

TENANCY TRIBUNAL AT North Shore

APPLICANT: Natalie Heywood
Tenant

RESPONDENT: Karen Bartlett
Landlord

TENANCY ADDRESS: 124 Mahurangi East Road, Snells Beach, Snells Beach
0920

ORDER

1. No suppression orders apply around publication of this decision.
2. Karen Bartlett must pay Natalie Heywood \$1,525.44 immediately, calculated as follows:

Description	Landlord	Tenant
Rent arrears	\$155.00	
Replace microwave oven	\$50.00	
Landlord labour to remove seagrass	\$100.00	
Compensation		\$500.00
Exemplary damages		\$1,000.00
Refund bond		\$310.00
Filing fee		\$20.44
Total award	\$305.00	\$1,810.00
Net award		\$1,525.44
Total payable by Landlord to Tenant		\$1,525.44

Reasons:

Background

1. Ms Heywood (the tenant) rented a caravan from Ms Bartlett (the landlord) at 124 Mahurangi East Road, Snells Beach. The tenancy started on 17 May 2019 although the tenant did not take possession until 25 May 2019. The tenant vacated on or about 14 September 2019. The landlord served a trespass notice on the tenant on 19 September 2019
2. The tenancy did not go well. When Ms Bartlett issued a trespass notice against the tenant, she removed her goods and placed them in a public area and changed the lock to the caravan. The police were involved. After the tenancy ended Ms Heywood made an application to the Tribunal for compensation and exemplary damages. Ms Bartlett then cross applied.
3. There has been a tortuous background to these applications. The Tribunal has twice considered whether the tenancy was a boarder/flatmate situation or a residential tenancy. Twice it has decided that the tenancy was a residential tenancy that falls under the Residential Tenancies Act 1986 (RTA) most recently on 11 August 2020. So, the applications must be dealt with on that basis.
4. Both parties provided substantial documentation at the hearing. I have considered it all though it is not necessary for me to refer to it all in detail.

The tenant's application

5. The tenant seeks compensation for the loss of some of her goods and exemplary damages for alleged breaches by the landlord. Among the alleged breaches are that the landlord continually interfered with the tenant's quiet enjoyment amounting to harassment; that she changed the lock to the caravan; that she unlawfully entered the premises; that she threatened to cut off the power supply and then disconnected the power; that she issued a trespass notice having provided false information to the police; that she told untruths to her employer including allegations of theft; that she removed washing from the line; that she removed all her possessions and dumped them 11 kms away and that she was generally bullying and belittling.

The landlord's application

6. The landlord has the following claims:

- Rent arrears - \$155.00 (1 week's rent)
- Compensation for the loss of water when the water tank was drained - \$440.00
- The replacement cost of 7 feijoa trees
- Compensation for the replacement of a microwave oven the tenant placed outside - \$50.00
- Landlord labour (4 hours) for the removal of seagrass
- The repair cost of a broken window (\$75.00 for labour and \$275.00 for brackets and stays)
- The cost of changing the lock (\$27.00)
- Reimbursement for packing, storing and transporting the tenant's goods to a collection point - \$325.00
- Cleaning and disposing of rubbish
- Exemplary damages, including for mental and emotional harm.

Law

7. The relevant provisions of the RTA are these:

- Section 38 RTA – Quiet enjoyment
- Section 46 - Locks
- Section 48 – Landlord's right of entry
- Section 51 – Termination by notice
- Section 62 – Goods left on premises on termination of tenancy
- Section 63 – Entry without order of Tribunal prohibited
- Section 109 – Unlawful acts

Case law

8. The Tribunal may award compensation to a tenant for losses arising from a proven breach or breaches by the landlord of their statutory responsibilities. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety. The tenant's compensation claims are for actual losses and for the loss of use of and therefore enjoyment of the tenancy.
9. Recently, in *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667 the District Court, noting the decision of the Tribunal in *Palmer v Housing New Zealand (No.2)* Auckland TT 2378/92, confirmed that the Tribunal must take into account the following factors:
 - The nature of the breach
 - The duration of the breach; and
 - The effect of the breach on the party.
10. Exemplary damages are different. They are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish. They are like a fine, though they go to the citizen who has been the victim of conduct.
11. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proved, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.
12. In *Birch v Otautahi Community Housing Trust* (referred to above) the Court said this:

In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in *Chief Executive, ex parte Edmondson v Walls* TT548/92 said:

Before an award of exemplary damages can be made the threshold question for the tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.

If the Tribunal considers that the person against whom the order is sought has committed the unlawful act intentionally, the tribunal must then consider whether it would be just to require that person to pay exemplary damages, taking into account:

- (a) The intention of the person
- (b) The effect of the unlawful act;
- (c) The interests of the party against whom the unlawful act was committed; and
- (d) The public interest.

