TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: The Chief Executive, Ministry of Business, Innovation, and Employment in place of Tenant(s)

Tenant

RESPONDENT: Hambletonian Limited

Landlord

TENANCY ADDRESS: Multiple Tenancies

ORDER

1. The Tribunal orders suppression of all of the tenant's names but for the purposes of publishing they may be known as [Tenant 1], [Tenant 2], [Tenant 3] and [Tenant 4].
2. [Tenant 1] had a separate residential tenancy.
3. [Tenant 2], [Tenant 3] and [Tenant 4] all had boarding house tenancies with the Respondent.
4. Hambletonian Limited must pay [Tenant 1]'s bond of $640.00, without deduction to The Chief Executive, Ministry of Business, Innovation, and Employment in place of Tenant(s)
5. Hambletonian Limited must pay [Tenant 4]'s bond of $480.00 without deduction to The Chief Executive, Ministry of Business, Innovation, and Employment in place of Tenant(s)
6. Hambletonian Limited must pay The Chief Executive, Ministry of Business, Innovation, and Employment in place of Tenant(s) $11,325.00 immediately as calculated and recorded for the breaches listed in the table below:

Description	**Landlord**	**Tenant**
Exemplary damages: Failure to lodge bond - [Tenant 1]		$800.00

Exemplary damages: Failure to lodge bond - [Tenant 3]	$200.00
Exemplary damages: Failure to lodge bond - [Tenant 4]	$600.00
Exemplary damages: Breach of Draught Stopping Standard - [Tenant 2]	$200.00
Exemplary damages: Breach of Draught stopping Standard - [Tenant 4]	$200.00
Exemplary damages: Breach of insulation requirement - [Tenant 2]	$1,500.00
Exemplary damages: Breach of insulation requirements - [Tenant 3]	$1,000.00
Exemplary damages: Breach of insulation requirements - [Tenant 4]	$500.00
Exemplary damages: Failure to install smoke alarm - [Tenant 3]	$500.00
Exemplary damages: Failure to install smoke alarm - [Tenant 4]	$500.00
Exemplary damages: Breaches of failure to comply with s13 statements - [Tenant 3]	$600.00
Exemplary damages: Breaches of failure to comply with section 13 statements - [Tenant 4]	$825.00
Exemplary damages: Breach of s137 - [Tenant 1]	$1,500.00
Exemplary damages: Breach of s137 - [Tenant 4]	$1,200.00
Exemplary damages: Breach of s137 - [Tenant 3]	$1,200.00
Total award	**$11,325.00**
Total payable by Landlord to Tenant	**$11,325.00**

Reasons:

1. This is an application by the Chief Executive of Ministry Business Innovation and Employment ("the Chief Executive") in respect of multiple tenancies at the Mangatawhiri, pursuant to s124A of the Residential Tenancies Act 1986 (RTA). This allows the Chief Executive to initiate and conduct proceedings on behalf of a tenant.

2. The Chief Executive has received complaints from tenants at the premises and has conducted investigations, including site visits in May 2021 and July 2021. As a result of these visits and the statements from the tenants the Chief Executive has initiated proceedings on the 17 March 2022.

3. When proceedings are brought by the Chief Executive the Tribunal must determine them in the same manner as it would if the tenants were bringing these claims. The Chief Executive has the burden of proving the claims on the balance of probabilities (the civil standard).

Background

4. The Respondent is a company registered in New Zealand. The Respondent is the lease holder of the farmland and buildings including the villa.[1] Mr Phillips is the sole director of the Respondent. He lives on the property when he is in New Zealand. He lives between Russia and New Zealand.

5. The wider property consists of large Villa built in 1871, another self-contained residence, cabins, caravans, stables accommodation and relocatable homes. The property also consists or organic farmland, a spring water bore, and orchards.

6. These applications relate to the Villa, which is two storied. On the bottom floor there are 4 bedrooms, a living and dining area, laundry, toilet and bathroom and living room. On the second level (the Attic) is a self-contained living area, with its own kitchen and bathroom. There are external stairs to the Attic and internal stairs, with a door that can be locked from the Attic side.

