[2022] NZTT 4338564, 4331326

TENANCY TRIBUNAL - Manukau

APPLICANT: Ravi Jha

Landlord

RESPONDENT: Joahnna Esguerra

Tenant

TENANCY ADDRESS: Unit/Flat b, 10 De Havilland Drive, Goodwood Heights, Auckland 2105

ORDER

1. An application for suppression has been made in this case, and the Tribunal declines orders.
2. The Landlord shall pay the Tenant $5,509.58 immediately as outlined in the table below.
3. The Bond Centre shall pay the Tenant the bond of $1,420.00.

Description	**Landlord**	**Tenant**
Rent arrears to 21 January 2022 by consent	$165.71	
Cleaning	$250.00	
Light bulbs/batteries	$11.50	
Repairs: Cupboard	$57.50	
Compensation: Unlawful premises		$4,794.29
Exemplary damages: Harrassment		$700.00
Exemplary damages: Unlawful entry		$500.00
Total award	**$484.71**	**$5,994.29**
Net award		$5,509.58
Bond		$1,420.00
Total payable by Landlord to Tenant		**$5,509.58**

Reasons:

1. Both parties attended the hearing by teleconference. The Tenant attended from the Phillipines. Her legal representative, Mr Zhang and support person, Ms Hazel also attended by telephone.
2. The Tenant has applied for compensation, exemplary damages and refund of the bond.
3. The landlord has applied for rent arrears, compensation, exemplary damages, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.

Background

4. The Tenant moved into the property on 18 June 2017 and entered into three fixed term tenancies over a period of four years. The most recent tenancy was fixed term from 1 March 2021 to 21 January 2022.
5. The property was a 1-bedroom unit located at the ground level of the Landlord's two storey house. The Landlord lived upstairs however would travel often overseas and appoint an Agent to manage this tenancy.

TENANTS CLAIMS FOR COMPENSATION

Key replacement

6. The Tenant claimed $218.50 for paying a locksmith to attend the property and produce a key. When the Tenant vacated the property, she left the property keys in the mailbox. The Tenant stated the neighbours in the blue house next door saw her place the keys (inside an envelope) into the mailbox. When the Landlord's Agent went to collect the keys in the evening, he stated they were missing so the Tenant had to arrange for a locksmith. The Tenant produced an invoice for the locksmith.
7. The Landlord claimed the Tenant did not pre-arrange with him to return the keys in the mailbox. He produced text message correspondence on 10 December 2021 around 12am between himself and the Tenant. The Landlord who was overseas at the time advised her to call his Agent. The Agent went attended late that night and found them missing. The Landlord told the Tenant she should have contacted the Agent before unilaterally deciding to place it there. The Tenant responded stating it was "*a lesson learned*" and then asked the Landlord if he knew of any locksmiths. The Landlord advised the Tenant was fully aware of the Agents contact details to organise the return of the keys but did not contact them. He referred to the Tenancy Agreement at clause 27 which states:

   "*The Tenants are provided with 1 keys for the property. Keys must be returned at the end of the tenancy. If keys are not returned by hand to the Landlord by 4pm on the final day of the tenancy the Tenant will pay for the cost of replacement locks*.

8. In considering the evidence, I find it more likely than not that the Tenant did not return the keys in accordance with the Agreement. This is because the Tenant did not provide any evidence to substantiate the Landlord agreed to her returning the keys via the mailbox. The Tenancy Agreement clearly specifies how the Tenant should return the keys and if there was agreement to deviate from that, this should have been provided. The Tenant has not proved her claim and therefore the claim is dismissed.

Unlawful premises

9. The Tenant claimed the property at unit '10B De Havilland Drive' was not consented to as a dwelling but an office. The property at '10 De Havilland Drive' is a single home and its neighbouring unit, '10A De Havilland Drive' is consented to as a minor household unit.

10. The Tenant submitted unit '10B De Havilland Drive' does not exist. She produced property files and plans from Auckland Council, which show no record of works performed on 'Unit 10B De Havilland Drive'. The unit was intended as an office and rumpus.

11. The Tenant deposed the Landlord labelled this Tenancy as a "Flat sharing tenancy Agreement" in an attempt to avoid compliance with the Residential Tenancies Act 1986 ("the Act"). There was also no window in the bedroom which is in breach of the Housing Improvement Regulations.