Analysis

13. This is a challenging case for the Tribunal to determine. The Tribunal has twice decided that the tenancy was not a boarding arrangement and that it falls under the provisions of the RTA.
14. Ms Bartlett was clear that she always intended the arrangement to be a boarding situation. She advertised the caravan for rent on that basis and included were utilities, water, power and wi-fi. She said in evidence that she took advice from Tenancy Services, a lawyer, Citizens Advice and from the Police and was told by all three agencies and the lawyer that the tenancy was a boarding arrangement. I do not know the exact advice Citizens Advice and the Police gave Ms Bartlett, but the advice given by Tenancy Services was not as clear as she states. The advice given recommended caution. It read: 'based on the information given to me over the phone it *may* be that this case is excluded under the Residential Tenancies Act 1986 section 5 subsection 1(n)'.
15. So, while the Tribunal has some sympathy with Mr Bartlett and accepts she acted in the genuine belief that the arrangement was a boarding arrangement, it must consider the applications under the provisions of the RTA. And even allowing for Mr Bartlett's belief that this was a boarding arrangement, some of her actions do not withstand scrutiny. Clearing out the tenant's goods and placing them in a public area some 11 kms away would be considered inappropriate even if the arrangement had been a boarding arrangement.
16. That said, each party would like me to think they were the blameless victim of the other's bad behaviour. I doubt that very much. More likely is that each acted poorly throughout the tenancy, each in different ways.
17. Ms Bartlett has established a claim for 1 week's rent arrears up to the date when she trespassed the tenant. I award rent arrears of \$155.00.
18. The allegations that the tenant ran the water out of retaliation and emptied the tank, and that she damaged feijoa trees out of spite are not proved on the evidence. Ms Bartlett probably has good reason to suspect that the tenant did

those things, but that is not sufficient. Any person could have done that damage. But more importantly, the tenancy premises only comprised the caravan. The tenant did not cause damage to the premises as far as the water and the feijoas are concerned.

19. Changing the lock was a failure on the landlord's part; she effectively took possession of the premises without lawful authority (though acting on the advice of the police after the trespass notice had been issued). Claiming for packing, storing, and then transporting the tenant's goods to dump them is bold in the extreme. The RTA required the landlord to safely store the goods; to try and return them to the tenant; and if not possible to apply to the Tribunal for a disposal of goods order.
20. A claim for cleaning and disposing of rubbish also cannot succeed. The landlord trespassed the tenant and unlawfully took possession of the premises. She cannot then credibly charge the tenant for the costs of cleaning and rubbish disposal. The same applied to the claim for the repair of the window. The tenant accepted that she damaged the window, but the landlord trespassed her from the premises (unlawfully) on 19 September 2019. It was that night she and her son did the repair. The tenant, having been trespassed, could not have done the repair work.
21. There is no basis for a claim for exemplary damages. Exemplary damages can only be awarded for breaches of the RTA that are declared to be unlawful acts. The landlord has not identified any breach by the tenant that amounts to a defined (under the RTA) unlawful act. Mental and emotional harm is not defined as an unlawful act, though harassment by a landlord against a tenant is.
22. Apart from rent arrears, the only two claims I find proved against the tenant are the claims for the replacement cost of a microwave which the tenant admitted placing outside (\$50.00); and the removal of the seagrass the tenant brought onto the property (\$100.00).
23. Together, the landlord's successful claims amount to \$305.00.
24. The tenant has established several breaches by the landlord, some of which are declared to be unlawful acts. They include:
 - The landlord trespassed the tenant. A tenant, being the lawful occupier of premises, cannot be trespassed.
 - The landlord illegally took possession of the premises without a possession order from the Tribunal.

- The landlord breached the tenant's right to quiet enjoyment and some of those breaches (entering the premises and going through her goods) amounted to harassment.
- The landlord breached the tenant's right to privacy.
- The landlord wrongfully disposed of the tenant's goods.
- The landlord unlawfully changed the lock to the caravan.

25. Even if the landlord believed the arrangement was a boarding arrangement (which I accept she did) disposing of the tenant's goods in the manner she did was callous. On the other matters, I accept that the landlord did not believe she was breaching the provisions of the RTA as she believed the RTA did not apply (and she was acting on advice from the Police when it came to the trespass notice and changing the lock). But I cannot overlook the fact that the landlord breached the RTA and that some of the breaches were serious breaches and amounted to unlawful acts. The landlord's actions were intentional; they were against the tenant's interests; they had an effect on the tenant; and they were against the public interest.

26. The tenant cannot quantify her loss of some goods (most she was able to retrieve). But I accept she suffered some losses and I accept that the circumstances in which her tenancy ended caused her anxiety and inconvenience. I award her compensation of \$500.00.

27. As well, for the landlord's breaches that amounted to unlawful acts, I award the tenant exemplary damages of \$1,000.00, an amount that encompasses all the unlawful acts. In making this award, I have taken into account that the landlord genuinely believed that the arrangement was a boarding arrangement, not a residential tenancy. So, I have taken a lenient approach. But for that, the award to the tenant would have been significantly higher.

28. In addition to compensation and exemplary damages the landlord must pay the bond of \$310.00 to the tenant.

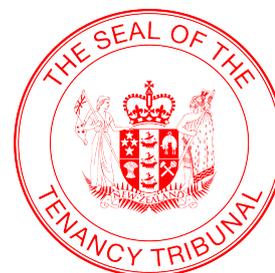
Conclusion

29. The landlord's application is successful in the amount of \$305.00

30. The tenant's application is successful in the amount of \$1,500.00.

31. Deducting the landlord's successful claims from the tenant's successful claims and allowing for the bond to be repaid to the tenant, the landlord must pay the tenant \$1,505.00. As well the landlord must pay the tenant's Tribunal

filing fee (\$20.44) as her application is successful. The landlord's application is mostly unsuccessful. Therefore, the landlord will pay the tenant a total of \$1,525.44.



J Greene
12 March 2021

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.