

TENANCY TRIBUNAL AT North Shore

APPLICANT: Belinda Louise King, Jason Craig Lawrence
Tenants

RESPONDENT: Andrea Garea
Landlord

TENANCY ADDRESS: 228 Rapson Road, Kaukapakapa, RD 1, Kaukapakapa
0871

ORDER

1. By consent, the tenancy ended at midnight on 12 August 2019.
2. Andrea Garea must pay Belinda Louise King and Jason Craig Lawrence \$1,020.44 immediately, calculated as shown in the table below. All other claims made in the application are dismissed.

Description	Landlord	Tenant
Exemplary damages – failure to forward bond to Bond Centre within 23 working days.		\$500.00
Exemplary damages – failure to include insulation statement in tenancy agreement		\$300.00
Compensation – failure to comply with section 45(1)(c) RTA (sleepout)		\$100.00
Compensation – breach of quiet enjoyment		\$100.00
Filing fee		\$20.44
Total payable by Landlord to Tenant		\$1,020.44

Reasons:

1. Both parties attended the hearing.
2. This matter involved an application by the tenants in which they sought: (i) an order ending their fixed term tenancy, and (ii) orders for compensation and/or exemplary damages against the landlord in respect of no insulation statement in tenancy agreement, failure to forward the tenants' bond to the Bond Centre, illegal or unsafe premises (or parts of the premises), breach of quiet enjoyment and no physical address for service for the landlord.
3. Because the tenants were the applicants, they had the onus of proving each of their claims to the required standard of proof ('on the balance of probabilities').

Ending of fixed term tenancy

4. During the hearing the parties agreed that the tenancy would end on 12 August 2019. This agreement is recorded in the order numbered 1 above.

Forwarding of bond money to Bond Centre

5. A bond for the tenancy was paid to the landlord on 13 February 2019. The bond was not received by the Bond Centre until 5 July 2019, after this application was filed.
6. Ms Garea's evidence in this regard was that she genuinely forgot to forward the bond money to the Bond Centre within 23 working days of receipt (as is required by section 19(1) Residential Tenancies Act 1986 (RTA)). Ms Garea confirmed however that she was aware, at the time that she received the bond money, that she needed to forward it to the Bond Centre promptly.
7. The tenants sought exemplary damages for this breach.
8. Section 109 RTA provides that where a party to a tenancy agreement has committed an unlawful act then the Tribunal may award exemplary damages (in the nature of a penalty) against that party if the Tribunal is satisfied that: (i) the unlawful act was committed intentionally and (ii) such an award would be just having regard to the criteria set out in section 109(3) RTA.
9. In respect of a landlord who knew that they were required to lodge a tenant's bond money with the Bond Centre, sections 19(2) and 109 RTA would be stripped of all utility if the party committing an unlawful act could escape any sanction under this section by simply saying that they 'forgot' and did not intend to commit the unlawful act. I am satisfied that a modest award of exemplary damages for the landlord's unlawful act is 'just' and appropriate in this case.

Insulation statement

10. A landlord must include a signed statement in the tenancy agreement that provides the following information: (i) whether or not insulation is installed in any ceilings, walls and floors, and (ii) details of the location, type and condition of all insulation installed – see section 13A(1A) RTA.
11. Alternatively, if the landlord is unable to provide some or all of the information required, they must include a statement explaining what information cannot be obtained, why it cannot be, and that all reasonable efforts have been made to do so – see section 13A(1B) and (1C) RTA.
12. Failure to comply with these requirements is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of \$500 – see section 13A(1F)(a) and Schedule 1A RTA.
13. In the present case, there was no insulation statement included in the tenancy agreement. The evidence established that the landlord did not comply with the statutory requirements. As noted above section 13A(1B)&(1C) RTA require that certain information must be provided in writing even where the landlord is unable to provide some or all of the details of the insulation.
14. No sufficient explanation was provided for the failure to comply with section 13A RTA.
15. I consider that the non-compliance with section 13A was intentional in the sense that this is not one of those cases where the landlord did not turn her mind to the issue of insulation – Ms Garea orally told the tenants that the house was “fully insulated”. There is a strong public interest in ensuring that landlord’s comply *fully* with the requirements of section 13A so that tenants can make informed choices when taking on a tenancy. The Court of Appeal has described the RTA as “consumer protection legislation” - *Holler & Rouse v Osaki* [2016] NZCA 130. I am satisfied that an award of exemplary damages is ‘just’ in these circumstances.
16. The tenants also alleged that the insulation installed in the premises did not of complying with the new insulation requirements that came into effect on 1 July 2019. However, and after carefully considering the evidence provided by both parties on this issue, I find that the evidence adduced by tenants fell short of proving this claim.