7. The Chief Executive's claims relate to four tenants.

    - [Tenant 1] who lived in the Attic. (8 September 2020- 17 June 2021).
    - [Tenant 2] who occupied the downstairs of the Villa and had exclusive use of her bedroom. (26 May 2018 to 3 September 2021)
    - [Tenant 3] who occupied the downstairs of the Villa and had exclusive use of his bedroom. (29 August 2019 to 25 March 2021)
    - [Tenant 4] who occupied the downstairs of the Villa and had exclusive use of her bedroom. (1 April 2021 to 3 September 2021)

The proceedings

8. There have been numerous case conferences and memorandum on the subject as to how the hearing was to be conducted. I have made orders on how the matter was to be progressed and how the hearing would be conducted.[2]

9. The claims were heard over 4 days on the 26, 27 and 28 July and 1 August 2023.

10. As Mr Phillips was unable to come back to New Zealand to attend the hearing, the Tribunal made special provision for him to attend via VMR. Mr Phillips did not avail himself of this opportunity, and the VMR was kept open and available

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[1] See Heartland Farm "land access " agreement which records the landlord as "Hambletonian Limited (this company holds an overall lease of the farm property and buildings thereon from the land owner, so is the landlord for the flatmates in the Villa and farm cottage or attic of the Villa."
[2] See Orders and Directions made 20 June 2022, 28 July 2022,28 October 2022, 9 December 2022, 20 March 2023, 4 July 2023 ad 13 July 2023.

for the whole hearing time to allow Mr Phillips the opportunity to attend. He did not do so.

11. Mr Pool attended at the hearing. He did so in a very limited capacity. Mr Phillips made it clear in submissions that Mr Pool was not there as a representative of the company and had no authority to speak on behalf of the company. Mr Pool's attendance was much like that of a support person. However, Mr Pool was also a witness, who could give the Tribunal evidence of what he had personally seen, heard, and done at the property. Mr Pool has been described by Mr Phillips in correspondence as a manager and 'head tenant'. Mr Pool lives at the property in a self-contained cottage. He does work around the property.

12. Mr Phillips has made it clear in his closing submissions that he does not consider that he had a fair audience with the Tribunal as the Tribunal did not allow him to attend via his preferred platform telegram. The Tribunal only uses communication software that is approved by the MOJ. Telegram is not approved.

13. The Respondent company has had more than ample opportunity to represent itself at these proceedings, from the first case conference the Respondent company was advised to engage counsel or a representative in New Zealand who could represent the company at a hearing. Additional measures such as allowing Mr Phillips to attend via VMR, and submit written submissions have all been allowed to ensure that the respondent company has an opportunity to be heard.

The claims.

14. Counsel for the Chief Executive set out in its memorandum of the 27 July 2023, the claims in respect of each tenancy. I record the issues and claims below.

    a. What is the nature of the tenancies and are they covered by the RTA?

    Claimed Breaches.

    b. Did the landlord breach its obligations to lodge a bond in respect of the tenancies of [Tenant 1], [Tenant 3] and [Tenant 4]?

    c. Did the landlord breach its obligations under the Healthy Homes Standards? All breaches are claimed to be unlawful acts under s66I(1)(bb) RTA.

        i. Heating standard - failing to provide a qualifying heater in the main living area? In relation to the tenancies of [Tenant 2] and [Tenant 4]. (1/7/21-3/9/21).

ii. Ventilation Standard- Failure to provide mechanical ventilation in the bathroom) In relation to the tenancies of [Tenant 2] and [Tenant 4]. (1/7/21-3/9/21).

iii. Draught Standard – failure to stop draught- hole and gap in living area door and gap in ensuite window) In relation to the tenancies of [Tenant 2] and [Tenant 4]. (1/7/21-3/9/21).

iv. Insulation- failure to provide underfloor insulation (Healthy Homes Standards) In relation to the tenancies of [Tenant 2] and [Tenant 4]. (1/7/21-3/9/21).

d. Failure to comply with Regulation 14 Residential Tenancies (Smoke Alarms and Insulation Regulations 2016) by failing to install underfloor insulation In relation to the tenancies of [Tenant 2] from 1 July 2019 to 30 June 2021), [Tenant 3] from and [Tenant 4] from 1 April 2021 to 30 June 2021).

e. Failure to comply with s66I(1)(c) failure to comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises. (breach of Schedule 1 Housing Improvement Regulations 1947) failure to provide enough toilets for the number of people occupying the house. (Tenancies of [Tenant 2], [Tenant 3] and [Tenant 4]).

