

TENANCY TRIBUNAL AT Pukekohe

APPLICANT: Hayden Thomas Huia Rehua
Tenant

RESPONDENT: Barfoot & Thompson as agents for Stephanie and Ian Cathcart
Landlord

TENANCY ADDRESS: 6 Magnolia Drive, Waiuku, Waiuku 2123

ORDER

1. Barfoot & Thompson as agents for Stephanie and Ian Cathcart must pay Hayden Thomas Huia Rehua the sum of \$1,363.30 immediately, calculated as shown in the table below:

Description	Landlord	Tenant
Compensation		\$1,342.86
Filing fee reimbursement		\$20.44
Total award		\$1,363.30
Total payable by Landlord to Tenant		\$1,363.30

Reasons:

1. The parties agreed to a tenancy of the property from 6 November 2018. The rent was \$480.00 per week. In the tenancy agreement, the landlord's insulation statement was left blank.
2. The property was built about 15 years ago and does not have a heat pump or a ventilation system. Mr Rehua lives in the property with his 5 children.
3. On 5 August 2019, Mr Rehua served a notice to remedy. He said the landlord was in breach of its responsibilities by not providing his family with a safe and

warm home. He requested that the landlord install insulation to NZ standards, improve the heating, and cut hedges around the home to let in natural light.

Application to the Tribunal

4. On 24 September 2019, Mr Rehua applied to the Tribunal. He raised issues with trees around the property blocking natural light, an increase in power use over winter because there was no heating and having to use the oven “24/7 to keep kids warm”. Mr Rehua said the landlord had breached the insulation standards.
5. Both parties attended the hearing on 6 December 2019. Directions were given to enable the parties to comment on an insulation document provided by the landlord following the hearing. No further comments were received and on 16 December 2019 the parties were advised that the Tribunal was preparing its decision.

Relevant Law

6. Landlords have an obligation to provide and maintain premises in a reasonable state of repair, having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes (section 45(1) of the Residential Tenancies Act 1986 (the Act)).
7. Landlords must also comply with the healthy homes standards (section 45(1)(bb)). For this purpose, the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 (the Regulations) apply to residential tenancies – the Residential Tenancies (Healthy Homes Standards) Regulations 2019 will apply from 1 July 2021.
8. Pursuant to the Regulations, the ceilings and floors of habitable spaces must be fully covered by qualifying ceiling and underfloor insulation. For ceiling insulation, this means that the insulation when installed must have an R-value of at least 2.9, be installed in accordance with NZS 4246:2016, and be in a reasonable condition (or better). For ceiling insulation installed before 1 July 2016, the insulation when installed must have an R-value of at least 1.9.
9. There is no issue with the underfloor insulation in this case. The property has a concrete slab foundation and underfloor insulation is not required.

Trees

10. Mr Rehua said trees surround the property and this means there is no sun in the morning. The owners trimmed the trees on 14 September 2019 and he said they were coming back on 7 December 2019.
11. Ms Fowley, for the landlord, said that the hedge around the property was several meters from the house, and was “pretty sparse”. Although in places as

tall as the house, it did not overhang. Mr Rehua said the owner had pruned part of the hedge that was nearly touching the gutter.

12. The photographs do not clearly establish that the landlord has failed to maintain the hedge, or that the hedge has contributed significantly to the issues Mr Rehua has had at the property. More problematic has been a large magnolia tree which hangs over the house and drops bits on the roof, waking the tenants and cracking some of the roof tiles. The magnolia tree is on adjoining Council-owned land and is protected. The emails provided show the landlord raising the issue with the Council since February 2019. On 5 September 2019, the Council had "...uplifted tree branches hanging over the house and weight reduced damaged limbs...".
13. I understood that the landlord would be attending at the property on 7 December 2019 to remove the hedge and replace it with a fence. Assuming this work has been done, I decline to make a work order for the landlord to trim the hedge. I am not satisfied that the hedge has not been properly maintained, and any issue it may have caused will be remedied by its removal and replacement with a fence. Although the magnolia tree has caused a nuisance, it is not on the landlord's property and therefore not under the landlord's control. I am satisfied that the landlord has not permitted any interference with Mr Rehua's reasonable peace, comfort or privacy in the use of the premises.

