[2025] NZTT 4895420

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Fair Rentals Limited As Agent For Ashish Kurana Merry Lekhi, Prestige Realestate Limited Will LIU, Ankuss Malsotra

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Fair Rentals Limited As Agent For Ashish Kurana Merry Lekhi, Prestige Realestate Limited Will LIU and Ankuss Malsotra must pay [The tenant/s] $2,770.44 immediately, calculated as shown in the table below.

Description	**Landlord**	**Tenant**
Compensation: Failure to provide proper heating		$1,000.00
Compensation: Failure to provide requested documents		$250.00
Exemplary damages		$1,500.00
Filing fee reimbursement		$20.44
Total award		**$2,770.44**
Total payable by Landlord to Tenant		**$2,770.44**

2. Prestige RealEstate Limited t/a Remax Prestige is removed as a party to the claim.

Reasons:

1. This matter was heard over two hearings on 24 October 2024 and 25 March 2025. [The tenant/s] and the representative for Fair Rentals Ltd attended the first hearing. [The tenant/s]'s new property management company, Prestige RealEstate Limited trading as Remax Prestige and the owner, Ashish Kurana Merry Lekhi, were joined as respondents to the proceedings. [The tenant/s]

confirmed at the second hearing that she no longer wished to pursue any claims against Remax Prestige as the issues primarily arose during Fair Rentals Ltd's management. It is noted that the owner did not attend the hearing.

Background

2. [The tenant/s] filed an application with the Tribunal against the landlord alleging multiple breaches of the Residential Tenancies Act 1986 (RTA). The tenancy commenced on 28 February 2023. The tenancy was managed by Fair Rentals Limited and property management was later transferred to Remax Prestige.
3. The tenant initially raised several claims, including unlawful discrimination and retaliatory termination. However, at the hearing, she confirmed she no longer wished to pursue those claims and was not seeking a work order, as most issues had since been remedied.

4. The remaining issues for the Tribunal to determine are:

    a. Whether the landlord failed to maintain the premises and comply with Healthy Homes Standards;

    b. Whether the landlord failed to provide required documentation, including a compliant tenancy agreement;

    c. Whether the tenant is entitled to compensation and/or exemplary damages.

The Tenant's claims

5. From the beginning of the tenancy, the tenant states that the property lacked adequate heating and was not compliant with the Healthy Homes Standards. She asserts that there was no heating source provided, and she was required to use three fan heaters throughout the winter months, resulting in high electricity costs. The landlord claimed to have a heating exemption but failed to provide any documentation verifying that exemption, despite several requests.

6. The tenant also raised concerns about draughts caused by defective windows, gaps around doors, and general disrepair. She reported these issues to the landlord on multiple occasions, including by email on 15 March 2024, 29 March 2024, and 3 August 2023. The tenant says the conditions of the premises made the home cold and difficult to heat, and that several windows were insecure or rotting, with broken hinges and latches that worsened the draught problem.

7. Additionally, the tenant alleges that she was not provided with a copy of the tenancy agreement at the beginning of the tenancy, despite making repeated written requests, and that the landlord also failed to provide documents such as the claimed Healthy Homes heating exemption. A copy of the tenancy agreement

and some compliance documents were only provided in May 2024, over a year into the tenancy.

8. To support her claims, the tenant provided a Healthy Homes Assessment report prepared by Habitat for Humanity on 8 July 2024. The report identified failures to meet several Healthy Homes obligations, including lack of adequate heating, missing ground moisture barrier insulation, mould in several areas, and draught issues from windows and external doors. Although some remedial work has since been carried out—including installation of a heat pump and fire alarms—the tenant maintains that the heating issue persisted for the majority of the tenancy and caused significant inconvenience and cost.

9. As a remedy, the tenant seeks:

    $4,000 in compensation for 17 months without proper heating,

    $1,000 in compensation for the landlord's failure to provide documents, and

    $3,000 in exemplary damages for unlawful acts committed by the landlord.

The Landlord's response to the claims

10. The landlord denies breaching the RTA and relies on a Healthy Homes compliance assessment dated 2 September 2022 from Affordable Energy Solutions. That report indicated the property was compliant with heating, insulation, ventilation, drainage, draught-stopping, and smoke alarm requirements. With respect to moisture ingress, the property was exempt due to the design of the baseboards, which allowed sufficient airflow.

11. The landlord maintains that a heating exemption was in place but has not produced a copy of the exemption certificate or related documentation in support of that claim.

