

TENANCY TRIBUNAL AT Wellington

APPLICANT: Nathan Blundell, James Cawthorn, Kaitlyn Rose Stringer,
Lara Lily Geard, Annalise Mary Will

Tenants

RESPONDENT: Lifestyle Rental Properties Limited

Landlord

TENANCY ADDRESS: 51 Tiketike Way, Brooklyn, Wellington 6021

ORDER

1. LIFESTYLE RENTAL PROPERTIES LIMITED must pay Nathan Blundell, James Cawthorn, Kaitlyn Rose Stringer, Lara Lily Geard and Annalise Mary Will \$3,728.40 by a reduction in rent payments to this value.
2. The amount is calculated as follows:

Description	Tenant
Compensation: Electricity usage	\$576.71
Compensation: Rent reduction 7.5%	\$1,631.25
Exemplary damages: Failure to maintain the premises	\$1,500.00
Filing fee reimbursement	\$20.44
Total payable by Landlord to Tenant	\$3,728.40

Reasons:

Did the landlord commit an unlawful act by failing to maintain the premises?

1. Nathan Blundell, James Cawthorn, Kaitlyn Rose Stringer, Lara Lily Geard and Annalise Mary Will claim that the landlord has breached its obligations under section 45 of the Residential Tenancies Act 1986 (RTA).
2. Under section 45, a landlord must provide and maintain the premises in a reasonable state of repair.

3. When the tenancy began on 3 February 2019 the property included a heat pump system that heated various rooms through ducting. The tenants discovered that the heat pump was not working and on 7 April informed the landlord in writing that it needed repair. What happened after that was a dispute between the landlord and tenants about whether the landlord was required to supply a functioning heat pump for the remainder of the tenancy. I do not need to set out the details of that dispute here.
4. The landlord's resistance was simply because the heat pump could not be repaired, and the replacement cost was estimated to be around \$7,500.00. That is a significant cost and I understand the landlord hesitating to make that unplanned outlay. The tenants also understood that was a significant outlay and it appeared for a short time that the tenants could have a replacement unit installed at a much cheaper price. However it turned out that the price was not for the work that was needed.
5. The landlord decided that the cost was prohibitive and refused to replace the heat pump. The landlord supplied two 2400 watt radiant fan heaters.
6. The dispute continued. The tenants have applied to the Tribunal for an order for compensation and exemplary damages claiming that the landlord committed an unlawful act.
7. The landlord's obligation was to maintain the premises with all features and systems in good working order. This applies to any appliance that was part of the tenancy at the time the contract was formed. The heat pump was an important asset in the premises. The open plan living area is expansive. The heat pump system was designed to give good heat output. The heat pump also heated several rooms. And the cost to run the heat pump was much less than using other forms of heating.
8. If the landlord had been able to replace the heat pump with some other form of heating that covered all the existing heat pump's features, this would have been acceptable.
9. Section 45(1A) of the RTA states that a failure of the landlord to maintain the premises is an unlawful act for which exemplary damages may be awarded up to a maximum of \$4,000.00 (section 45(1A) and Schedule 1A RTA). The landlord's refusal to replace the heat pump was an unlawful act.
10. Where a party has committed an unlawful act, the Tribunal may award exemplary damages if 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.
11. The events leading up to this application leave no doubt that that the landlord was intentional about not maintaining the heat pump. The effect of the failure was that the tenants lost a significant feature of the house during the winter

months. It also meant they were in and in an ongoing 'battle' with the landlord. This affected the tenants' enjoyment of the premises. It is important that the Tribunal upholds the law regarding landlords meeting their obligations. The tenants were in a powerless position when the landlord refused to replace the heat pump. Exemplary damages must be ordered.

12. The tenants have also referred to other maintenance issues that the landlord failed to rectify. I have consider all matters when making an order for exemplary damages.
13. As stated above, the maximum penalty is \$4,000.00. Having taken all the evidence into account I am satisfied that \$1,500.00 exemplary damages should be ordered.

Reduction in rental value

14. The tenants have also claimed compensation for (i) the loss of rental value that resulted from not having a heat pump and (ii) additional costs incurred in heating the house.
15. It is difficult to give an exact value that the heat pump added to the home. The applicants have given reasons for that value to be set at 20% of the rental value of the property. The applicants have referred to a Tribunal case in which the adjudicator set the value at 20%. Each case is different. The similarities in both cases are noted, IHowever am not convinced that this \$870/week rental property, suitable for 5 tenants, could have only been rented without a heat pump if the rent was set at \$690.00.
16. I have allowed the reduction in rent to be 7.5% over the 25 week period. I have taken account of the fact that the property was not without any form of heating for part of the period claimed, albeit inadequate units for the size of the premises. The claim is for \$4,350.00. I have ordered \$1,631.25.

Extra charges for power

17. The applicants have claimed compensation for additional power usage associated with the different form of heating they were required to use. They have provided a detailed explanation of how they calculated the loss to be \$576.71. In assessing this claim, care has to be taken that the applicants are not awarded more than their loss. I have checked the way that the loss has been calculated and accept the basis of the calculation.

The cross application

18. The landlord has applied to the Tribunal for compensation for a wine theft and for a vexatious claim being made by the tenants.

19. Regarding the wine theft allegation, the wine in question did not belong to the landlord and therefore that claim must be dismissed.
20. Regarding the request that the Tribunal makes a finding that the tenants' application is vexatious, there is no basis for the Tribunal to make that order. The tenants' claim has substance as this order shows. The application for a vexatious claim is dismissed.

Filing fee

21. Because Nathan Blundell, James Cawthorn, Kaitlyn Rose Stringer, Lara Lily Geard, Annalise Mary Will has substantially succeeded with the claim I have ordered the filing fee be paid by the respondent.



B Smallbone
23 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.