

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at North Shore**Tenancy Address**

51 Helvetia Drive, Browns Bay, Auckland 0630

Applicant

Full Name

Jelena Pavic and Milos Pavic

Tenants

Respondent

Full Name

Christopher Norton Bradfield

Landlord

Order of the Tribunal**The Tribunal hereby orders:**

Christopher Norton Bradfield is to pay to Jelena Pavic and Milos Pavic the sum of **\$6,061.43** calculated as follows:

a. Exemplary damages for failing to lodge the bond at the Bond Centre	\$460.00
b. Compensation for unlawful termination notice	\$2,300.00
c. Rent refund due to unlawful rent increase (01/08/17 to 03/02/18)	\$801.43
d. Discrimination – “pregnancy”	<u>\$2,500.00</u>

Total due **\$6,061.43**

Sections 12,19,24,38,85,109, Schedule 1A Residential Tenancies Act 1986

Section 21(1)(a) Human Rights Act 1993

Reasons

1. This was an application by the tenants, who applied for exemplary damages/compensation from the landlord for:
 - a. failing to lodge the bond in the Bond Centre;
 - b. unlawful notice of termination;
 - c. discrimination due to pregnancy;
 - d. smoke alarm issue (unproved); and
 - e. unlawful notice of rent increase.
2. The tenancy began on 1 June 2016 and ended 3 February 2018.

Failing to lodge the bond

3. The tenants paid a bond of \$920.00 on 16 June 2016.
4. A landlord is obliged to lodge a bond into the Bond Centre within 23 working days of receipt.
5. It was not disputed that the bond was not lodged in the Bond Centre. However, the bond was repaid to the tenants when the tenancy ended.
6. Nevertheless, the landlord's failure is a breach that undermines the legislated arrangement for the management of residential tenancies in this country. Such a breach can attract an award of exemplary damages of up to \$1,000.00.
7. I appreciate the landlord is a first-time landlord and he submitted he did not know he had to lodge the bond. However, he should have known. He retained the tenant's bond in his personal bank account, effectively having the use of it for the entire 20 months of the tenancy. During that period, the bond was at risk, the very risk having to lodge the bond was intended to alleviate.
8. Fortunately, the bond was repaid but exemplary damages are still warranted, as ordered above.

Unlawful notice of rent increase

9. On 31 July 2017, the landlord gave the tenants less than one day's notice of a rent increase
10. The text from the landlord to the tenants read:

"However, I must inform you that the weekly rent is to increase from \$460.00 a week to \$490.00 a week starting from 1/8/17."

11. Thereafter effective 1 August 2017, the tenant's rent increased from \$460.00 to \$490.00 per week and the tenants duly complied, by making the additional rent payment.
12. However, section 25 of the Residential Tenancies Act 1986, requires a landlord to give a tenant notice of not less than 60 days from the day notice is given of a rent increase.
13. The required notice was not given by the landlord and fell an extraordinary 59 days short.

14. Therefore, the rental increase was invalid, and an order is made, reimbursing the tenants the increased rent paid.

Unlawful notice of termination

15. On 17 January 2018, the landlord served the tenants with a written notice informing them that their tenancy would be terminating in 30 days (“the termination notice”).
16. The termination notice stated:

“It is with regret and after great thought that we have to inform you that we have decided to cancel our tenant agreement with yourselves.....

The reason for our cancellation is that we originally rented out our apartment to two people, but due to you having been new in the country, we made the exception.

However, with another baby on its way, we feel that the apartment is not in our minds designed for the additional person, as you are already three.

Furthermore, as you are aware our bedroom is right next to your lounge, and that we do not see our way fit to maybe have interrupted sleep due to the new baby.

Therefore, we would like to inform you that we are providing you with 30 days’ notice as from today, but that we are prepared to allow you to remain in the apartment up to latest 28 February 2018”.

17. Pursuant to section 51(1) (d) of the Residential Tenancies Act 1986, the landlord was required to give 90 days’ notice (42 days if family moving in but that was not intended by the landlord).
18. Therefore, according to Ms Pavic:

“We had to find another property as soon as possible. All this stress was even stronger and put me to a desperate and hopeless situation because of the discriminatory reason stated in the letter saying that my new born baby will disrupt his and his wife’s sleep. Instead of planning my delivery and organizing things ready for the baby, I had to run around, view more than 15 properties and after 6 applications we had to accept the first and only one that was successful and it is with the fixed term of 4 months”.