12. The Tenant claimed she incurred extra costs as a result of the Landlord's failure to comply with building standards. The build- up of grease and oils in the kitchen area was due to the inadequate kitchen facility and ventilation. The extractor fan was not designed for a kitchen. As a result, the Landlord told her to pay for painting over the oil spots in the property which cost her $2,000.00. Had the Tenant been aware the premises was unlawful, she would have incurred less rent by terminating her fixed term tenancy on the grounds the premises were unlawful.

13. The Tenant has claimed compensation of $20.00 reduction in rent per week and reimbursement of the $2000.00 she paid for painting the ceiling.

14. The Landlord submitted this property was fully consented to and produced a 'Code compliance certificate'. They submitted it was habitable and the Tenant got what she paid for. She did not suffer from any loss of facilities at the outset. The property was built to a standard that was comfortable for his elderly parents to occupy. The Landlord then went onto submit this was a 'Flat Sharing Agreement' because the property is "totally independent" with its "own check meter for power consumption".

15. The Landlord submitted email correspondence from Auckland Council dated 16 May 2016 which stated:

"On your request ,our inspector visited and met you on site .Everything is as per approved plans in your home office .So you do not require to do anything .You can rent the office ,as it has a independent access with fully self-contained with bathroom and office kitchen bench top and laundry tub.

There are 3 options as advised to you

1) Apply for a new minor dwelling and which will have to be with a new power and water connection, contribution costs etc .All costs are approx. – 40-50k and time frame of 6-8 months .You will require the services of a professional .

2) Rent it, as is where is ,as long as you get your stove installed by a professional electrician and you keep the certificate should you choose option 1 in future

3) Renting as a flatmate with all the utilities included.

16. The Landlord submitted in his evidence regarding the Tenants claim for the key replacement, that the only persons with access to the property was the Tenant. It was solely occupied by the Tenant and no other 'flatmate'. In considering the relevant evidence, I find that this was not a 'Flat-sharing Tenancy Agreement' and this property is subject to the Act.

17. I also refer to clause 33 of the Tenancy agreement which states *"The Tenant shall pay all electricity, gas, telephone, and metered water charges as billed by the supplier.*

18. These factors indicate the 'Tenancy Agreement' is subject to the Act.

The law

19. The relevant provisions of the Act in determining whether a property is lawful are as follows:

    a. Section 78A(2) of the Act states:

    For the purposes of this Act, unlawful residential premises means residential premises that are used for occupation for a person as a place of residence but—

    (a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and

    (b) where the landlord's failure to comply with the landlord's obligations under section 36 or 45(1)(c), …, has caused the occupation by that person to be unlawful or has contributed to that unlawful occupation

    b. Section 36 of the Act states that:

    The landlord shall take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes*.*

    c. Section 45(1)(c) states that:

    The landlord shall – ….. (c) Comply with all requirements in respect of buildings, health, and safety under any enactment ……so far as they apply to the premise.

    d. Section 40, 114 & 115 Building Act 2004:

    -Section 40 of the Building Act states that a household unit, being a building intended for residential occupation, must have a building consent and be certified as being compliant by

having a code compliance certificate. If it has neither, or a building consent only, then the Act deems it an unlawful residential premises.

-Section 114 of the Building Act requires the owner to give notice of a change of use of the building, and makes failure to do so an offense.

-Section 115 of the Building Act states:

That an owner of a building must not change the use of the building –

(a) in a case where the change involves the incorporation in the building of 1 or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects; and

(b) in any other case, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use,—

(i) will comply, as nearly as is reasonably practicable, with every provision of the building code that relates to the following:

a) means of escape from fire, protection of other property, sanitary facilities, structural performance, and fire-rating performance:

b) access and facilities for persons with disabilities (if this is a requirement under section 118); and (ii) will,—

c) if it complied with the other provisions of the building code immediately before the change of use, continue to comply with those provisions; or

d) if it did not comply with the other provisions of the building code immediately before the change of use, continue to comply at least to the same extent as it did then comply.

20. Where the Tribunal declares residential premises to be unlawful, it must not make an order for rent arrears or compensation against the tenant unless, having regard to the special circumstances of the case, it would be unjust not to make the order. The Tribunal may order the return of all rent paid by the tenant, although it may deduct an amount from that sum if, in the special circumstances of the case, it would be fair to do so. See sections 78A(3)(a), (4) and (5) of the Act.

