

TENANCY TRIBUNAL AT Rotorua

APPLICANT: Matthew James Smith
Tenant

RESPONDENT: TREMAIN NORTHERN LIMITED as Agent for Hinekete and Vivian Meha
Landlord

TENANCY ADDRESS: 6A Mill Street, Koutu, Rotorua 3010

ORDER

1. TREMAIN NORTHERN LIMITED as Agent for Hinekete and Vivian Meha must pay Matthew James Smith \$3,880.44 immediately.

Description	Landlord	Tenant
Compensation: failure to maintain, dampness		\$1,560.00
Exemplary damages: No insulation, leaks & mould		\$2,000.00
Exemplary damages: No insulation statement		\$300.00
Filing fee reimbursement		\$20.44
Total award		\$3,880.44
Total payable by Landlord to Tenant		\$3,880.44

2. All other claims are dismissed.

Reasons:

1. Both parties attended the hearing.
2. Matthew James Smith claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986 (RTA). Mr Smith seeks compensation, return of his bond and exemplary damages.
3. The bond was returned to Mr Smith by previous order of the Tribunal dated 26 September 2019 and the parties agreed that the tenancy ended on that day.

Did the landlord fail to maintain the premises?

4. Under section 45, a landlord must provide the premises in a reasonable state of cleanliness, 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 , comply with any relevant enactment in relation to buildings, health and safety, and provide an adequate means for the collection and storage of water if there is no reticulated supply
5. Regulation 15 of the Housing Improvement Regulations 1947 requires that every house shall be free from dampness.
6. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of \$4,000.00. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.
7. Where a party has committed an unlawful act, 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 interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.
8. The landlord does not dispute that one of the bedrooms had a mould problem and water was leaking through the bath seals from as early as October 2018. The landlord says that the extent of the water leaks was not discovered until July 2019 and the plumbing work was completed at the end of August. The landlord acknowledges that it took too long to respond to the tenant's complaints but says that due to the tenant's exemplary housekeeping standards, it was difficult to understand and appreciate the extent of the issues.
9. The landlord called their plumber, Aaron Dean, to give evidence on their behalf. Mr Deane confirmed that the current shower over a freestanding bath is not fit for purpose and agrees that problems with water leaks and water pooling on the floor are likely longstanding. Mr Deane says the floor drainage is not formed properly due to poor design and the same problems are likely to reoccur.

Conclusions

10. I find there is insufficient evidence that the premises were uninhabitable or that the living conditions caused any of Mr Smith's medical problems therefore the claim for motel costs, storage costs, and a full refund of all rent paid, is not proven.
11. However, I am satisfied that Mr Smith suffered a damp, leaky bathroom for at least one year of the tenancy and water was constantly pooling on the floor, there were leaky taps, there was an unresolved mould problem in one of the bedrooms and laundry, there was a thermostat problem with the hot water, and adequate

insulation was not put in until 19 August 2019 despite a legal obligation to have it in place by 1 July 2019.

12. I find this is a case where it is appropriate to make an award of compensation and exemplary damages. I make an award of \$1,560.00 for the breaches as fair, reasonable and proportionate compensation for the loss of amenity which amounts to a rent reduction of \$30.00 for one year of the tenancy.
13. I also find it 'just' to make an award of \$2,000 exemplary damages in this case. Mr Smith had to endure cold and damp conditions for the duration of the tenancy and despite warnings and quotes obtained from the property manager, the landlord chose not to install insulation by 1 July 2019 as they are legally required to do. There is a high public interest in ensuring that landlords provide warm and dry rental properties. The provision of adequate insulation is not a conditional obligation but a mandatory one and it is in the public interest that landlords fulfil their obligations under the RTA. If no meaningful penalty is imposed there can be no deterrent.

Did the landlord provide an insulation statement?

14. A landlord must include a signed statement in the tenancy agreement that provides whether or not insulation is installed in any ceilings, walls and floors, and details of the location, type and condition of all insulation installed. See section 13A(1A) Residential Tenancies Act 1986.
15. 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) Residential Tenancies Act 1986.
16. Breaching these obligations is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of \$500.00. See section 13(1F)(a) and Schedule 1A Residential Tenancies Act 1986.
17. The landlord failed to provide any insulation statement when the tenancy agreement was signed and offered no explanation for the breach. I find they have committed an unlawful act.
18. Bearing in mind the high public interest in ensuring that landlords fully comply with their obligations to provide adequate information to tenants as to the extent and nature of insulation, I find it appropriate to make an award of \$300.00 exemplary damages for this breach. I have also taken into account that fact that the insulation underneath the premises was clearly in a dilapidated state and there was no insulation in the ceilings.

19. As Matthew James Smith has partly succeeded with the claims, the landlord must reimburse the filing fee.



A Macpherson
14 October 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.