f. Failure to comply with s66I(1)(ba) – no qualifying smoke alarm either in sleeping space or within 3 meters of a sleeping space. (In relation to the tenancies of [Tenant 3] and [Tenant 4])

g. Breach of s13A(1A) failure to provide an insulation statement. (In relation to the tenancies of [Tenant 3] and [Tenant 4])

h. Breach of s13A (1CA) failure to provide a healthy homes statement. (In relation to the tenancies of [Tenant 3] and [Tenant 4])

i. Breach of s 13A(2) failure to provide an insurance statement. (In relation to the tenancies of [Tenant 3] and [Tenant 4])

j. Breach of s 137- that the landlord sought to contravene or evade the provisions of the RTA by requiring the occupants to enter into the tenancy documents, including the addendum to the flat sharing agreement and the Heartland Farm Access Agreement.

The documents signed by each occupant.

15. [Tenant 1] signed a tenancy agreement dated 4 September 2020 and a Heartland Farm “Land Access” Agreement dated the same date.

16. [Tenant 4] signed- a ‘flatmate agreement’ dated 1 April 2021, an addendum to flat sharing agreement, and a Heartland Farm land Access agreement.

17. [Tenant 2] signed a agreement, but she does not have a copy of the agreement as she says that it was taken away for the landlord to sign and not returned to her.

18. [Tenant 3] says signed at Flat/ House sharing agreement in or about 27 August 2019. [Tenant 3] says though he was sent an unsigned addendum to flat sharing agreement and a Heartland Farmland access agreement, he did not sign either of those documents

What is the nature of the tenancies and are they covered by the RTA?

19. A tenancy is defined in the RTA as

> a tenancy, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent.

20. All tenancies are covered by the Act unless one of the exceptions applies in section 5 RTA.

21. The Court has previously determined that there can be a separate premises within larger premises.[3]

[Tenant 1]’s tenancy

22. [Tenant 1] occupied an area of the house known as the attic. Mr Pool and Mr Phillips both gave evidence that when Mr Phillips lived in the property he usually resided in the attic. The attic is self-contained. It has its own bedroom, living area, kitchen, bathroom and toilet facilities. It has an outside deck. The attic can be accessed via steps outside on the deck or an internal staircase. However, there is a door at the bottom of the internal stairs which can be locked on the attic side.

23. Having heard all of the evidence I am satisfied that [Tenant 1] had a separate residential premises because:

    a) The premises were distinct and separate from the rest of the house and [Tenant 1] had exclusive occupation of her premises.
    b) None of the other tenants went into [Tenant 1]’s premises without her permission.

[3] Kahi v Lucus HC Auckland, 81/96 , 23 September 1996 and Harding v Schellevis, Tan and Caroto [2021] NZHC 1265.

c) [Tenant 1] did not use the downstairs villa facilities except when invited as a visitor for a shared meal or to visit the other occupants.
d) [Tenant 1] signed a residential tenancy agreement with Ms Williams.

24. As Mr Phillips did not live at the Attic for the duration of the [Tenant 1]'s tenancy then the exception of s5(1)(n) used principally as place of residence by the landlord or a member of the landlord's family does not apply.

25. I am satisfied that that [Tenant 1]'s tenancy was a residential tenancy covered by the Residential Tenancies Act 1986 (RTA)

The downstairs of the Villa.

Was the downstairs portion of the villa a separate premises and if so was it a boarding house?

26. Mr Phillips says that when he was in New Zealand he lived in the upstairs villa as his residence, he says that therefore all the occupants in the downstairs premises were his flatmates He relies on the exception in s5(1)(n) RTA:

> where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord's or owner's family.

27. Mr Phillips makes a number of submissions in respect of this issue which I summarise as:

a) That the villa is Mr Phillip's principal place of residence in New Zealand, he lives there when in New Zealand, it is full of his belongings, and he stores his personal items there.
b) That when he is away from New Zealand he appoints Mr Pool, who lives in a separate cottage on the property to be his head tenant, and that Mr Pool is in charge of appointing the tenants and resolving any flatmate disputes that may arise.
c) That Heartland farms is more than just a place for people to live, it is a lifestyle and the occupants that live there embrace the philosophies of that lifestyle.
d) That all of the tenants signed 'flat sharing agreements' and understood themselves to be flatmates of Mr Phillips and each other. It was not until the compliance officers came to the property that anyone raised the issue of being a boarding house.
e) That Heartland farm assists with the housing crisis in New Zealand in that allows people a comfortable place to live, that they could otherwise not afford.