12. The landlord provided a timeline of works carried out at the property, including:

    Window hinge repairs in August 2023;

    Installation of a rangehood in June 2024;

    Servicing of the fireplace in June 2024;

    Installation of a Haier heat pump in August 2024.

13. The landlord's position is that reasonable efforts were made to maintain the property and respond to tenant concerns over time. The landlord appears to dispute the tenant's characterisation of prolonged non-compliance and maintains

that the property either met the relevant standards or was brought into compliance when required.

The Law

14. Under section 45(1)(b) of the RTA, a landlord must provide and maintain the premises in a reasonable state of repair, having regard to the age and character of the property and the period of tenancy. Section 45(1)(bb) requires compliance with the Healthy Homes Standards, as set out in the Residential Tenancies (Healthy Homes Standards) Regulations 2019.

15. Under sections 45(1AC) and 45(1AD), landlords must provide documents on request relating to the tenancy, including records that demonstrate compliance with the Healthy Homes Standards. Failure to do so may constitute an unlawful act.

16. Section 13A(1) of the RTA requires that landlords provide a written tenancy agreement which includes key prescribed information, including Healthy Homes compliance statements. Section 13A(3) confirms that failure to provide this information is an unlawful act.

17. Under section 77(2)(n) of the RTA, the Tribunal may award compensation for breaches of the tenancy agreement. Under section 109, the Tribunal may award exemplary damages where an unlawful act is proven and where the act was intentional, having regard to the harm caused and the public interest in deterrence.

Findings and Analysis

18. The Tribunal is satisfied, based on the evidence provided, that the landlord failed to maintain the premises in a reasonable condition and failed to comply with the Healthy Homes Standards for a significant portion of the tenancy.

19. The tenant gave clear and consistent evidence that she raised heating, insulation, and draught-stopping issues repeatedly from early in the tenancy. She stated there was no functioning heating at the property when the tenancy began and that she relied on multiple fan heaters to warm the house during winter. The landlord claimed the property was subject to a two-year exemption, but no exemption documentation was ever produced.

20. A Healthy Homes Assessment obtained by the tenant in July 2024 identified serious deficiencies, including the lack of a compliant heating source, draughts from windows and doors, and evidence of mould and moisture ingress. The inbuilt fireplace was deemed unsafe in June 2024. A compliant heat pump was only installed in August 2024—approximately 17 months after the tenancy began. The Tribunal finds this delay to be unreasonable and a breach of section 45(1)(bb).

21. There were also delays in general maintenance. Several windows and doors allowed draughts to enter due to rotting, broken hinges, or gaps. While some minor repairs were undertaken (such as window hinge replacements and rangehood installation), key issues including heating, draught stopping, and moisture control were not addressed promptly, resulting in discomfort and hardship to the tenant.

22. In addition, the Tribunal finds that the landlord breached section 13A of the RTA. The tenant was not provided with a written tenancy agreement at the start of the tenancy. Despite repeated requests made on 15 March 2024, 29 March 2024, and 15 May 2024. Further, the landlord failed to provide key prescribed Healthy Homes documentation, including any evidence of the claimed heating exemption. This failure amounts to an unlawful act under section 13A(3). The Tribunal finds that the landlord failed to comply with their legal obligation to provide a tenancy agreement that included all required disclosures.

23. The Tribunal considers these failures cumulatively and notes that the lack of proper documentation compounded the uncertainty experienced by the tenant about the state of the property and her entitlements. While some work was ultimately carried out, this occurred only after long delays and outside the periods during which the breaches caused the most harm.

Compensation and Exemplary Damages

24. The tenant seeks compensation of $4,000 for the extended period without heating. Given the lack of any compliant heating source for 17 months, the increased power usage from running multiple fan heaters, and the clear adverse effect on the tenant's comfort and wellbeing, I find the amount of $1,000 to be reasonable.

25. The tenant seeks compensation of $1,000 for failing to provide documents. For the failure to provide documentation, including both the tenancy agreement and Healthy Homes compliance information, I award $250 as reasonable compensation. The delay was significant, despite repeated requests, and this added to the tenant's uncertainty and frustration.

