

TENANCY TRIBUNAL AT Wellington

APPLICANT: Alessandro Zama
Tenant

RESPONDENT: Hsien Feng
Landlord

TENANCY ADDRESS: 27 Myrtle Crescent, Mount Cook, Wellington 6021

ORDER

1. Mr Zama's application is dismissed.

Reasons:

1. Both parties attended the hearing.
2. Mr Zama seeks compensation and exemplary damages against the landlord in relation to the following alleged claims:
 - a. Failure to provide an insulation statement;
 - b. Failure to provide an email contact address for the landlord;
 - c. Failure to provide working smoke alarms;
 - d. Failure to repair a towel rail and light bulb in a reasonable timeframe;
 - e. Unlawful entry;
 - f. Breach of quiet enjoyment by failing to enforce the "no pets" clause in the tenancy agreement;
 - g. Unlawful termination of the tenancy/ retaliatory notice.
3. I deal with each of the claims in turn, noting that I have dismissed all the claims.

Background facts concerning the tenancy agreement

4. There was some confusion about the tenancy agreement because the same agreement has been used since 20 November 2017 and simply altered as different tenants have come and gone. However, there is no dispute that the current tenancy was for a fixed term of one year starting on 20 November 2019 and ending on 20 November 2020. Mr Zama only became a tenant and signed the agreement from 7 January 2020 replacing a departing tenant. There were also three other co-tenants already at the premises being Mr George, Ms Mudliar and Ms Gibson.

Has the landlord failed to complete an insulation statement and provide contact details for the premises?

5. Alessandro Zama claims the landlord has not included insulation details and the landlord's email contact details in the tenancy agreement.
6. A landlord must include a signed statement in the tenancy agreement that provides the following information:
 - a. whether or not insulation is installed in any ceilings, walls and floors, and
 - b. details of the location, type and condition of all insulation installed.

See section 13A(1A) Residential Tenancies Act 1986 (RTA).

7. 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.
8. 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 RTA.
9. I am satisfied on the evidence that when the tenancy agreement was first signed in November 2017, there was no obligation to provide an insulation statement. However, Mr Feng advised that insulation work was done in 2015. On 8 January 2020, Mr Feng prepared and signed the insulation statement to be added to the tenancy agreement which was produced in evidence. He sent the statement to Tenancy Services for confirmation that it was in order. Tenancy Services were late in replying but sent a letter dated 10 June 2020 confirming that the statement was compliant with the RTA and that the type of insulation specified in the statement also appeared to be compliant with the RTA requirements.
10. Mr Heng arranged for the insulation statement to be displayed in the premises by Mr George. Mr Zama says that he never saw the statement.

11. I am satisfied on the evidence that Mr Feng did complete an insulation statement. However, he did not provide a copy of the statement in the tenancy agreement signed by Mr Zama at the start of the tenancy which is a breach of s13(1A) and an unlawful act.
12. Where a party has committed an unlawful act intentionally, 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) RTA. I do not find that this is a case justifying an award of exemplary damages because Mr Feng clearly had no intention to deliberately ignore the RTA requirements, and quite the opposite intention to provide the statement and comply. Therefore, the claim for exemplary damages is dismissed.
13. Mr Zama's complaint that Mr Feng did not include his email address in the tenancy agreement is also dismissed. There is no requirement to do so where the landlord does not have an email address, which is the case here. See section 13A(1)(ab) RTA.

Has the landlord failed to install working smoke alarms?

14. Mr Zama claims that the landlord has breached the obligations under section 45(1)(ba) RTA by failing to install working smoke alarms in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.
15. Mr Zama maintains that there was only one smoke alarm in the central corridor of the premises, and he says that when he tested it in August 2020, it did not work. When asked how he tested the alarm, he says that he used a smoke machine (the type used at discos) and when operating the machine, the alarm did not sound. I note that this is not the way to test an alarm and, generally, dry ice or fog machines may not necessarily activate a smoke alarm. When asked, Mr Zama confirmed that there was a battery in the alarm, and he says he also tested it by pushing the red button on the alarm, but it still didn't work. However, he did not change the battery. I noted that it is the tenant's responsibility to change the smoke alarm batteries and in the absence of doing so, there is no proof that the alarm itself was not working.
16. I am also satisfied on the evidence that Mr Feng had installed two compliant smoke alarms as required at the premises in the hallway and in the lounge just outside the kitchen. Tenancy Services also confirmed in its letter to Mr Feng on 10 June 2020, that his alarms appeared to be compliant with the RTA.
17. In summary, there is no evidence to prove that there were no working smoke alarms and the claim is dismissed.