28. The exception in s5(1)(n) does not apply to boarding house tenancies, so the first question to be determined is was the downstairs portion of the Villa a boarding house?

29. Section 66B RTA sets out the definition of boarding house and boarding house tenancy.

> boarding house means residential premises—
> **(a)**containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and
> **(b)**occupied, or intended by the landlord to be occupied, by at least 6 tenants at any one time
> boarding house tenancy means a residential tenancy in a boarding house—
> **(a)**that is intended to, or that does in fact, last for 28 days or more; and
> **(b)**under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house, and has the right to the shared use of the facilities of the boarding house

30. In *Karmarker v Pandem* [4]at para [38] the High Court said that the test to determine if there was a boarding house, was to apply the following list of questions if the answers to all of the questions was yes, then there was boarding house.

    a. Does the house contain one or more bedrooms along with facilities for communal use by the tenants?
    b. Is the house intended to be occupied by 6 or more tenants?
    c. Is the tenancy intended to, or does it in fact last for 28 days or more
    d. Are tenants granted exclusive rights to occupy particular bedrooms whether that occupancy is for single or shared use?
    e. Does the right to occupy a particular bedroom derive from the tenancy agreement between the individual tenant and the landlord rather than from a collective decision of the tenants?

31. I am satisfied that the answers for all of those questions is yes, and therefore I am satisfied that that [Tenant 2], [Tenant 3]'s and [Tenant 4]'s tenancies were boarding house tenancies pursuant to s66B of the RTA- my reasons are as follows:

    a. *Does the house contain one or more bedrooms along with facilities for communal use by the tenants?*
    It is not disputed the downstairs portion of the Villa contains 4 bedrooms, The occupants of each bedroom have exclusive use of their bedrooms,

[4] Karmarker v Pandem and others [2018] NZHC 693 [17 April 2018

but share certain facilities such as bathroom, toilet, kitchen facilities and laundry facilities.

b. *Is the house intended to be occupied by 6 or more tenants?*
Mr Hayes gave evidence that when he attended the property in July 2021, the 4 downstairs bedrooms were [Tenant 4], [Tenant 2], Two Filipino tenants who shared the master toom and two other Filipino tenants who shared the other room, making a total of six. This was confirmed by Mr Pool who said at one stage the four rooms were occupied in this manner. I am satisfied that there has been at least for some period of time 6 occupants in the house.

In addition, there are two cabins outside the home which share the facilities including toilet, bathroom and laundry facilities with the occupants of the downstairs villa.

[Tenant 2]'s occupation spanned both [Tenant 3]'s and [Tenant 4]'s occupations. I am satisfied that during [Tenant 2]'s occupation the downstairs villa was used by 6 or more tenants during the times that [Tenant 3] and [Tenant 4] were in residence.

c. *Is the tenancy intended to, or does it in fact last for 28 days or more?*
Yes, all of the 6 occupants in occupation when Mr Hayes visited in July 2021 lived at there for at least 28 days. Most of the tenants lived there for over a year.

d. *Are tenants granted exclusive rights to occupy particular bedrooms whether that occupancy is for single or shared use?*

Yes, each occupant had exclusive rights to occupy their bedroom for single or shared use.

e. *Does the right to occupy a particular bedroom derive from the tenancy agreement between the individual tenant and the landlord rather than from a collective decision of the tenants?*
Yes, either Mr Pool or Mr Phillips would sign an agreement which was labelled as a flat sharing agreement which gave the occupant the right to live at the property. Mr Phillips would direct the tenant as to which bedroom was their bedroom. This was not a collective decision of the other occupants of the house. [Tenant 4], [Tenant 3] and [Tenant 2] all gave evidence (some of which was supported by emails between the occupant and Mr Phillips and Mr Pool) which showed that the they were appointed by Mr Phillips or a representative of Mr Phillips, such as Ms Williams or Mr Pool.

Mr Phillips has submitted that the landlord granted Mr Pool a tenancy of the Villa and that he was the 'head tenant' who appointed the occupants. There was no evidence that supported this proposition, Mr Phillips did

not provide any tenancy agreement that would co-corroborate this assertion. Mr Pool lived in a separate cottage on the farm, that had its own facilities. He did not share facilities with the villa tenants to any significant degree and had exclusive occupation of his cottage.