Application of the law

21. In considering the evidence, I find the property is an 'unlawful residential premises'. I am persuaded by the Council plans which indicated 'unit 10B' was intended to be an office, the 'Combined Certificate of Compliance and Electrical Safety Certificate' was relevant to unit '10 De Havilland', the email correspondence from Auckland Council confirmed the property was consented to as an office and not a dwelling and the absence of consent sought to change the use of the office into a residential premises.

22. In taking account the rent to be refunded, I find it would be appropriate to deduct an amount from the total rent paid over the four year period because the Tenant submitted she was reasonably comfortable living at the unit. She had lived there

for a considerable amount of time and had a choice not commence another fixed term agreement. She also did not produce evidence of the property being in an unreasonable state of repair. The Tenant did not seek a total refund of the rent over the entire tenancy period and this amount is unknown to the Tribunal.

23. The Tenant sought a rent reduction of $20.00 per week. I find it appropriate to award this amount which equates to approximately 5% of the rent. The time the Tenant lived in the property was a total of 239 weeks and 5 days. Accordingly, I award to the Tenants $4,794.29.

24. The Tenant also sought reimbursement of the ceiling painting of $2,000.00 however there was insufficient evidence to determine whether the damage was caused entirely by the lack of ventilation or some other means. There was also no evidence to substantiate the costs incurred by the Tenant to paint the ceiling. This part of the claim is dismissed.

TENANTS CLAIMS FOR EXEMPLARY DAMAGES

Landlord claiming a letting fee and failing to appoint an Agent in 2017

25. These claims are referred to contemporaneously because they were both claims made in a previous application the Tenant filed in 2018. At that time, the parties attended mediation and an agreement was reached. This was formalised into Orders however the Orders did not refer to these two claims.

26. The Tenant claimed $1500.00 in exemplary damages for the Landlord claiming a letting fee of $230.00 in 2018 which she paid at the beginning of the tenancy. Evidence was produced of that payment.

27. The Tenant also claimed the Landlord failed to appoint an Agent in 2017 as he was often overseas for long periods of time.

28. The Landlord submitted the letting fee was a marketing fee which the Tenant agreed to pay at the time. He submitted he had appointed an Agent during the times he was overseas and their contact details were clearly listed on all his Tenancy Agreements. He also submitted that these claims were heard previously in 2018 and should not be re-heard again.

29. The Tenant deposed that although these unlawful acts occurred in 2018, the Tribunal has a discretion to determine the claim after 12 months which was indicated by the use of the word ‘may’ at section 109 of the Act. If the Tribunal did not accept this argument, they submitted the Tribunal had a residual discretion under section 77 of the Act.

The Law

30. Section 109 of the Residential Tenancies Act 1984 (‘the Act’) states in relation to unlawful acts:

“A Landlord or a Tenant may not apply under subsection (1) later than-

(a)12 months after the termination of the tenancy in the case of—

(i) an unlawful act to which section 19(2) refers; or

(ii) a failure to keep records in respect of bonds that is an unlawful act to which section 30(2) refers; or

(b) 12 months after the date of commission of the unlawful act in the case of any other unlawful act.

31. Case law has indicated in *Mah v Tey [2013] NZHC 573*, a decision of the High Court, that:

> *"It is an abuse of process to raise in subsequent proceedings matters which could and should have been litigated in earlier proceedings*"

32. In considering the evidence, the Tribunal finds that the Tenant is well out of time to make these claims for exemplary damages and the claims cannot be heard again. Although the Mediators Orders made in August 2018 do not pertain to these claims, the Tenant had an opportunity at that time to proceed to hearing with them. The Tribunal declines to provide a second opportunity to the Tenant. This amounts to an abuse of process and there needs to be finality of litigation. The claim is dismissed.

Unlawful rent increase

33. The Tenant claimed compensation because the Landlord increased the rent twice with only verbal notification. The first time was on 1st July 2019 where only one day verbal notice was given that it was increased to $385.00. The Landlord increased the rent again to $405.00 with only verbal notification for the period 1st March 2021 to 21st January 2022.

34. The Tenant submitted there appeared to be no 'Tenancy Agreement' for the period from 19th July 2019 to 1 March 2021 so it was unclear if the Tenancy became periodic from July 2019. The Tenant submitted that even if there was agreement to increase rent, the Tenant was pressured into consenting.

