TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: Edinburgh Realty Limited As Agent For David Crean

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant name and identifying details.
2. Edinburgh Realty Limited As Agent For David Crean must pay [The tenant/s] **$15,028.00** immediately, calculated as shown in table below:
3. Until the tenancy ends the tenant may deduct from the amount to be paid the ongoing weekly rent.
4. The application for termination is **dismissed**.
5. By agreement the tenant may end the fixed term tenancy before the expiry date without providing notice. However, the tenant must inform Edinburgh Realty Limited of their intended vacate date.

Description	**Landlord**	**Tenant**
Compensation		$15,000.00
Filing fee reimbursement		$28.00
Total award		**$15,028.00**
Total payable by Landlord to Tenant		**$15,028.00**

Reasons:

1. Both parties attended the hearing.
2. On 2/9/2025 the tenant sought compensation and exemplary damages for breach of Healthy Homes Standards and a work order.
3. At mediation on 8/10/2025, the parties agreed on various repairs, which the parties confirmed had all been completed at the time of the hearing.
4. In addition, an agreement was reached about termination of the tenancy, which has been incorporated into this order.
5. Following mediation, the only outstanding matter was compensation.
6. However, on 6/11/2025 the landlord filed a late application for termination of the tenancy.
7. The tenant agreed the issue of termination could be heard with her application.
8. The tenancy was for a fixed term which began on 18/12/2021 and was renewed annually to now end on 25/3/2026 at a weekly rent of $570.00.

Tenant's claim

Has the landlord breached their obligations?

9. [The tenant/s] claims that the landlord has breached their obligations to maintain the premises and comply with Healthy Homes Standards.
10. The tenant submitted that the heater in the lounge was small, and her electricity bills were high. She estimated these at an average of $800.00 per month.
11. In addition, the tenant suggested there were draughts under the front and back doors which were not finally remedied until this year.
12. Of particular concern to the tenant was a panel which fell off the soffit in October 2024 which contained asbestos and had not been fixed.
13. As a result of a hole through the ceiling the tenant said she had been unable to use the bedroom concerned and mould had accumulated on the bedroom window which could not be opened.
14. The tenant wanted a refund of a quarter of the rent she had paid during the nearly four year tenancy and recompense for the high power bills and the stress she had suffered during the tenancy.
15. In response, the landlord accepted that the premises did not comply with healthy homes standards, despite a compliance report having been undertaken on 23/8/2022 pointing out non-compliance for heating, insulation, drainage and draught stopping.

16. The landlord submitted that insulation was installed, and spouting repaired following the 2022 report, but the heating had not been upgraded due to staff error.

17. In support of their position that the soffit did not immediately require replacement the landlord provided written comment from an insulation specialist.

18. The landlord believed the mould was due to the way the tenant lived in the premises.

19. Under section 45, a landlord must, among other matters, provide and maintain the premises in a reasonable state of repair, comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.

20. From 1 July 2019, all residential premises must be insulated to a minimum standard. Where the premises were insulated before 1 July 2016, the ceiling insulation must have an R-value of at least 1.9 (or 1.5 for houses of a brick or concrete block construction). The underfloor insulation must have an R-value of at least 0.9. The insulation must be in reasonable condition.

21. Where insulation is installed after 1 July 2016, the minimum R-value for ceiling insulation is 2.9 in Zones 1 and 2, and 3.3 for Zone 3 (Zone 3 covers the South Island and central North Island). The minimum R-value for underfloor insulation is 1.3.

22. There are exceptions to these requirements, for example, where it is not reasonably practicable, or where there is a habitable space above or below the ceiling or floor that would otherwise have to be insulated.

23. [The tenant/s]Section 45(1)(bb) of the Residential Tenancies Act 1986 (RTA), requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS), in particular the heating, drainage and draught stopping standards.

24. The heating standard requires landlords to provide one or more ‘qualifying heaters’, with a capacity to heat the room to a required level. The heating standard defines what a qualifying heater would be and confirms that certain types of heaters are unacceptable heaters for the purpose of the HHS.

25. The draught stopping standard requires that residential premises be free from unreasonable gaps and holes that are not an intentional part of the building, which allow draughts to arise.

26. The moisture ingress and drainage standard requires that buildings comprising residential tenancies must have efficient systems to drain storm water, surface water and ground water, and that includes gutters, downpipes and drains. The Standard requires a ground moisture barrier when there is an enclosed subfloor space.

27. The HHS does provide exemptions in specific circumstances.

28. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45 (1)(A) and Schedule 1A RTA.

29. Compliance dates for the HHS vary depending on the tenancy:

    a. For private rentals

        i. If the tenancy commenced between 1 July 2021 and before 28 August 2022, the rental must comply within 90 days of the commencement of any new or renewed tenancy; or

        ii. If the tenancy commenced between 28 August 2022 but before 3 March 2025, the rental must comply within 120 days of the commencement of any new or renewed tenancy.

        iii. All private rentals must comply by 1 July 2025.

30. As the tenancy started on 18/12/2021 the compliance date for these premises was 18/3/2022.

31. The evidence is overwhelming, and the landlord did not dispute, that the premises were not fully healthy homes compliant until draught stopping was completed, and a new wall mounted heater installed after a further healthy homes standards compliance report on 2/10/2025.