Gas califont

17. The hot water cylinder at the premises is heated by gas. The tenants alleged that they had problems with the hot water supply at the premises and that this was due to the gas califont being defective. Ms King stated phone calls were made to Ms Garea asking her to have this fixed. The tenants also stated that they believed the califont to be unlawful and uncertified.

18. In response, Ms Garea produced a copy of a signed gasfitters' certificate for a Fisher & Paykel califont dated 13 April 2015. Ms Garea stated that she was not aware that the tenants had any issues with the hot water or that the califont required repairs.
19. In reply, Ms King stated that the certificate produced by Ms Garea was incorrect because the califont at the premises is not a Fisher & Paykel model.
20. After weighing up this evidence I find that the claim made under this heading was not proved to the required standard. In so finding, I have taken into account the absence of any evidence of anything in writing by the tenants to notify Ms Garea of their problems with the califont.

'Illegal' sleepout

21. The tenants stated that the premises included a sleepout which was uninsulated, too cold and was a building that had no consent by the City Council. They also believe that the electrical wiring in the sleepout is substandard. They produced copies of email communications that they have had with one of the compliance officers employed by Auckland Council. In one of these emails the compliance officer (who did not attend the hearing) stated:
22. In relation to the 40ft container that has been converted into a sleepout, this is a breach as it has been changed from its original state into a sleepout. The container is well over 10m² itself so would need a building consent.
23. Section 45(1)(c) RTA provides that a landlord shall:
comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises.
24. Ms Garea stated in response to this claim that the electrical wiring of the sleepout was done by a qualified electrician and the sleepout was insulated by a builder. Ms Garea did not dispute that the sleepout was an unconsented building.
25. I am satisfied that the evidence put before the Tribunal established that the sleepout was an unconsented building and that, as a result, the landlord breached her obligations under section 45(1)(c) in respect of the sleepout.
26. Section 77(2)(n) RTA provides that the Tribunal can order the landlord or the tenant to pay to the other party such sum by way of damages or compensation as the Tribunal shall assess in respect of the breach of any provision of the RTA.
27. A difficulty arises in respect of the tenants' claim for compensation made under this heading because: (i) there was insufficient evidence produced to show a causal link between the coldness of the sleepout and the fact that the building was unconsented and (ii) there was no evidence that the tenants' health and safety concerns regarding the sleepout were raised with Ms Garea until shortly before the application was filed and following the 'falling-out' that occurred

between landlord and tenants. That said, there ought to be at least some financial sanction for a landlord who rents out unconsented buildings in breach of section 45(1)(c) RTA. In these circumstances, I determine that only a nominal award of compensation for the landlord's breach should be awarded to the tenants.

Address for service

28. The tenants also claimed against the landlord in respect of her breach of section 13AB(2) RTA which provides:

(2) Whenever a party is required to give an address for service, the party—

(a) must give an address of a physical place in New Zealand; and

(b) may, in addition, specify a Post Office box number, email address, or facsimile number as one of the party's addresses for service.

29. The evidence established that Ms Garea did not give the tenants an address for service in compliance with section 13AB(2) RTA. In light of the other monetary awards made in favour of the tenants, I do not consider that any further order should be made in respect of this breach, especially where the evidence did not establish any difficulty or loss arising for the tenants as a result of Ms Garea failing to give them her address for service.

Breach of quiet enjoyment

30. After considering the evidence given by the tenants as to various alleged actions by Ms Garea that were said to have interfered with their reasonable peace, comfort or privacy in their use of the premises (see section 38(2) RTA), I find that the evidence established that only a text message sent to Ms King by Ms Garea at 4.25am amounted to a breach of the tenants' quiet enjoyment. It was clear to me that these parties 'fell out' during the tenancy and that there has subsequently been a number of disagreements and arguments for which neither party, in my view, is solely responsible.

31. As found above, the text message sent by the landlord at 4.25am was unreasonable and a breach of the tenants' quiet enjoyment. I consider that the tenants should be compensated for this breach, pursuant to section 77(2)(n) RTA, in the amount ordered above.

Filing fee

32. As the tenants have been at least partly successful with the claims made in their application, the other party is also ordered to pay the filing fee.



M Benvie
21 September 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.