35. The Landlord submitted the rent was increased only twice during the four years of tenancy and these were lawful increases. The Landlord submitted the Tenant agreed to the 2019 rent increase at mediation on 28 August 2018 which was nine months prior to that increase.

36. He also submitted email correspondence dated 13th July 2019 where the Landlord states: "*As discussed and agreed on phone your fixed term tenancy is now extended till 30th June 2020 at $385 pw starting from 1st July 2019*". The Tenant responded by asking the Landlord to confirm this in a new Tenancy Agreement. She does not oppose the new amount.

37. The Landlord submitted he had a third tenancy agreement for the 2019-2021 period to prove that the Tenant also agreed to the rent increases. This was sent through to the Tenant at the hearing

The law

38. Section 24 of the Act provides that rent maybe increased if the Landlord provides notice in writing to the Tenant, the notice refers to the amount of increased rent and the day it becomes payable (which must be 60 days after notice is provided). In the case of fixed term tenancy, increase in rent can only occur if the Tenancy Agreement provisions allow it and it is in accordance with the provisions outlined earlier.

Application of the law

39. In considering the evidence, I find the Tenant has failed to prove their claim that the rent was increased without sufficient notice. The Landlord's evidence of the three Tenancy Agreements which the Tenant had signed are indicative of this. The Tenant argued they were unduly influenced by the Landlord to enter into these Agreements however there was insufficient evidence to support this. The tone of the email correspondence submitted, between the Landlord and Tenant on 13th July 2019 does not suggest any pressure on the Tenant. This claim is dismissed.

Landlord interference with reasonable peace, comfort or privacy

40. The Tenant has claimed the landlord has harassed them.

41. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) Residential Tenancies Act 1986.

42. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See section 38(3) and Schedule 1A RTA.

43. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds,* CIV-2009-019-001524, DC Hamilton, 26 February 2010.

44. The Tenant claimed the Landlord had established a pattern of behaviour through text messages and email correspondence which amounted to verbal abuse, intimidation and harrassment. Initially it started with the Landlord attempting to increase rent without proper notice through bullying and verbal attacks. The Tenant provided evidence of the email exchanges between her and the Landlord, medical notes from her GP in 2018 and police reports dated 10 June 2021 and 13th October 2021.

45. The parties attended mediation in August 2018 and an Order was made for the Landlord to correspond with the Tenant via written correspondence. The Tenant submitted she felt helpless at mediation and agreed to the Orders to keep the peace and maintain her tenancy.

46. The "medical notes' dated 28 August 2018 refer to the Tenant as:

"*under a lot of stress, unable to sleep, feels unsafe at her home, her landlord puts her under a lot of stress*" "*discuss anxiety related to Landlord*". The Police reports note the Tenant "*Despite reaching agreement at mediation in August 2018, the Landlord's behaviour escalated*".

The Tenant submitted she still felt these symptoms up until the end of her tenancy.

47. On 8th June 2021, the Tenant claimed she arrived home and the Landlord approached her as she pulled up in her car. He was argumentative and told her not to place her rubbish bin in her house. The Tenant told him not to talk to her. The Tenant reported this incident to the Police as she felt unsafe because the Landlord had a duplicate key to the unit. She was "intensely affected by the intimidating conversations which caused her stress" and lack of sleep for weeks.

48. On 3 October 2021, the Tenant claimed the Landlord came into her property and was abusive and aggressive. They argued about her painting of the ceiling. She asked him to leave and then tried to close the door on him. He positioned his foot between the door so she could not close it.

49. Following that incident, the Landlord sent the Tenant abusive emails on 13th October 2021. He referred to her as a *"Doctor of Animals*", "*your ugly face and character*", *"psycho"* and *"ugly and depressed*". The Tenant reported these emails to the Police. On 21st October 2021, he referred to the Tenant as *a "mentally retarded woman with extreme racist character"* and she *"needed to see a doctor".*

50. The Tenant stated she felt dehumanised, threatened, suffered low self esteem and was powerless against the Landlord. She lost weeks of sleep and undue stress over this. She stated she was *'often left defenceless because of her non-confrontational personality" a*nd too afraid to appeal the mediators orders.

51. The Landlord denied harassing the Tenant and stated it was "just a made up story". He stated that the Tenant would harass him and referred to email correspondence where she was abusive towards him.

