

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Palmerston North

Tenancy Address

150 Lethbridge Street, Feilding 4702

Applicant

Full Name	
Shantel Marie Ngakawe Manihera	Tenant
Robert Hohepa Kent Hadfield	Tenant

Respondents

Full Name	
Janice Butler	Landlord
Laura P Buckley	Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Janice Butler and Laura Buckley is granted possession of the premises situated at 150 Lethbridge Street, Feilding 4702 at 4pm on 20 April 2018.

(Section 64(1) Residential Tenancies Act 1986)

2. Janice Butler and Laura Buckley to pay Shantel Manihera and Robert Hadfield the sum of \$1,450.00 immediately calculated as follows:

Exemplary damages for failure to lodge the bond	\$200.00
Exemplary damages for failure to provide an approved form of heating	\$750.00
Compensation for cleaning at the commencement of the tenancy	\$500.00
Amount payable by Landlord to Tenant	\$1,450.00

(Sections 19, 45,77(2)(k), 78(1)(d) and 109 Residential Tenancies Act 1986)

Reasons:

Reasons:

1. The tenancy agreement between Ms Buckley and Ms Butler, the landlords, and Ms Manihera and Mr Hadfield, the tenants, commenced on 15 October 2016 and is still current. The premises comprise a large 6 bedroomed home.
2. The landlords have filed an application seeking possession of the premises following the serving of a 42-day notice. The notice expired on 11 February 2018 but the tenants were given a further 4 weeks to vacate to 10 March 2018.
3. The tenants have filed an application seeking compensation for the landlords' failure to maintain the premises, for cleaning that was undertaken by them at the commencement of the tenancy and exemplary damages for failure to lodge the bond of \$1050.00. They also claim the 42-day notice was revoked after they had paid rent arrears.

Claim by the tenants

Failure to lodge the bond

4. A bond of \$1050.00 was paid on 13 October 2016. Ms Butler said this more by way of a deposit, but it is clear from the tenancy agreement a bond of \$1050.00 was to be paid, it was paid and it was not lodged with the bond centre.
5. Ms Butler said that aside from the first weeks rent in advance, no rent was paid for the first few weeks and the tenants had told her to use the bond for these weeks. She said if this had not been used for rent the arrears would have been much higher throughout the tenancy.
6. The tenants said this was not the case and the reason they had not paid rent for the first few weeks was because there was a verbal agreement between the parties that the first three weeks would be rent free in acknowledgement of the work they had done in cleaning up inside and outside. Ms Butler denies this was offered. This will be considered at a later part in the decision.
7. The law is clear that a bond must be lodged within 23 working days of receipt and failure to do so is an unlawful act. If the rent falls into arrears there are other remedies available under the act. (Section 19 Residential Tenancies Act 1986)
8. When considering the level of damages that can be awarded it is necessary to have regard to whether the act was intentional, the intent of the person in committing the unlawful act, the effect of the unlawful act, the interests of the landlord or the tenant against whom the unlawful act was committed and the public interest. (Section 109 Residential Tenancies Act 1986)
9. A bond is money that belongs to the tenant but is held in trust by the bond centre during the course of the tenancy. If all is in order at the end of the tenancy it is returned to the tenants or if there are deductions to be made from the bond these are agreed between the parties or are the subject of an application to the Tribunal.
10. The maximum amount of exemplary damages that can be awarded is \$1000.00.

11. Not lodging the bond was an intentional act on behalf of the landlords. They said the house had been tenanted previously so they should have been well aware of this obligation. If lodging the bond had meant the tenants fell into arrears the landlords could have lodged an application for termination at that time.
12. I award the amount of \$200.00 in exemplary damages

Compensation for cleaning

13. The tenants said at the start of the tenancy the house and grounds were a mess and no cleaning had been done at all. They said an agreement had been reached with the landlords that they would receive 3 weeks free rent in lieu of that.
14. The landlords categorically denied this. They said they had cleaned the property with the help of friends but the tenants were in a hurry to move in and wanted the landlords and their helpers gone. This meant that one room was left not cleaned and there was some clearing up to be done in the yard.
15. Both parties presented photographic evidence of the supposed condition of the property at the start of the tenancy but there was some disagreement about when these photographs were taken and none of them are dated. They do show the landlords and others undertaking work at the property. There was an inspection report completed by Ms Butler only which showed, although there was some maintenance needed, there was no mention of the house being unclean. I do acknowledge this was not signed by the tenants.
16. On 2 March 2018 the landlords wrote to the tenants giving them a further 4 weeks to vacate the premises. They said if the tenants had gone by this date and the premises were left reasonably clean and tidy and the rent was up to date they would pay them the \$500.00 they had claimed for cleaning the yard and house.
17. While this was a conditional offer I find that an award of \$500.00 for the work they had to undertake at the commencement of the tenancy is a fair award.

