

TENANCY TRIBUNAL AT Tauranga

APPLICANT: Krystal Louise Gamman, James Gamman
Tenant

RESPONDENT: Kaimai Real Estate Limited trading as First National
Landlord

TENANCY ADDRESS: Flat B, 26 Wilson Road South, RD 9, Paengaroa 3189

ORDER

1. Kaimai Real Estate Limited trading as First National must carry out the following installation of qualifying insulation to the premises, which must be completed **by Tuesday 13 August 2019**:
 - a. Ground vapour barrier and appropriate R rating underfloor insulation; and
 - b. Removal of current inadequate ceiling insulation and installation of the appropriate R rating ceiling insulation
2. Leave is reserved for the tenant to return to the Tribunal for additional orders should the landlord fail to comply with Order 1 in the required timeframe.
3. Kaimai Real Estate Limited trading as First National must pay Krystal Louise Gamman and James Gamman exemplary damages of \$1,500.00 immediately.

Reasons

1. Both parties attended the hearing. Mr Hooper represented the landlord. He started managing the premises from the end of June 2019 when the former property manager resigned from her position.

2. The tenant does not hold a copy of the tenancy agreement and the landlord's agent Mr Hooper did not bring a copy with him to the hearing. The owner's name was never mentioned at the hearing or any request made for a change to the name of the landlord. On that basis I must assume that Kaimai Real Estate Limited is correctly named as the landlord (see section 2 RTA and general agency law principles).
3. The tenant claims that the landlord did not install insulation in the house by 1 July 2019 as required. The tenant wants the problem fixed and also claims exemplary damages.
4. The tenancy started on 21 May 2016. The Gammans live in the house with their two young children. Ms Gamman says that she first discussed the lack of insulation with the former property manager about a year ago offering her community services card which could reduce the costs of installing insulation. She says her offer was ignored.
5. She says the house is very cold in winter with lots of condensation around windows in spite of making their best efforts to ventilate.
6. Mr Booth says the house is a 1950s/1960s timber weather board cottage with single glazing on the windows.

Has the landlord failed to comply with its obligation to install ceiling, under floor and wall insulation as required by 1 July 2019?

7. Under section 45(1)(bb) Residential Tenancies Act 1986 (RTA), the landlord has an obligation to comply with the Healthy Home Standards set out under the Residential Tenancies (Healthy Home Standards) Regulations 2019 ("the 2019 regulations").
8. Because this tenancy started before 1 July 2019 the transitional healthy home standards applicable for insulation are those set out in the 2016 Regulations (Schedule 1, clauses 2(3), and 3 2019 Regulations and Schedule 1AA HHG Act 2017).
9. The 2016 Regulations require habitable spaces above ceilings, floors, and walls to have qualifying insulation. An assessment has been carried out by an insulation expert in recent weeks that establishes the ceiling insulation is deficient and there is no underfloor insulation. The walls are impractical to access.
10. So I find the landlord has breached its obligation to have the ceiling and underfloor insulation installed by the deadline of 1 July 2019.

Should a work order be made?

11. Where the Tribunal finds the landlord has failed to comply with these obligations, it may make an order for the landlord to carry out the work. See section 78(1)(e)

Residential Tenancies Act 1986. The Tribunal must not make a monetary order as an alternative to a work order but may award compensation if appropriate (see sections 78(2AA) and 77(2)(n) RTA).

12. Therefore leave is reserved for the tenant to return to the Tribunal to consider additional remedies should the landlord fail to comply with the work order made above.

Should exemplary damages be awarded?

13. Failure to comply with the insulation obligations is an unlawful act, for which exemplary damages up to a maximum of \$4,000.00 may be awarded (section 45(1A) and Schedule 1A RTA).
14. I find the landlord has committed an unlawful act by failing to install qualifying insulation in the ceiling and underfloor by 1 July 2019. The next question is to determine if exemplary damages should be awarded.
15. Exemplary damages are a form of punitive damages akin to a fine. They are designed to encourage particular behaviour and deter failure to comply with an obligation.
16. I must first determine if the landlord has committed the unlawful act intentionally, and then if it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.
17. I find the unlawful act was intentional. The landlord was fully aware of the obligation to have compliant insulation by 1 July 2019 but only took action to carry out an assessment two months before the deadline in spite of Ms Gamman's offer to help subsidise the cost of new insulation a year earlier. There is a strong public interest in deterring a landlord from ignoring this obligation, reinforced through the three year timeframe within which a landlord had to meet this obligation.
18. It is a mitigating factor that a contractor was sent to make an assessment in May but due to a health emergency for the Gammans was unable to access the property. The Gammans' interests have not been served as they have been concerned about dampness in the house with young children one of whom was hospitalised last year with respiratory issues, and is now in winter with suspected pneumonia.

19. Having regard to all these factors I find it just to award exemplary damages of \$1,500.00.



R Lee
30 July 2019

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 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.