52. On 13 October 2021, the Tenant emailed the Landlord: "*you behave like a monkey- VERY UNEDUCATED*" and *"I know why your wife left you and your children because you are verbally abusive LOL*". He claimed his abuse was reciprocated. He also stated that if he had been as abusive as the Tenant claimed, then why did she live at the property for so long. Also why did she ask to connect with him on the app "Linkedin".

53. The Landlord referred to text messages which were undated where the Tenant apologised for her abuse claiming she was angry and her behaviour was due to her menstrual period. The Landlord stated this was a pattern where she was abusive then would apologise after.

54. The Landlord also stated that he did not enter the Tenant's property on 3 October 2021 but spoke to her from outside of her house.

55. The Tenant responded she stayed in the tenancy for four years because the property was in close proximity to work and it was difficult to obtain another tenancy in the Auckland market. She had migrated from overseas and was living on her own so that also made compelled her to remain at the property.

Application of the law

56. In considering the relevant evidence, the Tribunal finds that it is more likely than not that the Landlord has interfered with the Tenants peace by harassing her. The persuasive factors were the medical evidence, the abusive emails, the police reports and the Mediators Orders specifically stating communication is to be in writing.

57. I find the Landlord has committed an unlawful act.

58. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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.

59. The Landlord harassed the Tenant which caused detrimental impact to her. I find that it is more likely than not to have been intentional conduct on behalf of the Landlord. He was aware of the agreement to limit contact to written correspondence so he would have understood to some extent how speaking directly to the Tenant would affect her. Tenants should be able to feel secure and safe in their property and it is in the public interest that tenants are not harassed by their Landlords.

60. For these reasons, I have made an order of $700 exemplary damages in respect of the section 38(3) breach.

Tenants claims for unlawful entry

61. The Tenant claims the landlord has entered the premises without consent or notice.

62. 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) Residential Tenancies Act 1986.

63. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,500.00. See section 48 (4)(a) and Schedule 1A Residential Tenancies Act 1986.

64. The Tenant claimed on 3 October 2021, the Landlord entered the Tenant's property without her consent to discuss the painting on the property. This has been outlined previously at paragraph 48.

65. The Landlord denies entering the Tenants property. The Landlord stated the conversation happened outside of her property. He claimed that the police did not approach him afterwards to discuss this incident if it really did occur. He also stated the Tenant made the police report out of retaliation because he was going to complain to the Racial Commissioner regarding racist comment's she made towards him.

66. On balance, I find it more likely than not that the Landlord has committed an unlawful act. The Tenant reported this incident to the Police as she felt intimidated. The Landlord was aware that communication should be written yet he still entered her property to discuss the painting.

67. 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) Residential Tenancies Act 1986.

68. I find that the Landlord was intentional in his behaviour because he knew the Mediator Orders that limited contact. Whilst it may have been more convenient and perhaps easier to negotiate with the Tenant in person, this behaviour by the Landlord was clearly intimidating and intrusive to her. The police report also stated that the Tenant did not want the Landlord approached by Police in case it provoked him again. The public should be assured that Landlords do not enter a Tenant's property unless they have consent or have provided proper notice.

69. I find an award for $500.00 is appropriate in these circumstances.

Tenants claim for failure to provide Tenancy Agreement in writing

70. The Tenant claimed the Landlord failed to ensure there was a tenancy agreement in writing, signed, and provided to the Tenant for the period from 1 July 2019 to 28 February 2021.

71. The Landlord submitted there was a Tenancy Agreement from 1 July 2019 – 30 June 2020 which was initialled by the Tenant. This was sent to the Tenant's Counsel during the hearing. The Landlord also produced email correspondence on 16th July 2019, where the Tenant has attached the signed 'new fixed term tenancy' in an email to the Landlord. The Landlord went onto state there was a further Tenancy Agreement for the period from 2020-2021.

72. In considering the evidence, I find the Tenant has not proved their claim that a Tenancy Agreement was not in writing. The Landlord has disproved this with their email correspondence and Tenancy Agreements provided.