26. In determining any claim for exemplary damages, section 109(3) of the RTA sets out a range of considerations, including the intent of the person committing the unlawful act, the effect of the act, the parties' interests and the public interest. In effect exemplary damages are damages to punish. I find exemplary damages are appropriate for the landlord's unlawful acts under sections 13A(1CA) and (3) failing to provide a compliant tenancy agreement, section 45(1A) failing to maintain the premises and comply with the Healthy Homes Standards and section 45(1AD) failing to provide the required documents. The failure to meet these obligations was not a simple oversight; it extended over a substantial period,

despite clear statutory requirements and direct requests from the tenant. Having regard to the intentionality of the breach, the harm caused, and the need to deter similar conduct, I award exemplary damages totalling $1,500.00 as follows:

- sections 13A((1CA) and (3) of $250.00.
- section 45(1AD) of $250.00
- section 45(1A) of $1,000.00

Liability of the agent

27. The tenant's claim is against the former agent, Fair Rentals Limited. The owner is Ashish Kurana Merry Lekhi.

28. There are a number of authorities that deal with the issue of whether agents, owners, or both are liable under a tenancy agreement. The answer usually involves a consideration of the parties' intent (based on a consideration of the tenancy agreement and all background facts), the principles of agency law, and the extended definition of landlord in the RTA. The extended definition of 'landlord' in section 2 RTA which provides that a landlord is the *"grantor of a tenancy of the premises: and, where appropriate, includes – (e) An agent of a landlord"*.

29. In the case of *Mumby & Agrenz v Gary Brown Ltd* (CIV 2010-044-2067), DC North Shore, 07/02/11) the Court considered whether the agent, the owner, or both were liable to the tenant. In that case, although the tenant knew that the agent was acting in that capacity, the Court held that it was nevertheless liable to the tenant (jointly and severally with the property owner).

30. The RTA's definition of "landlord" under section 2, reinforces the potential for agents to bear liability alongside property owners. I am satisfied that Fair Rentals Limited was acting as an agent in all respects of the tenancy and in the capacity as the landlord. Therefore, this is a situation where it is appropriate for both the owner and the agent to be liable to the tenant as landlord. Whether the order is made against the owner, the agent, or both, those parties will have to resolve between themselves who ultimately bears the burden of any costs ordered.

Filing fee and suppression order

31. As the tenant has substantially succeed with the claim, I consider it reasonable to order the other party to reimburse the filing fee. The tenant sought name suppression. As the tenant has substantially succeeded in the proceedings, name suppression is granted on that basis as per section 95A(1) RTA.

J Setefano
16 May 2025

Please read carefully:

Visit justice.govt.nz/tribunals/tenancy/rehearings-appeals for more information on rehearings and appeals.

Rehearings

You can apply for a rehearing if you believe that a substantial wrong or miscarriage of justice has happened. For example:

- you did not get the letter telling you the date of the hearing, **or**
- the adjudicator improperly admitted or rejected evidence, **or**
- new evidence, relating to the original application, has become available.

You must give reasons and evidence to support your application for a rehearing.
A rehearing will not be granted just because you disagree with the decision.
You must apply within five working days of the decision using the Application for Rehearing form: justice.govt.nz/assets/Documents/Forms/TT-Application-for-rehearing.pdf

Right of Appeal

Both the landlord and the tenant can file an appeal. You should file your appeal at the District Court where the original hearing took place. The cost for an appeal is $260. You must apply within 10 working days after the decision is issued using this Appeal to the District Court form: justice.govt.nz/tribunals/tenancy/rehearings-appeals

Grounds for an appeal

You can appeal if you think the decision was wrong, but not because you don't like the decision. For some cases, there'll be no right to appeal. For example, you can't appeal:

- against an interim order
- a final order for the payment of less than $1000
- a final order to undertake work worth less than $1000.

Enforcement

Where the Tribunal made an order about money or property this is called a **civil debt**. The Ministry of Justice Collections Team can assist with enforcing civil debt. You can contact the collections team on **0800 233 222** or go to justice.govt.nz/fines/civil-debt for forms and information.

Notice to a party ordered to pay money or vacate premises, etc.

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.

If you require further help or information regarding this matter, visit tenancy.govt.nz/disputes/enforcing-decisions or phone Tenancy Services on 0800 836 262.

Mēna ka hiahia koe ki ētahi atu awhina, kōrero ranei mo tēnei take, haere ki tenei ipurangi tenancy.govt.nz/disputes/enforcing-decisions, waea atu ki Ratonga Takirua ma runga 0800 836 262 ranei.

A manaomia nisi faamatalaga poo se fesoasoani, e uiga i lau mataupu, asiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesootai mai le Tenancy Services i le numera 0800 836 262.