32. In addition, to the above, I consider the following evidence to be supportive of my finding that this was a boarding house tenancy:

- I was provided with many emails by both parties. These emails are often directives by Mr Phillips to each of the boarding house tenants on how they should live in the villa, for instance how to use the water wisely.
- The house rules were directed by Mr Phillips and Mr Pool.
- When disputes arose between flatmates, the occupants deferred to Mr Phillips and Mr Pool to try to resolve those disputes. When Mr Phillips made a decision about how matters would be resolved the occupants would be expected to follow that directive.
- Mr Phillips made a number of submissions about the shared dinners that occurred. Whilst I accept that shared dinners did occur approximately monthly when Mr Phillips was in residence, the dates of those dinners and the 'rules' around them were made by Mr Phillips. I note that the occupants did not cook together or for each other on a regular basis.
- I accept that there was a level of co-operation between the occupants as to cleaning and use of the facilities, but this would usually occur in a boarding house.

33. I am therefore satisfied that the downstairs portion of the villa was a boarding house and the landlord of the boarding house was Hambletonian Limited.

34. As I have determined that this was a boarding house tenancy, then the exemption in s5(1)(n) RTA does not apply and there is no need for me to determine whether Mr Phillips as a member of the landlord's family used the property as a primary place of residence.

35. However, for the sake of completeness I will address further issues raised by Mr Phillips in his submissions in respect of jurisdiction.

36. Mr Phillips has submitted that the landlord granted Mr Pool a tenancy of the Villa and that he was the 'head tenant' who appointed the occupants. There was no evidence that supported this proposition, Mr Phillips did not provide any tenancy agreement that would co-corroborate this assertion, and Mr Pool lived in a separate cottage on the farm, that had its own facilities. He did not share facilities with the villa tenants to any significant degree and had exclusive occupation of his cottage. Mr Pool's role appeared to be more of a property manager.

37. Mr Phillips submits that a previous Tenancy Tribunal decision in respect of a person living at the property had determined that the tribunal had no jurisdiction

as the person was deemed to be a flatmate, and therefore the Disputes Tribunal had to determine the dispute.

38. Each case before the Tribunal is determined on its own facts. An Adjudicator decides on the evidence and submissions that are presented in that matter. Decisions made in one Tribunal hearing are not necessarily binding on another Adjudicator, as the facts and circumstances might be different. The Tribunal has originating jurisdiction to determine whether the matter should be heard by the Tribunal or not.[5]

39. That many of the tenant's rents were paid by the Ministry of Social Development, who accepted the flatmate agreement as proof of the tenancy. The Respondent submits that Chief Executive should not be able to submit that the relationship was anything other than a flatmate or flat sharing relationship as the Crown's own agencies have accepted the documents which state this and have paid out rent in reliance of those agreements.

40. Parties cannot contract out of the RTA. This means that a landlord cannot avert his obligations by labelling the relationship as something other than a residential tenancy. Only the Tenancy Tribunal, after a careful analysis of the facts in each case can make that determination. The Ministry of Social Development is seeking documentation to prove that the tenant is paying rent, not to determine the exact nature of the relationship.

41. Having reached this conclusion that [Tenant 1] had separate residential tenancy and that [Tenant 2], [Tenant 3] and [Tenant 4]'s tenancies were boarding house tenancies (as they occupied bedrooms and shared facilities in the downstairs portion of the villa.) I turn to the specific claimed breaches.

The Bonds

Did the landlord breach its obligations to lodge a bond in respect of the tenancies of [Tenant 1], [Tenant 3] and [Tenant 4]?

42. The Applicant says the Respondent breached section 19(1)(b) of the RTA because it failed to lodge bonds received from [Tenant 1], [Tenant 3] and [Tenant 4] within 23 working days of receipt.

43. The Respondent says that any amount of money paid in addition to rent at the beginning of the tenancy was not a bond, but rather consideration or payment to use the adjacent farm land, pursuant to a 'land access agreement'.

44. Bond is defined in section 2 RTA

[5] Section 82 Residential Tenancies Act 1986

> any sum of money payable or paid under a tenancy agreement as security for the observance and performance of the tenant's obligations under the agreement and this Act; but does not include any sum payable or paid by way of rent.

