

**TENANCY TRIBUNAL AT Whanganui**

APPLICANT: The Chief Executive, Ministry of Business, Innovation and  
Employment on behalf of the tenant Jaswinder Singh,  
Ranjeet Kaur

Tenant

RESPONDENT: THE RENT CENTRE LIMITED

Landlord

TENANCY ADDRESS: Flat 4, 23 Gonville Avenue, Gonville, Whanganui 4501

**ORDER**

1. The Rent Centre Limited must pay The Chief Executive of the Ministry of Business, Innovation & Employment \$271.39 immediately, calculated as shown in the table below.

**Description**

Exemplary damages – failure to forward Bond to Bond Centre within 23 working days	\$250.00
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Costs (including filing fee)	\$21.39
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<b>Total payable by Respondent to Applicant</b>	<b>\$271.39</b>
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2. The claim made for a restraining order is dismissed.

**Reasons:**

1. Both parties attended the hearing. The Chief Executive of the Ministry of Business Innovation and Employment ("the Chief Executive") was represented

by counsel, Ms English. The respondent company was represented its' director, Mr Gould.

### ***The application***

2. This application relates to a claim that bond monies were not forwarded by the respondent to the Bond Centre as required by section 19(1)(b) Residential Tenancies Act 1986 ("RTA").
3. This application was one of 116 applications brought against the respondent by the Chief Executive pursuant to section 124A RTA.
4. All 116 applications were consolidated, for the purposes of the hearing only, pursuant to section 124B(2) RTA as ordered by me on 17 May 2018.
5. Of the 116 applications, 83 applications, including the present application, allege a failure to forward bond monies to the Bond Centre only. 32 applications allege both a failure to forward bond monies to the Bond Centre as well as a failure to provide a compliant insulation statement in a tenancy agreement. One application alleges a failure to provide a compliant insulation statement in a tenancy agreement only.
6. Section 124A RTA permits the Chief Executive to initiate proceedings in the Tribunal, as if the Chief Executive were the tenant, if the Chief Executive is satisfied that it is in the public interest to do so.
7. I am satisfied that this application was properly brought by the Chief Executive under section 124A. It was in the public interest for the Chief Executive to initiate these proceedings pursuant to section 124A because:
  - There is a risk of undermining public confidence in the administration of the RTA if the conduct of a landlord who repeatedly failed to forward bonds goes without redress by way of orders from this Tribunal;
  - There is a clear public interest in ensuring that landlords comply with their statutory obligation to forward any bond monies paid to them to the Bond Centre in accordance with the requirements of section 19 RTA.
8. In the present application the Chief Executive sought orders: (i) awarding exemplary damages for the landlord's breach of section 19(1)(b) RTA, (ii) a

restraining order pursuant to section 109A RTA and (iii) reimbursement of the Tribunal's filing fee and the Chief Executive's legal costs.

9. On the subject tenancy agreement the respondent was named as the landlord.

### ***The facts***

10. The evidence given during the hearing established, and it was not disputed by the respondent, that: (i) a bond was paid for the subject tenancy by the tenant, (ii) this bond was not forwarded by the respondent to the Bond Centre within 23 working days as is required by section 19(1)(b) RTA and (iii) the bond was much later forwarded to the Bond Centre by the respondent, but only after the Ministry of Business Innovation & Employment began an investigation concerning the respondent and (iv) the respondent is in business of (*inter alia*) property management of residential rental properties.

### ***Exemplary damages***

11. Section 19(2) RTA provides that a failure to forward any bond monies received (as provided for in section 19(1)) is an unlawful act.
12. As noted above, the evidence established that the respondent breached section 19(1)(b) RTA and has therefore committed an unlawful act.
13. Section 109 RTA provides that the Tribunal may award exemplary damages where it is established that a party to a tenancy agreement has committed an unlawful act. In the context of section 109 RTA "exemplary damages" are really in the nature of a penalty, rather than the ordinary common law meaning of these words (an amount intended solely to punish the defendant for outrageous conduct).
14. Exemplary damages may be awarded where the Tribunal is satisfied that the unlawful act was committed intentionally and it would be "just" having regard to those factors listed in section 109(3) RTA.
15. This is a case where the respondent knew that the bond monies had to be forwarded to the Bond Centre. The unlawful act cannot be explained away by saying that the respondent 'forgot' to forward the bond or that it had reason to believe that, somehow, the bond money had already been forwarded.

16. In respect of a failure to forward bond money by a professional property management company, section 109 would be stripped of all utility if a party committing an unlawful act could escape liability under that section by simply saying that they did not intend to commit the unlawful act, or if a strict criminal law interpretation, were to be adopted in respect of the use of the word "intentionally" in the section.
17. I am satisfied that, particularly having regard to the obvious and considerable public interest in ensuring that professional property management companies do not breach their obligations under the RTA in respect of the proper handling of any tenant's bond money, an award of exemplary damages in respect of the respondent's unlawful act is just. I have also taken into account: (i) whilst it held onto the tenant's bond money in its' own account the respondent had the use of that money, (ii) the respondent holds itself out to the public as a property management company and manages a large number of rental properties at any one time, (iii) there is usually (but not always) a power imbalance between landlords and tenants which may mean that some tenants may feel inhibited in seeking redress where her or his bond has not been forwarded to the Bond Centre and (iv) the integrity of the regime for the handling bond monies under the RTA, under which a tenant's bond monies are to be held by an independent third party (the Bond Centre), is important.
18. Taking into account Mr Gould's evidence, mitigating factors are: (i) the bond was eventually forwarded to the Bond Centre and (ii) the failure arose within the respondent's office following the retirement of a long-standing employee however a new system has now been put in place within the office to ensure that all present and future bond monies received are forwarded within 23 working days. I must also allow some credit for the fact that Mr Gould has fulsomely participated in both the Chief Executives' investigations and these proceedings as well as his frank admission of fault on the part of the respondent as to the forwarding of bond monies.
19. The Chief Executive sought exemplary damages in the sum of \$1,000 - the maximum amount of exemplary damages that may be awarded for a breach of section 19(1)(b) RTA (see Schedule 1A RTA). I consider that the maximum amount must be reserved for those cases involving the most egregious or worst