Failure to maintain the premises and provide heating

18. The tenants are claiming compensation as there was no heating in the house, aside from a very small electric heater, and no maintenance was carried out when the landlords were approached to do urgent repairs such as the hot water cylinder bursting and the toilet gushing water. The hot water cylinder was repaired but there was a large hole left by the builder.
19. The landlords said they had attended to the hot water cylinder bursting as soon as they were advised. They were shocked to see a photograph of the hole the builder had left but they had not been advised of this by the tenants. As far as the toilet Ms Butler said there was a small leak around the u bend of the toilet. She took down some sealant to fix it when she was advised of the problem but it had run out so she was not quite able to finish the job. She acknowledged she should have gone back and finished it off. The tenants said the toilet is usable but there is still a small leak
20. I find neither of these matters reaches the threshold to establish to the required level the landlords have failed to maintain the premises.

21. As regards the heating Ms Butler said they had never had heating in any of their houses. They had offered an unflued gas heater and bottle to the tenants but this was declined. The fire place does not work but they did provide a small electric heater.
22. Section 45(1)(c) Residential Tenancies Act 1986 requires landlords to comply with all requirements in relation to building, health and safety and any other enactment that affects the premises.
23. Regulation 6 Home Improvement Regulations 1947 requires that every living room shall be fitted with a fireplace and chimney or other approved form of heating.
24. The term 'approved form of heating' is not defined in the regulations or the Act but the term 'approved' is defined as being approved by the local council, however many councils do not have this provision.
25. While the landlords have said they offered a gas heater to the tenants, these are not now regarded as an approved form of heating. The Ministry of Health states unflued gas heaters produce a number of pollutants as a result of combustion. Such pollutants that can harm your health include nitrogen dioxide and carbon monoxide.
26. Unflued gas heaters also produce water vapour that can indirectly affect health by increasing the growth of moulds and dust mites.
27. The reasoning that the landlords have never had heating in their houses does not abrogate them from their responsibilities as landlords.
28. By not providing an approved form of heating the landlords have committed an unlawful act. In such a large old home as this the tenants said it was very cold during the winter and no doubt had flow on effects to health although this has not been established by evidence.
29. The goal of all landlords should be to comply with all legislation to provide a warm and dry home for their tenants.
30. Taking all of these factors into account I award the amount of \$750.00 in exemplary damages. The maximum award is \$4000.00.

Claim by the landlords

31. The landlords are claiming possession of the premises pursuant to a 42 day notice which expired on 11 February 2018 and was then extended to 10 March 2018.
 32. The validity of the notice has not been challenged by the tenants. They do note however that a 14 day notice to remedy rent arrears was served at the same time as the notice. Ms Manihera said this has happened before and they have remedied the rent arrears and the notice has been withdrawn.
 33. On this occasion, she said the rent arrears were remedied on 5 January 2018. Ms Manihera said she contacted Ms Butler to enquire where now they had remedied the arrears whether the notice still applied. Ms Manihera said Ms Butler told her they were safe and there would be no eviction.
 34. Ms Butler denies that she told Ms Manihera there would be no eviction. The notice was not withdrawn in writing nor was there any other written communication between the parties to suggest this was the case. In fact, the letter sent on 2 March extending the date for the last day of the tenancy would confirm that it had never been agreed the eviction would not go ahead.
 35. Ms Manihera was concerned the rent arrears and the 42 day notice were linked however a landlord is entitled at any time to serve a 14 day notice regarding a breach. The notice provisions are entirely separate from this.
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36. I therefore find the landlords are entitled to possession of the premises. Given there is a large family to re-house and they have been waiting on the outcome of their application I find it is appropriate to grant the tenants some further time to vacate. The tenancy will end at the latest at 4pm on 20 April 2018.
37. Given the tenancy is not at an end no orders will be made in relation to the bond.