Ms [Tenant 1]'s tenancy.

45. [Tenant 1] says that she paid a bond of $640 in two payments, the first $320.00 on the 31 August 2020 and the second $320.00 on the 17 September 2020.

46. Mr Phillips says that this was a prepayment of rent or alternatively a prepayment for the land access to the farm, spring and orchard pursuant to the Heartland Farms Farm Access Agreement.

47. Having considered all the evidence I am satisfied that [Tenant 1]'s payment of $640.00 was a bond, and that this amount should have been paid to the Bond Centre within 23 working days of receipt. I say this for reasons that include:

    a) I am satisfied that [Tenant 1] paid the bond on the days that she says.

    b) That the amounts were paid at the beginning of the tenancy when bonds were normally paid. That the amount of the bond is in keeping with the rent which was paid.

    c) That there is no record of the bond being lodged with the bond centre.

    d) That Mr Phillips in his submissions of the 31 July 2023 to the Tribunal links the payment of the bond to the performance of obligation by saying- *"indeed [Tenant 1] still owes the Respondent one weeks attic rent."*[6]

    e) The Respondent's submission that the money paid by [Tenant 1] was a prepayment for access to the farmland, would contravene the provisions of section 18A of the RTA[7], and would be unlawful in any case.

48. Having determined that the money paid by [Tenant 1] was a bond, and as the tenancy has ended and the bond has not been returned to [Tenant 1], I order immediate payment of the bond of $640.00 to [Tenant 1].

[Tenant 3]'s bond.

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[6] Respondent's submissions dated 31 July 2023, paragraph 2.19 page 4.

[7] The prepayment of access to farm landlord is a security because it allowed [Tenant 1] a right to access the farmland and take fruit from the land. It is in relation to the tenancy because the farm access agreement is only offered to tenants of the property and refers to tenancy.

49. [Tenant 3] says that he only signed one document, the flat sharing agreement. [Tenant 3] says that he never signed the addendum to the flat sharing agreement no the Heartland Farms 'Land Access' agreement.

50. [Tenant 3] says that he paid the bond of $435.00 equivalent of 3 weeks rent to Mr Phillips' farm account on the 29 August 2019 as per the requirement in the flat sharing agreement which records a bond of $435.00

51. I am satisfied that [Tenant 3] paid his bond of $435.00 and that the Respondent failed to deposit this amount with the Bond Centre as required by s19(2) RTA.

52. The Respondent submitted that [Tenant 3]'s bond was a prepayment pursuant to the land access agreement. However, the Respondent did not provide a copy of the signed land access agreement and I prefer [Tenant 3]'s evidence that he never signed such an agreement.

53. The Respondent also submitted that [Tenant 3] was a flatmate of Mr Phillips (pursuant to s5(1)(n) RTA) and therefore the respondent was not required to submit the bonds to the bond centre. As I have determined that [Tenant 3]'s tenancy was boarding house tenancy, the Respondent was required to submit the bond to the bond centre.

54. As the landlord returned [Tenant 3]'s bond to him at the end of his tenancy I do not need to make any order requiring the landlord to repay the bond to him.

[Tenant 4]'s bond

55. [Tenant 4] paid a bond of $480.00 to the Respondent through MSD on the 28 April 2021.

56. [Tenant 4]'s bond was set out in the flat sharing agreement.

57. I am satisfied that [Tenant 4]'s bond was paid and not lodged with the bond centre. I am satisfied that the respondent has breached s 19(2) RTA. I say this for the following reasons.

    a. In his written answers to the Applicants cross examination questions Mr Phillips said he had not lodged [Tenant 4]'s bond:

       "because it was not required both as a farm access prepayment and as no flatmate bonds needed be lodged. Information on the internet confirms that flatmate bonds are held by head flatmate and NOT individually lodged with Tenancy Services."

    b. I am satisfied that [Tenant 4]'s tenancy was a boarding house tenancy to which the RTA applied therefore the Respondent had an obligation to pay the bond to the Bond Centre.

c. Even, if the payment by [Tenant 4] was a payment under the land access agreement, and I am not satisfied that it was, there is a sufficient nexus between all of the documents that were signed to show that a bond under one of the documents was a bond for the tenancy.