possible breaches or where, over time, there have been repeated instances of the same unlawful acts by a party.

20. There is also the issue of proportionality that arises in cases such as this where, although involving entirely separate applications, exemplary damages are contemporaneously sought against the same respondent for the same breaches of the requirements of the RTA. I must consider the overall burden, allowing for a deterrent factor, that is imposed upon the respondent arising out of the result of the 116 applications, including the present one.
21. This was an issue that I had to consider in each of the 54 applications that were before the Tribunal in *Chief Executive of Ministry of Business Innovation and Employment v Strathvale Investments Limited* [2016] NZTT 4080581 (and other application numbers). *Strathvale* also involved multiple applications by the Chief Executive arising out of a failure to forward bonds to the Bond Centre. However I note here that one immediate and significant difference between the present application and the *Strathvale* applications, is Mr Gould's fulsome participation in the Tribunal proceedings and his evidence that not only have steps have been taken to remedy the breach at issue but that steps have been taken by the respondent to ensure that it does not fail to forward bond monies ever again.
22. I have also gained some assistance from considering the approaches adopted, albeit in entirely different jurisdictions and under very different statutory regimes, in *Borsboom v Preet PVT Ltd and Warrington Discount Tobacco Ltd* [2016] NZEmpC 143 and *Worksafe New Zealand v Electrix Limited* [2017] NZDC 20855.
23. No evidence was provided by the respondent as to its' ability to pay exemplary damages. The respondent continues to carry on business in Whanganui as a property management company.
24. In the particular circumstances and taking into account the overall burden imposed upon the respondent as a result of the determination of the 116 separate applications, I determine that the respondent should pay exemplary damages in the sum of \$250 for the breach of section 19(1)(b) RTA in respect of this tenancy.

25. But for the cumulative total of the amounts ordered to be paid across the 116 separate applications (\$34,531.24), the above award of exemplary damages would have been much greater if the issue of exemplary damages in this application had been considered in isolation.

***Restraining order***

26. Section 109A RTA provides that the Tribunal may make a restraining order against a person where: (i) an order has been made under section 109 RTA and (ii) it is in the public interest to make an order restraining a person from committing a further act of the same kind.

27. Although section 109A RTA refers to an order being made restraining “a person”, the word “person” includes a corporation sole - see section 29 Interpretation Act 1999.

28. A restraining order was made against the respondent company in each of the *Strathvale* applications.

29. For the Chief Executive, Ms English submitted that I should make a restraining order against the respondent given: (i) the respondent’s “repeat offending”, (ii) the respondent was aware of its’ obligations and disregarded them, (iii) the respondent was, at least in part, motivated to “work around the protective regime created by the bond lodgment requirements, (iv) the respondent’s potential to influence the local housing market and (v) the potential vulnerability of the tenants affected.

30. A restraining order is a significant remedy as a breach of such an order becomes a criminal, rather than a civil, matter.

31. In the particular circumstances of this application, I decline to make the restraining order sought pursuant to section 109A RTA.

32. The fact that this was an application was brought by the Chief Executive under section 124A RTA is not relevant to the question of whether or not a restraining order should be made.

33. Whilst a restraining order will usually be appropriate where the evidence establishes a pattern of repeated non-compliance or persistent and ongoing breaches of the RTA (as in *Strathvale*), I am satisfied that: (i) the cumulative

effect of the awards of exemplary damages made across the 116 applications will act as a sufficient deterrent for the respondent into the future and (ii) the respondent has, since this application was filed, put in place a system for bonds that greatly reduces the risk of any further breaches.

34. In the event that any further non-compliance by the respondent comes to the attention of the Tribunal in a subsequent application, an applicant could of course seek that the issue of a restraining order be revisited by the Tribunal in light of any such further non-compliance.

### **Costs**

35. As the applicant has been successful, an order that the other party must pay the filing fee paid for the application is appropriate.
36. The Chief Executive, in bringing this application pursuant to section 124A RTA, was entitled to be represented by counsel (see section 93(2)(c) RTA) and an award of costs in the sum of \$110, representing travel costs only, was sought.
37. As noted above, all 116 applications were consolidated for the purposes of the hearing. I am satisfied, pursuant to section 102 RTA, that total costs should be fixed in the sum of \$110 for the hearing. Costs in the sum of \$21.39, inclusive of the filing fee, are ordered to be paid by the respondent in respect of this application.



M Benvie  
20 August 2018

**Please read carefully:**

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

**Rehearings:**

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

**Right of Appeal:**

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

**Enforcement:**

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to [www.justice.govt.nz/fines/civil-debt](http://www.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.