Heating

14. When the Residential Tenancies (Healthy Homes Standards) Regulations 2019 come into effect from 1 July 2021, there will be a requirement for the main living room of tenanted properties to be heated by one or more qualifying heaters. At the moment, the position is governed by the Housing Improvement Regulations 1947. Clause 6 provides that every living room "shall be fitted with a fireplace and chimney or other approved form of heating" (which means approved by the local authority).
15. I am not aware that Auckland Council maintains publicly available information about approved forms of heating and none was provided to me. The Tenancy Services website states that, where Councils do not provide information on approved forms of heating, "...the Tenancy Tribunal may consider an inexpensive plug in heater (or similar) to be enough. However this type of heater will most likely not meet the healthy homes standards".
16. In *Complete Property Management v White* (DC Christchurch, CIV-2010-009-3562, 3 February 2011) the District Court said that a power point was not a "form of heating" and could not be reasonably approved by the local authority under the Housing Improvement Regulations. I consider that provision of an inexpensive electric heater by a landlord would meet the landlord's obligations under the Housing Improvement Regulations.

17. Mr Rehua said he requested a heater before and during the winter period and was told this was for the tenant or the owner to provide.
18. Ms Fowley accepted that no heating had been provided to Mr Rehua and suggested that a power point is an approved form of heating. For the reasons given above, a power point is not sufficient, and I find that there has been a breach of the Housing Improvement Regulations 1947. I address compensation for the breach below.

Insulation

19. The landlord's insulation statement was not completed on the tenancy agreement provided to the Tribunal by Mr Rehua, which was also unsigned. No other copy of this document was provided by the landlord. Tenancy agreements are required to provide information about insulation at the property pursuant to section 13(1A) of the Act. It is not clear that any insulation information was provided to Mr Rehua when he took the tenancy.
20. Pink Batts provided the landlord with an Insulation Assessment Report dated 8 November 2017. This stated that there was polyester ceiling insulation with a minimum thickness of 185mm that was in "adequate" condition, with no further description. The R-value of the insulation was not stated.
21. The landlord provided Mr Rehua with an insulation statement dated 24 June 2019. This adopted the information from the Pink Batts report. Again, this meant that the R-value was not disclosed. The statement said that the landlord believed the insulation had no gaps, was at least in a reasonable condition and "...meets the minimum requirements for insulation".
22. On 18 June 2019, Warm Fuzzies conducted an assessment at the property. They reported that the ceiling insulation had a thickness of 50mm, an estimated R-value of 0.9 and the insulation was non-compliant. The downlights did not have a minimum 100mm clearance as required by NZS 4246:2016.
23. Ms Fowley said that the landlord relied on the Pink Batts assessment in good faith. When Mr Rehua mentioned that an electrician had said there was no ceiling insulation, they arranged the assessment by Warm Fuzzies. She accepted that the assessment meant there was close to no ceiling insulation but emphasized that the landlord did not want a tenant in an uninsulated house. The house was brought up to standard straight away. Further insulation was installed on 17 September 2019 and an updated insulation statement provided to Mr Rehua.
24. By not complying with the healthy homes standards, as currently reflected in the Regulations, I find that the landlord is in breach of section 45(1)(bb) of the Act and committed an "unlawful act". Exemplary damages may be awarded where an unlawful act is committed, in certain circumstances.

25. I am not satisfied that the landlord committed the unlawful act intentionally, as required by section 109(3). The landlord was entitled to rely on the November 2017 assessment which indicated that there was ceiling insulation in a reasonable condition. The landlord took steps to remedy the situation as soon as the Warm Fuzzies assessment was received (the delay in installation, Ms Foley said, was caused by the demand for insulation ahead of 1 July 2019 when the new requirements came into effect). I accept that the landlord did not want Mr Rehua to be living in an uninsulated home and did not have any basis to think otherwise until about June 2019. It would not be just to require the landlord to pay exemplary damages. I address the issue of compensation below.