> When this agreement is cancelled or withdrawn by the landlord or by any other authorised person, then EXCEPT IN THE CASE OF MATERIAL BREACH OF THIS AGREEMENT (when no refund is then due by landlord to tenant or occupier), the landlord shall otherwise ensure it secures a refund of 100% (less 1.00) of the rental rate paid for entering into this Heartland Farm Land Access Agreement as described in clauses 22 and 23 above and the landlord shall pay such refund within 3 weeks of such cancellation to the party having paid it to the landlord; **but the landlord shall be entitled or permitted in any situation to retain any unpaid monies owed by the tenant or flatmate or occupier for any matter relative to any tenancy or occupancy on The Property**, including but not limited to any arrears in amenities charges or rent, and/or the landlord shall be entitled and permitted in any situation to retain any monies for damages or losses caused by any tenant/flatmate/occupier to The Property and/or to the landlord or to its agent and/or to The Property owner. (own emphasis)[8]

d. The Respondent withheld [Tenant 4]'s bond at the end of her tenancy because she had not paid rent. Thereby linking the bond to the performance of the tenant's obligations.

58. Having found that the [Tenant 4] paid a bond of $480.00 and as her tenancy has now ended, I order that the landlord repay the total bond to [Tenant 4] immediately. I understand that there were some rent arrears owing at the end of the tenancy. If there is a dispute over the bond, then the landlord must file a claim and evidence which supports their claim to deduct monies from the tenant. The landlord has not done so, and therefore no rent will be deducted from the bond owing to [Tenant 4]. If the landlord has a claim for rent arrears, the landlord can file same in the Tribunal.

59. Having found that the Respondent breached its obligations to lodge the bonds of [Tenant 1], [Tenant 3] and [Tenant 4] I turn now to the award of exemplary damages.

60. Failure to lodge bonds is an unlawful act pursuant to s 19(2) of the RTA, which an award of up to $1000 can be made in respect of [Tenant 1]'s and [Tenant 3]'s tenancies and $1500 for [Tenant 4]'s tenancy (as that tenancy commenced

[8] Clause 19 Heartland Farms Land Access agreement.

after the legislative change of 11 February 2021 increasing the maximum award to $1500).

61. The Tribunal must first look at intention. Intention cannot be subverted because a landlord was not aware of the law.

> Like all citizens, corporate or otherwise, he and his company are deemed to know the law and on that basis a failure to provide these fundamental documents is properly seen as intentional. Parliament's intention would be subverted if landlords were able to escape consequences for the unlawful acts involved by claiming ignorance of the law.[9]

62. The question is did the landlord intend to keep the bond in its possession? I am satisfied it did. Having determined that the landlord acted with intention, then I must take into account the intent of the landlord, the effect on the tenant, the interests of the tenant and the public interest.

63. Each tenant gave evidence that they were under the clear impression that the money that they had paid was bond money, that they will have returned at the end of the tenancy if they complied with their obligations.

64. It is in the interests of all tenants that bonds are kept at the Bond Centre so if there is a dispute about the bond at the end of the tenancy, this can be determined in the Tribunal, rather than the landlord simply taking the bond.

65. It must not be forgotten that bonds are tenants' money, and for many tenants are the biggest asset that they have. Many tenants find coming up with lump sum of money for the bond, very difficult, and often borrow from relatives or friends, or take loans with MSD or loan companies to finance those bonds. When a landlord holds the bond and refuses to give it back at the end of the tenancy, this can be an impediment to tenants finding other accommodation. It is therefore in the public interest that when bonds are not lodged with the Bond Centre that the Tribunal makes an award that is punitive and a deterrent.

66. Taking into account all of the above factors I make that following awards:

    a) In respect of [Tenant 1]'s tenancy, I award exemplary damages of $800.00, this takes into account the distress that not having access to her bond at the end of the tenancy caused [Tenant 1], her vulnerability as an older person living alone, the amount of bond paid, that [Tenant 1] has yet to receive her bond back from the Respondent, and the public interest.

[9] TMT New Zealand Limited TA Strata Property Management v Sweeney and Sundhal [2021]NZDC 16182.

b) In respect of [Tenant 3]'s tenancy, I award $200.00 this takes into account that [Tenant 3] received his deposit back in full from the Respondent and the public interest.

c) In respect of [Tenant 4]'s tenancy, I award $600.00, this takes into account that [Tenant 4] has not received her bond back from the Respondent.

Healthy Homes

Did the landlord breach its obligations under the Healthy Homes Standards? All breaches are claimed to be unlawful acts under s66I(1)(bb) RTA.