32. In addition, I am persuaded by the evidence that the premises were not well maintained, in particular the soffit, toilet, laundry and oven repairs.

33. I find Edinburgh Realty Limited As Agent For David Crean has committed an unlawful act by failing to maintain the premises in a reasonable state of repair and not comply with Healthy Homes Standards.

Landlord's case

Should the tenancy be terminated?

34. The landlord sought termination due to what they believed was significant contamination from methamphetamine because they did not consider it safe for the tenant to remain in the premises.

35. However, the landlord confirmed that the agreement made at mediation about termination was acceptable to them.

36. As the parties have agreed on the issue of termination, I do not need to make a further determination on that matter.

37. However, for the avoidance of doubt the Tribunal cannot terminate a tenancy under section 59B because of the recent High Court decision of *Nisbet v Te Ahuru Mowai Ltd Partnership* [2025] NZHC 2467.

38. At clause [40] His Honour Grice J found:

    a. First, s 59B is not engaged. It only applies if "testing in accordance with a relevant prescribed method establishes contamination … at a level that is above a relevant maximum inhabitable level prescribed for that contaminant".[38] As both the adjudicator and District Court Judge recognised, there are no regulations currently in force that prescribe either a method of contamination testing or a maximum inhabitable level for methamphetamine. There has accordingly been no testing under a prescribed method nor is there any contamination levels prescribed against which to determine that the premises are uninhabitable.[39] In the absence of regulations, it is not for the Tribunal or the Court to apply another source of guidance. Other cases which have referred to the recommendations in the Gluckman report and other similar sources referred to different sections of the Act.[40]

39. While under section 56(1) the Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate there would need to be sufficient evidence to prove a breach not capable of remedy.

40. This was not the case here due to the lack of evidence about pre-tenancy methamphetamine testing.

41. The application for termination outside of the terms of the mediated agreement fails.

Should exemplary damages and or compensation be awarded?

42. As I have found the landlord committed an unlawful act by failing to maintain the premises in a reasonable condition and timely manner and failing to comply with Healthy Homes Standards I must consider the issue of exemplary damages.

43. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interest of the other party, and the public interest. See section 109(3) RTA.

44. Exemplary damages under the Act are different from compensation. The provision of such damages is designed to punish and deter; *Attorney-General (Commissioner of Crown Lands) v Little Bo Peep Sheep Company Ltd* (HC CIV 2010-412-134).

45. An award of exemplary damages is made at the Tribunal's discretion when one party has proved, as in this case, that the other party has committed a defined unlawful act. In making an award I need to consider the four matters set out in section 109(3).

46. However, I am unable to do that because under section 109(2)(b) a landlord or tenant cannot apply under subsection (1) later than 12 months after the date of commission of the unlawful act.

47. Put another way the tenant's claim for exemplary damages cannot succeed because the unlawful act was committed four years before they applied.

48. However, as I am unable to award exemplary damages, I consider it is appropriate in the circumstances to award compensation to the tenant.

49. Section 85 of the Residential Tenancies Act 1986 provides useful guidance about how the Tribunal should exercise its jurisdiction. This must be in a manner most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises.

50. In addition, the Tribunal must consider the substantial merits and justice of the case without being bound to give effect to strict legal rights or obligations, or to legal forms and technicalities.

51. The effect on the tenant of lack of appropriate heating in particular has been significant and ongoing for many years.

52. Even when the landlord obtained a Healthy Homes Standards compliance report, five months after the initial compliance date for the tenancy, the lack of compliant heating was not remedied.

53. While this may have been an oversight on the part of the landlord in 2022, I do not consider that a reasonable excuse for the next three years.

54. Indeed, the overall impression from the evidence is that the tenant's claims have been ignored until she lost patience over the issue of the damaged soffit which led eventually to a claim to the Tribunal.

55. Had I been in a position to award exemplary damages I would have done so at the maximum end of the scale and have taken this into account in the award of compensation, which I have set at $15,000.00.

56. While this is a significant award it also takes into account the high electricity costs incurred by the tenant throughout the tenancy, the inability to use one bedroom for part of the tenancy, and the stress caused to the tenant by the numerous issues which arose.

57. I am mindful of the tenant's comment that she put up with many issues over the years without complaint such as the oven, until part of the soffit broke off and was not fixed, leading to her application.

58. The only mitigating factors in the landlord's favour is that they eventually obtained a Healthy Homes Standards compliance report in August 2022 and did some remedial work, and completed the matters agreed at mediation.

59. The renting of premises is a business.

60. Both landlords and tenants have obligations and rights, and landlords should make sure their processes do not ignore the rights of tenants.

61. As Edinburgh Realty Limited As Agent For David Crean has wholly succeeded with the claim I must award the filing fee.

62. Suppression is granted to the tenant because they were successful with the proceedings.

J Wilson
13 November 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, or the failure to make an order, where the amount in dispute on appeal is less than $1000
- a final order to undertake work, or the failure to make an order, where the value of the work in dispute on appeal is 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.