73. I dismiss the Tenants claim.

Tenants claim for interference with services

74. The Tenant claimed the Landlord has interfered with the internet services to the premises by cutting this service on 14th October 2021 without prior notification. She paid the Landlord $40.00 per month for this. This prevented her from being able to work effectively as she is a lecturer and taught classes online. She had to stay at her sisters house in Remuera in order to use her internet. She eventually spent $249.00 to get fibre broadband connection installed at her unit which took several days to install. She cited the decision in '*Liang & Ng v Fang* [2020] NZTT Tauranga 4263726, whereby disconnection of internet services constituted interference with services. The Tenant claimed this case was similar in that the Landlord in retaliation, unilaterally cut the Tenant's internet service.

75. The Landlord refuted this stating that he did not charge the Tenant for 3.5 years of the tenancy. She used his wifi upstairs. He disconnected his service because he was going overseas but before he did so, he checked with the Tenant. He produced an email dated 16 July 2019 where he asked the Tenant whether she would like to retain the internet service and the Tenant declined. She stated she had internet on her telephone. He then later states that he resumed her internet sometime in June 2021. After the parties had their altercation on or about 13th October 2021, the internet was cut.

76. The Tribunal also notes the Tenancy Agreement commencing 21 March 2021 did not include a clause stating the Tenant is responsible for internet services. At clause 6 of the Tenancy Agreement, it provides only that the Tenant shall be responsible for metered water, gas, electricity and telephone services.

The Law

77. A landlord must not interfere with the supply of water, gas, electricity, telephone of other service to the premises, except where the interference is necessary to avoid danger to any person or to enable maintenance or repairs to be carried out. See section 40(2) Residential Tenancies Act 1986.

78. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,800.00. See section 40(2A) and Schedule 1A Residential Tenancies Act 1986.

Application of the law

79. In considering the evidence, I find the Tenant has not proved the Landlord interfered with her internet service because the internet account did not belong to her. The Landlord was free to disconnect this service because it belonged to him and the Tenant was free to set up her own account at her property which she eventually did. She also did not produce any evidence that the internet was a service included in her Tenancy Agreement or inclusive in the rent. Had the Landlord interfered with the Tenants own internet account then this would have been an interference. I find the Tenant has not proved their claim and this is dismissed.

Breach of Healthy Home Standards.

80. The Tenant claims that the landlord has breached their obligations under section 45(1)(bb) of the Act, which requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS). The Tenant considers that the landlord has failed to comply with the HHS heating standard by not providing a fixed heating unit in the property. The Tenant submits this would have resolved the dampness issues.

81. The Landlord submitted that he had asked the Tenant five times in 2019 whether she wished to have a heat pump installed but she refused because she was mindful of the power costs to run one. He deposed he is not required to install a heat pump until 1 July 2024 because the tenancy commenced before 1 July 2021.

82. The Tenant claimed she did not know her rights at the time the landlord asked her so she declined the heat pump.

The law

83. Compliance dates for the HHS vary depending on the tenancy:

    a. All private rentals must comply within 90 days of any new or renewed tenancy after 1 July 2021, with all private rentals complying by 1 July 2024.

    b. All boarding houses must comply by 1 July 2021.

    c. All houses rented by Kāinga Ora and registered Community Housing Providers must comply by 1 July 2023.

84. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45(1A).

Application of the law

85. In considering the evidence, I find there has been no breach due to the Tenancy commencing on 1 March 2021. The Landlord is not required to provide a heater until 1 July 2024. The claim is dismissed.

LANDLORDS CLAIMS

Landlords claims for rent arrears

86. The Landlord claimed rent arrears of $185.71 owing at the end of the tenancy. A rent summary was provided. The Tenant refuted this amount however had no evidence to support this. The amount claimed is proved.

Did the tenant comply with their obligations at the end of the tenancy?

87. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986. The tenant is required to replace worn out smoke alarm

batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986. The tenant must also replace standard light bulbs.

88. The Landlord claimed the Tenant did not leave the premises reasonably clean and tidy, and did not remove all rubbish. He claimed there were dirt marks on the ceiling, stove, bathroom and windows. It took two cleaners approximately four hours to clean and an invoice for $250.00 was produced. Text message correspondence in January 2022, show the Landlord or their Agent stating they needed to get the property commercially cleaned. The Tenant agrees and then advises the Landlord can take this amount out of the bond.

89. The Tenant disputed the cleaning. She claimed she vacated the property on 10 December 2021 and gave notice in October 2021 that she would be leaving despite this being a fixed term tenancy. She understood she was still liable for rent to the end of the tenancy in January 2022.