19. Having secured a new tenancy, the tenants then gave the landlord notice that they had found another place to live and would be vacating in 4 days:

“Hello Chris

After many applications sent during last week, finally we got accepted for one today and I am letting you know straight away. Since it is hard to find a property at such short notice (I am due in 4 weeks and I need to prepare for the delivery and baby) we cannot risk waiting any longer. That is why we accepted the first one.....Our last day here will be Sunday 3 February and this is the date our tenancy ends.....”

20. However, Mr Bradfield then objected to the above notice and informed the tenants by email dated 30 January 2018, that:

“In the interim, I would like to inform you that you are supposed to provide at least three weeks’ notice to be from both parties as we have done so to allow sufficient time for the property to be re-advertised.....

Therefore, you are bound to pay the weekly rental for at least two weeks being \$980.00 due to the short notice that you have provided, and if in doubt, I would recommend that you communicate with your agent which I am sure will inform you that timely notice is to have been provided or you need to cover the rental until a suitable tenant has been found.”

21. Having breached the obligation imposed on him to give 90 days’ notice of termination, the landlord then insisted that the required 21 days’ notice of termination be given by the tenants. To ensure they had accommodation to move to, the tenants then had to pay double rent for a period of at least 14 days.
22. The invalid termination notice given by the landlord, obviously caused the tenants serious undue stress and inconvenience and breached their entitlement to quiet enjoyment. That is apparent from the written statements exhibited by the tenants, including a comprehensive letter dated 7 February 2018 from Sara Weeks a psychiatrist.
23. Accordingly, the tenants are entitled to a general compensation award for stress and inconvenience (*Mills & Murray v Auckland Property Management Solutions Ltd t/a Ray White 14 August 2017, Auckland Tenancy Tribunal, No: 4085842, paragraphs 81 to 117*). Also compensation for double rent payments and the letting fee and higher rent paid in their new accommodation. The Tribunal does not have jurisdiction to award loss of earnings.

Discrimination

24. At the time of receiving the termination notice on 17 January 2017, Ms Pavic was 33 weeks pregnant and was due to give birth on 6 March 2018, having been advised by her mid-wife that labour could start from 13 February 2018.
25. In the termination notice, the landlord recorded that the reason for the termination was because another baby was “on its way”.
26. The tenancy agreement did not specify the number of persons who could occupy the premises. However even if it did, the number of occupants was irrelevant. That is because at the time the notice of termination was served, there were no additional occupants. The issue that prompted the termination notice was the “pregnancy”.
27. Section 12 of the Residential Tenancies Act 1986 states:

12Discrimination to be unlawful act

(1) Each of the following is hereby declared to be an unlawful act:

(a)discrimination against any person in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement in contravention of the Human Rights Act 1993

28. Section 21(1) (a) of the Human Rights Act 1993 states:
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21 Prohibited grounds of discrimination

(1) For the purposes of this Act, the prohibited grounds of discrimination are—

(a)sex, which includes pregnancy and childbirth:

29. When the landlord served the termination notice he was obviously aware Ms Pivac was pregnant and expressly gave that as the reason for terminating the tenancy.
30. Ms Pivac's acute distress at having to cope with an unlawful termination notice and having to secure alternative accommodation while 33 weeks pregnant and preparing for imminent childbirth, was described in some detail by her and her doctor in statements exhibited. Her doctor referred to an acute onset of anxiety, sleeplessness, fears of what the impact would be on her baby, a fear of homelessness, a tendency to wake in the middle of the night with shortness of breath, tachycardia and worrying about what would happen.
31. The obvious distress of the experience for both her and her husband was still very apparent at the hearing.
32. The discrimination was intentional, was not in Ms Pivac's interest nor the public interest.
33. Accordingly, the criteria specified in section 109(3) of the Residential Tenancies Act 1986 was satisfied and the tenant is entitled to an award of exemplary damages pursuant to Schedule 1A of the Residential Tenancies Act 1986.
34. In making the award, I have reduced it to some extent, in recognition of Mr Bradshaw's honesty in declaring his reason for terminating the tenancy at the time the notice of termination was given (he was not obliged to give a reason) and because at the hearing, he apologised to Ms Pivac.
35. Finally, Mr Bradshaw's management of this tenancy has been very unsatisfactory and he would be well advised to secure the services of a professional property manager, if he wishes to continue as a landlord.