Compensation

26. Mr Rehua said he first told the landlord the property was cold in February or March 2019, however, his notice to remedy was not served until August 2019. Ms Foley said there was no evidence the family was sleeping in the living room during her inspections, although Mr Rehua said he would tidy everything up every day. It is possible Mr Rehua is mistaken about when he first raised issues with cold with the landlord, as February and March are typically hot times of the year. He also said things were hard during the winter.

27. On the other hand, Mr Rehua and his family have been living in a house for some time that did not have adequate insulation. The property is about 15 years old and the degradation of the insulation could be viewed as a failure by the landlord to maintain the premises in a reasonable state of repair. The landlord knew about the issue from 18 June 2019 at the latest. Mr Rehua and his family have also had to live in a property during the winter with no form of heating. From 1 July 2019 they were living in a property that was required by law to have qualifying insulation, but the insulation was only installed to that standard from 17 September 2019.

28. I consider that Mr Rehua is entitled to compensation for the discomfort he and his family have experienced over the winter. Apart from Mr Rehua's evidence about sleeping in the living room with the oven on, there was no other evidence to establish the extent of the family's loss of amenity, or the extent to which their power bills increased. I am satisfied however that the breaches of the landlord's obligations had a serious impact on Mr Rehua, who raised concerns and then issued a formal notice of breach. His family lived in a home that was cold during winter without any heating provided by the landlord.

29. I award compensation of \$50.00 per week from 1 June to 30 June 2019 (4 weeks and 2 days) totaling \$214.29. I award compensation of \$100.00 per week from 1 July to 17 September 2019 (11 weeks and 2 days) totaling \$1,128.57. The increased rate from 1 July 2019 reflects the fact that Mr Rehua and his family were living in a property that was not insulated as required by

law. Throughout the period (the winter months) there was no form of heating provided by the landlord. The total award is \$1,342.86.

Filing Fee

30. Mr Rehua has established breaches of the landlord's obligations. I award the filing fee.



M Edison
23 December 2019

Please read carefully:

Visit justice.govt.nz/tribunals/tenancy/rehearings-appeals for more information on rehearings and appeals.

Rehearings

You can apply for a rehearing if you believe that a substantial wrong or miscarriage of justice has happened. For example:

- you did not get the letter telling you the date of the hearing, **or**
- the adjudicator improperly admitted or rejected evidence, **or**
- new evidence, relating to the original application, has become available.

You must give reasons and evidence to support your application for a rehearing.

A rehearing will not be granted just because you disagree with the decision.

You must apply within five working days of the decision using the Application for Rehearing form: justice.govt.nz/assets/Documents/Forms/TT-Application-for-rehearing.pdf

Right of Appeal

Both the landlord and the tenant can file an appeal. You should file your appeal at the District Court where the original hearing took place. The cost for an appeal is \$200. You must apply within 10 working days after the decision is issued using this Appeal to the District Court form: justice.govt.nz/tribunals/tenancy/rehearings-appeals

Grounds for an appeal

You can appeal if you think the decision was wrong, but not because you don't like the decision. For some cases, there'll be no right to appeal. For example, you can't appeal:

- against an interim order
- a final order for the payment of less than \$1000
- a final order to undertake work worth less than \$1000.

Enforcement

Where the Tribunal made an order about money or property this is called a **civil debt**. The Ministry of Justice Collections Team can assist with enforcing civil debt. You can contact the collections team on **0800 233 222** or go to 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.

If you require further help or information regarding this matter, visit tenancy.govt.nz/disputes/enforcing-decisions or phone Tenancy Services on 0800 836 262.

Mēna ka hiahia koe ki ētahi atu awhina, kōrero ranei mo tēnei take, haere ki tenei ipurangi tenancy.govt.nz/disputes/enforcing-decisions, waea atu ki Ratonga Takirua ma runga 0800 836 262 ranei.

A manaomia nisi faamatalaga poo se fesoasoani, e uiga i lau mataupu, asiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesoatai mai le Tenancy Services i le numera 0800 836 262.