90. When the Tenant vacated, the Landlord's Agent conducted an inspection which she did not attend. The Agent sent her text messages (undated) after viewing the property which remarked there was one broken cabinet hinge, spider webs, a few paint marks on the vanity and grease marks in the drawers. She understood this was the final inspection and nothing further would be claimed. She undertook to remedy these inspection issues.

91. In February 2022, the Landlord returned from overseas and then sent the Tenant another list of items which required remedying. This included $250.00 for the deep cleaning.

92. The Tenant stated the unit was left reasonably clean and submitted the cost claimed by the landlord was unreasonable given the small size of the unit.

93. In considering the evidence, I find the Tenant did not clean the property sufficiently. The Tenant's email correspondence in January 2022, agreeing to the commercial clean and then advising the Landlord could deduct this from the bond is persuasive in leading to this conclusion. Although she believed she had this sorted with the Agent in December 2021, her agreement via text message with the Landlord in January 2022 that the place still required cleaning, is compelling. I do not sense the Landlord pressured her to pay that amount either. I award the Landlord the amount claimed of $250.00.

94. The following chattels were missing at the end of the tenancy: stove bulb, bedroom bulb. These needed to be replaced as they were not working at the end of the tenancy.

95. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

96. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the

tenant must prove they did not carelessly or intentionally cause or permit the damage. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.

97. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.

98. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

99. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

100. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

101. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

102. The following damage was caused during the tenancy: damaged cupboard, damaged kitchen cupboard, broken electrical outlets, incorrect door blinds, and ceiling damage.

103. The Landlord claimed repairs for the damaged back panel of a cupboard which the Tenant used to store her clothes. An invoice for the repair was produced by the Landlord. The Tenant denied this was damaged.

104. An ingoing tenancy inspection report was not provided by the Landlord or photographs to confirm this cupboard was damaged during the tenancy. The claim is dismissed.

105. The Landlord claimed $40.00 for repairs to the kitchen cupboard due to loose hinges. The Tenant consented to repairs for this.

106. The Landlord claimed there were two broken electrical outlets. There was no ingoing inspection report to confirm this damage occurred during the tenancy. The Tenant disputed this stating they were working during the tenancy. In her last month at the property, she did not use the oven for cooking so it was difficult to

understand how this could have happened. Again, the ingoing inspection report has not been provided. The claim is dismissed.

107. The Landlord claimed for the replacement of a blind which the Tenant had replaced however the Landlord claimed it was too short. The Landlord provided an invoice for the repair. The Tenant refuted this stating that she had repaired it to the same standard as before and it was not a shorter blind. There were no photographs of the blind nor was there an ingoing report. The claim is dismissed.

Landlords claim for exemplary damages for racial discrimination

108. The Landlord claims that the Tenant has discriminated against them. They were also making a claim under the 'Human Rights Act 1999'. They claimed the Tenant had made racist remarks about the Indian treatment of women. The Landlord claimed he had a lot of evidence of racist remarks from the Tenant in text messages. Upon perusal of these messages, there was one remark by the Tenant stating*: "Yes, you told me women are not respected in India*". The rest were insults to his character.

109. The Tenant submitted, the Landlord was making a claim under the Human Rights Act 1999 and therefore cannot make a claim under the Act as well.

110. The Act provides that a landlord must not discriminate against a tenant in relation to the grant, renewal, variation or termination of a tenancy, in contravention of the Human Rights Act 1999. See sections 12(1) and 109(3) Residential Tenancies Act 1986.

111. Section 21 of the Human Rights Act specifies the prohibited grounds of discrimination, which include sex, marital status, religious or ethical belief, race or ethnicity, disability, age, political opinion, employment status, family status, and sexual orientation.

112. Breaching this obligation is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of $6,500.00. See section 12(1) and Schedule 1A Residential Tenancies Act 1986.

113. Section 12A of the Act also provides that any person who would be entitled ot make an application to the Tribunal and a complaint under Human Rights Act 1993, cannot take both steps.

114. In considering the evidence, I find the Tenant's remark is not racist but she is quoting what was said to her. Furthermore, the Landlord is making a claim pursuant to the Human Rights Act and therefore this claim is dismissed.

115. As neither party has been substantially successful in their claims, each party shall pay their own filing fee and name suppression is declined.

A Aiolupotea
01 June 2022

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.