Has the landlord failed to carry out repairs in a reasonable timeframe?

18. Under section 45(1)(b), a landlord must provide and maintain the premises in a reasonable state of repair. Breaching this obligation 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 RTA.
19. A tenant has a duty to notify the landlord of any damage and need for repairs. In the absence of such a notice, the landlord cannot be held liable for any failure to investigate and repair.
20. Mr Zama said that a light in one of the bathrooms had not been working from the start of his tenancy and he says he sent the landlord a text about it and received no reply. He was unable to produce a copy of the text nor advise when he may have sent it to the landlord. He says that it was then magically fixed a few weeks before he left the tenancy in October 2020.
21. I am satisfied that there is no evidence of Mr Zama notifying the landlord of the faulty lightbulb until he raised it in a letter, simply dated September 2020, which he lodged with a previous application (later withdrawn) to the Tenancy Tribunal. When Mr Feng was served with the previous application he immediately went and fixed the lightbulb.
22. Mr Zama also sent Mr Feng a text on 28 July 2020 advising that the towel rail was not affixed to the wall properly, but he says that Mr Feng did not take it seriously. However, Mr Feng confirmed that he received the notice and fixed the towel rail the next day on 29 July. He received no further advice that there was any on-going problem with the towel rail.
23. I am satisfied on the evidence that Mr Feng attended to the maintenance issues raised by Mr Zama in a reasonable timeframe and has not breached his obligations under s45. For that reason, Mr Zama's claims are dismissed.

Has the landlord entered the premises unlawfully?

24. Mr Zama claims the landlord has entered the premises without consent or notice.
25. A landlord may not enter the premises during the tenancy except with the tenant's consent, in an emergency, or after giving the required notice for inspections and repairs and maintenance. See section 48(1) and (2) RTA. For the purposes of s48, the definition of "*premises*" excludes "*facilities*." Facilities encompasses all facilities provided by the landlord for the non-exclusive use and enjoyment of the tenant such as any land or buildings intended for use for storage space, or for parking vehicles; lawns, gardens and recreational areas. It is well accepted that a landlord is not prevented from knocking on the door of the premises to deliver notices, or being on the grounds for some other

legitimate purpose, provided they do not enter the actual premises and provided they do not interfere with the tenant's right to quiet enjoyment.

26. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of \$1,000.00. See section 48 (4)(a) and Schedule 1A RTA.
27. Mr Zama says he found Mr Feng gardening at the property on one occasion. When he asked the other tenants if this was usual, they informed him that it was and advised that Mr Feng sometimes came to the property to access the basement area which the landlord uses for storing items and which is not rented out to the tenants. The other tenants provided a statement confirming that the landlord had never entered the house without prior consent or warning and the occasional visits had not bothered them in the least. However, Mr Zama, believes that if the landlords access the basement and garden, it is quite possible that they also enter the house without the tenants' knowledge.
28. Mr Feng confirmed that he did go and tidy the garden once; that from time to time he enters the basement but has never entered the house without giving the tenants the required notice.
29. I am satisfied that there is no evidence of the landlord entering the house unlawfully in breach of s48 and access to the garden and basement area is not prohibited by s48. Furthermore, I am satisfied that Mr Feng entering the garden or basement area has not interfered with the tenants' rights to quiet enjoyment in their use of the premises. Mr Zama seeing Mr Feng in the garden once, is also not an incident that could possibly be viewed as a breach of his quiet enjoyment. Mr Feng believes that Mr Zama has raised this claim in retaliation for the landlord refusing his request to use the basement for storage. In any event, I find no unlawful entry and the claim is dismissed.

Has the landlord breached the tenant's quiet enjoyment by failing to enforce the prohibition on pets in the tenancy agreement?

30. A landlord must not cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) RTA.
31. Two of the tenants, Ms Mudliar and Ms Gibson, were keeping two cats at the property when Mr Zama became a tenant on 7 January 2020. Mr Zama was aware the cats were in the premises from the start of his tenancy. Sometime in August 2020, one of the cats was ill and Ms Mudliar asked Mr Zama to ensure that he did not let the cat out of the premises. Mr Zama was not happy about the request and sent Mr Feng a text on or about 25 August explaining the situation; stating that he did not think the cat was his responsibility to look after; he did not want to be blamed if the cat got out, and asked Mr Feng "What's your view?"

