[2020] NZTT Hamilton 4277248

TENANCY TRIBUNAL AT Hamilton

APPLICANT:	Monarch Realty Limited, John and Lisa O'Donoghue Landlord
RESPONDENT:	Jordan Henry Alchin-Boller Tenant
TENANCY ADDRESS:	Flat 2, 79 Lake Road, Frankton, Hamilton 3204

ORDER

1. The rent is increased to $275.00 per week effective from the date of this order.

Reasons:

1. Both parties attended the hearing on 11 November 2020.
2. The landlord has applied for an order to increase the rent from $255.00 per week to $320.00 per week due to substantial improvements at the premises.

Background

3. The rent was increased on 20 March 2020 from $235.00 to $255.00.
4. The owners decided to do work on 6 units they own in this block at 79 Lake Road. The work was done in July 2020.
5. The Covid-19 emergency legislation prohibited rent increases from 25 March 2020 to 25 September 2020; see clauses 11 and 12, Schedule 5, Residential Tenancies Act 1986 (RTA).
6. Section 24(1)(e) RTA was amended as from 12 August 2020 limiting rent increases to every 12 months.

7. The landlord sought the consent of the tenant to increase the rent to $320.00 per week on the grounds that the owner has improved the property which had increased its value and benefit to the tenant.
8. The tenant did not agree to the proposed increase in rent. The landlord then made this application to the Tribunal.

The law

9. A landlord may increase rent every 12 months provided that 60 days' written notice is given; s24(1) RTA.
10. However, rent may also be increased with the agreement of the tenant or by order of the Tribunal, if, with the consent of the tenant, the landlord has:-
    a. Made substantial improvements to the premises (not being general or necessary repairs) that increase the value of the premises and constitute a material benefit to the tenant:
    b. Increased or improved the facilities or services (other than general or necessary repairs) provided for the tenant
    c. Agreed to a variation in the tenants of the tenancy that benefits the tenant.

    See section 28(1) Residential Tenancies Act 1986 (RTA).

The improvements

11. Both parties gave evidence that the following work has been done at the premises:-
    a. Replacement stove;
    b. New kitchen cabinets and larger splashback;
    c. Replacement kitchen venting fan;
    d. Repaint kitchen;
    e. Install bathroom extractor fan;
    f. Install heat-pump in living area.
12. The relevant law is s28(1)(a) RTA – whether the landlord has made "substantial improvements to the premises (not being general or necessary repairs) that increase the value of the premises and constitute a material benefit to the tenant".
13. Section 28(1)(b) RTA does not apply. That refers to improvements to "facilities" which are defined in s2 as non-exclusive (or shared) facilities that are not part of the tenancy premises themselves, such as parking areas, lawns and gardens, shared sheds or laundry facilities, or to "services" which are electricity, water, internet and the like.

14. Mr Alchin-Boller confirmed that he did consent to the work being done so the first part of s28 is satisfied.

15. Parliament has introduced new 'Healthy Homes Standards' (HHS) under regulations provided for by s138B RTA. The HHS are contained in the Residential Tenancies Healthy Homes Standards Regulations 2019.

16. From 1 July 2021, private landlords must ensure their rental properties comply with the Healthy Homes Standards within 90 days of any new, or renewed, tenancy.

17. Improvements that are required under the HHS are necessary. They are required by law. However, compliance with these is not yet required. These landlords have been prudent and proactive and have organised and completed the HHS upgrades well before the compliance date. I do not want to discourage that.

18. After considering the evidence, I make the following findings:-

    a. The kitchen extractor fan was a replacement for a rangehood that could not be vented to the outside – I find this to be a necessary repair;

    b. The bathroom extractor fan was new, there had not been one before. This is a required upgrade under the HHS however has been completed before the compliance date. I find that it is a substantial improvement;

    c. The heat-pump is also required under the Healthy Homes Standards. However, the tenant said there has been no heater previously although "an approved form of heating" is currently required under the Housing Improvement Regulations 1947. I find this to be necessary work and not a substantial improvement;

    d. I do find the installation of a new, replacement stove and new kitchen cabinetry and splashback, to be substantial improvements. This work was not required. Mr Alchin-Boller confirmed that the cabinets were of benefit to him although he said that the stove and splashback performed the same function as those previously.

19. The landlord provided evidence of the cost of the work done. This was approximately $14,000.00 for this unit. However, *cost* is not the same as *value*. S28(1)(a) says there must be an increase in value. No evidence was provided to show an increase in value. For example, there is no comparative valuation assessing the rental value of the premises before and after the works had been completed. The comparisons of rentals of other units does not tell me whether *this* unit has increased in value.

20. However, in the interests of fairness, I do accept that it is more probable than not that the installation of the bathroom fan, new kitchen cabinetry, stove, and splashback have increased the rental value of the premises. I find that s28(1)(a) RTA applies.

21. However, I disagree that the rent increase proposed by the landlord is (as it was described) “modest”. An increase from $255.00 to $320.00 is an increase of more than 25%. I have made an order increasing the rent to $275.00 per week effective from the date of this order.

22. This order does not affect the dates by which the rent may otherwise be reviewed or increased; s28B(1) RTA.

N Maplesden
1 December 2020

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 fesootai mai le Tenancy Services i le numera 0800 836 262.