
6. The signing of the tenancy agreement was completed electronically. A heat pump was listed as a chattel in the tenancy agreement signed by both parties. Discussions over other items listed in the chattels list took place but it was not until Mr Heo and Ms Kwan moved in that he realised there was no heat pump.
7. Mr Heo said there were two properties they were considering renting and both had a heat pump listed as a chattel. They decided on the current address because it was a single level.
8. Mr Heo believed that the heat pump was part of the contract and it was one of the reasons they took the premises. Mr Heo's partner was expecting a baby at the time and the ability to keep the premises at a reasonable temperature was important to them.
9. Mr Heo did not want to incur the extra cost and trouble to move as they now have a 5-week-old baby and he believed that a heat pump is the best heating and cooling option for the premises.
10. Mr Heo and Ms Kwon stated that the addition of the heat pump would add value to the premises and therefore are seeking a work order to have a heat pump installed.
11. APL admitted that they had made the mistake by not crossing the heat pump of the chattels list.
12. They said they were in the process of standardising their tenancy agreements which included a comprehensive list of chattels. The idea being that when the parties met to sign an agreement they would go through the list and cross off those chattels that were not provided. This procedure was not followed because Mr Heo and Ms Kwon were still in Wellington.
13. APL offered to change the fixed term tenancy to a periodic tenancy to allow Mr Heo to terminate the tenancy earlier and find another property. They have offered to supply a Dyson heating/cooling fan as a replacement.
14. APL stated that the owner of the premises did not want to make the physical changes required to put a heat pump in the premises.
15. In any application made before the Tribunal the applicants are required to prove their claim.
16. The standard of proof in matters before the Tenancy Tribunal is the balance of probabilities, in other words the party proving the claim must establish with evidence that the claim is "more probable than not" or "more likely than not".

Was there a breach of contract?

17. Mr Heo and Ms Kwon believed that it was a breach of contract to not provide the heat pump. This was a chattel that was important to them and included on the list that formed part of the contract.
 18. A tenancy agreement is a contract and the general law of contract applies in relation to the formation of an agreement.
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19. For an agreement to exist the general law requires an offer and acceptance, an intention to create legal relations, consideration given by each party for the bargain, and a legal capacity to contract.
20. These premises were advertised by the landlord as available for rent. This is not legally an offer but seen as an invitation to treat. The tenant responded, inspected and negotiated with the landlord which ended in an agreement. This is held to be an offer by the tenant to rent the premises on specified terms which was accepted by the landlord.
21. I find here that a contract did exist and still does as Mr Heo and Ms Kwon continue to rent the premises from APL.
22. The problem here is terms of the agreement.
23. Under s78(1)(h) of the Residential Tenancies Act 1986, the RTA, the Tribunal is empowered to make "any other order that the High Court or District Court may make under any enactment or rule of law relating to contracts".
24. This allows the Tribunal to apply other statutes that relate to contract law and here the Contract and Commercial Law Act 2017, the Act, can be applied.
25. A broad summary is that relief may be granted under this Act in Section 24 if in entering into the contract, a mistake by one party, that is common to both parties influenced all the parties in their decision to enter the contract.
26. Both parties gave evidence that at the time the agreement was signed they did not know there was no heat pump/air-conditioning unit in the premises. This was a mistake common to both parties.
27. However the relief able to be given under this Act is by way of cancellation or variation of the contract or by restitution, or compensation. These are not the remedies sought by Mr Heo and Ms Kwon.
28. They have already been offered a variation of their agreement to a periodic term and been offered to have a different heating /cooling system installed. Both offers were rejected.

Work order

29. The remedy specifically sought was a work order and this an order able to be made under the RTA.
 30. Section 78(1)(e) of the RTA empowers the Tribunal to make a work order. This is usually made when a Landlord has breached their responsibilities as required by the Act under Section 45.
 31. Section 45(1)(c) provides that a landlord shall comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises. Clause 6 of the Home Improvement Regulations 1947 provides that "every living room, shall be fitted with a fireplace and chimney or other approved form of heating".
 32. APL as landlord simply has to comply with the legal requirements relating to heating of the home by supplying the "approved form of heating".
 33. A work order to install a heat pump exceeds this legal requirement.
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34. There was no other evidence presented supporting a claim under Section 45 of the RTA.
35. The application for the work order to install an air-conditioning unit is therefore dismissed.