32. Mr Feng advised Mr Zama that he did not know there were cats at the premises and that the tenancy agreement did not allow pets. Mr Zama replied that he thought Mr Feng did know about the pets and he also stated *"I have no problem to live with pets as long as I don't have any responsibility for its action. Maybe we can write this down/amend the contract ASAP."*
33. Further communications followed with Mr Zama then serving a 14-day breach notice on Mr Feng dated 27 August 2020, saying that Mr Feng had breached his responsibilities by allowing flatmates to have pets at the house and asking him to remedy the situation. This is a surprising step given that Mr Feng had made it clear that he did not agree to any pets and Mr Zama had indicated he could live with pets. In any event, Mr Feng duly served a 14-day breach notice on the tenants dated 31 August 2020 requesting that they re-home the cats within 14 days.
34. Subsequently, Mr Feng agreed to Ms Mudliar and Ms Gibson's request to keep the cats at the premises because it was proving difficult to re-home them.
35. Mr Zama seeks compensation of \$2,000 on the basis that the landlord did not enforce the terms of the tenancy agreement forbidding pets which in turn breached his quiet enjoyment because he says the cats made too much noise; they smelt and disturbed his reasonable peace. When one of the cats had been sick, he claims that the cat was kept in the room next to his and became a problem.
36. When asked, Mr Zama confirmed that the cats had been at the premises since the start of the tenancy, and he had never complained to the landlord or his flatmates that the cats were noisy or smelly.
37. After carefully reviewing the evidence, I am satisfied that Mr Feng did not know there were cats in the premises prior to 25 August 2020, and therefore he could not have taken steps to deal with the issue before then, and cannot be liable for any breach of quiet enjoyment that might have occurred prior to being notified. I am also not persuaded on the evidence that the presence of the cats in the house caused any great disruption or interference with Mr Zama's reasonable peace prior to 25 August 2020, as he did not make any complaints about the cats during that period.
38. As to whether the cats affected his quiet enjoyment after 25 August, perhaps on the basis that one of the cats was not well and causing problems, I am also not persuaded that there is enough evidence to support his claim. Notably, Mr Zama advised the landlord in one of his text messages on 26 August that he had no problem living with cats. Mr Zama vacated the premises on 2 October 2020. Therefore, any disruption was for a relatively short period and would not justify such a large claim for compensation in any event.
39. In summary, there is insufficient evidence that Mr Feng allowing the cats to remain in the premises after expiry of the 14-day notice, interfered with Mr

Zama's reasonable peace and comfort in the use of the premises. For that reason, the claim is dismissed.

Has the landlord terminated the tenancy unlawfully or given a retaliatory notice?

40. The tenancy was for a fixed term ending on 20 November 2020. In a letter to the tenants dated 31 August 2020, the landlord gave notice under s60A RTA that he would not be renewing the tenancy. Unfortunately, he made a mistake with the end date of the tenancy saying: "Please be reminded that your tenancy will end on 1 November 2020." It should have read 20 November 2020. However, the mistake was rectified, and the landlord confirmed shortly after that the end date was 20 November 2020. Mr Zama confirmed at the hearing that he was told it was mistake but says that he had been looking for a flat anyway as he wanted to leave.
41. Mr Zama complains, that after advising that the tenancy would not be renewed, the landlord then negotiated separately with the other tenants allowing them each to stay at the premises for further periods of time. He claims that this is unfair and unlawful.
42. Mr Feng's decision to allow other tenants to stay longer is not unlawful. He gave a proper notice that he would not be renewing the tenancy agreement with Mr Zama and his three co-tenants under s60A RTA. However, Mr Feng was perfectly entitled to negotiate separate agreements with any of the tenants and allow them to stay in the premises under some other arrangement after the fixed term tenancy expired but was not obligated to do so.
43. The notice given by Mr Feng not to renew the tenancy agreement is not a termination notice under section 51 RTA. Therefore, there can be no claim that it was a retaliatory notice which is a remedy in respect of valid termination notices given under s51 RTA (or s66U for boarding house tenancies).
44. Furthermore, Mr Zama asked the landlord if he could terminate his interest in the fixed term tenancy early on 2 October 2020. Mr Feng agreed, and the parties recorded the agreement in email exchanges between them.
45. For the reasons detailed above, there was no unlawful termination of the tenancy and Mr Zama's claims of unlawful termination or retaliatory notice must be dismissed.



K Stirling, 22 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 fesoatai mai le Tenancy Services i le numera 0800 836 262.