67. All boarding house tenancies had to comply with the Healthy Homes Standards as set out in the Residential Tenancies (Healthy Homes Standards) Regulations 2021 by the 1 July 2021.

68. As [Tenant 3]'s tenancy ended before that date, there was no obligation on the Respondent to comply to these standards during his tenancy. The Applicant has only applied for breaches of these standards on [Tenant 2] and [Tenant 4]'s tenancies from 1 July 2021 to 3 September 2021, when their tenancies ended.

Heating.

69. The heating standard (Standard) requires landlords of boarding house tenancies to provide one or more 'qualifying heaters' in the living room with a capacity to heat the room to a required level.

70. The living room for boarding houses is defined in the regulations as:

> 3) If the premises are in a boarding house, the main living room of the premises is,—
> (a) if the facilities (as defined in section 66B of the Act) include 1 living room, that living room; or
> (b) if the facilities include 2 or more living rooms, the largest of them.[10]

71. The heating standard defines what a qualifying heater would be and confirms that certain types of heaters are unacceptable heaters for the purpose of the HHS. This includes open fireplaces.

72. The Applicant claims that the living room which has an open fireplace is not compliant with the Standard as it does not have a qualifying heater.

[10] Regulation 8 (3) Residential Tenancies (Healthy Homes Standards) Regulations 2021

73. There are two living areas in the boarding house, the living room and the large open plan kitchen/ dining/ living room. In that space there is a fixed wood burner heater, which is a qualifying heater.

74. The Applicant has not provided any evidence on which of these living spaces is the larger, and therefore I am unable to determine whether there has been a breach of the heating standard, as I must determine first which is the larger room and then if that room has the qualifying heater to meet the standard.

75. I also did not have evidence from the Applicant which shows exactly whether the wood burner heater in the kitchen/ dining/ living met the Standard. Tenancy Services has a calculator that allows parties to enter data and the calculator will analyse whether the property meets the standards. Neither party offered me that evidence. I do note that Mr Hayes confirmed that when he visited the house on a cold July day, that the wood burner was going. The pictures Mr Hayes took that day show the wood burner fire burning brightly.

76. The Applicant has the burden of proving this claim as the Applicant has not done so, then the claims that the respondent breached its obligation in respect of the Heating Standard are dismissed.

Ventilation.

77. The Applicant says that the Respondent has failed to install a mechanical ventilation in the bathroom as is required in regulation 23 Residential Tenancies (Healthy Homes Standards) 2019.

78. However, regulation 24 sets out the exemptions to regulation 23 which are:

> (a) at the commencement of the tenancy,—
> (i) the room does not have an extractor fan:
> (ii) it is not reasonably practicable to install an extractor fan so as to comply with the regulation 23:
>
> (b) when the room was built or converted into a kitchen or bathroom, not having an extractor fan was lawful:
>
> (c) if not having an extractor fan was lawful only because the room met alternative ventilation requirements, at the commencement of the tenancy the room still meets those requirements.

79. Having considered all the evidence submitted I am not satisfied on the balance of probabilities that the Respondent has breached its obligations by failing to install mechanical ventilation in the bathroom of the villa, I say this for reasons that include:

    a. There was conflicting evidence as to whether there was mechanical ventilation in the bathroom. Mr Phillips says that there is, but the tenants say that there is not.

b. Even if there was no extractor fan after the 1 July, both of the tenancies began before the commencement date and there was no evidence given on whether installing a compliant fan was reasonably practicable. Given the age and heritage of the Villa, I consider that it may not have been reasonably practicable to instal ducted extractor fans without incurring considerable cost damaging the house.

c. The photographs taken by Mr Hayes in his visit on the 26 July show that there is an open window beside the shower. There is also a photograph which appears to show a vent on the roof of the shower room, but there is no photograph of the roof.

d. Due to the age of the Villa it is unlikely that when the bathroom was installed, that having an extractor fan was required in order for the bathroom to be lawful.

80. The Applicant's claims for breach of the ventilation standard are not proven and therefore dismissed.

Draught Stopping

81. The draught stopping standard requires that residential premises be free from unreasonable gaps and holes that are not an intentional part of the building, which allow draughts to arise.

82. The Applicant has claimed that the landlord has breached its obligations in three areas:

a) There is a gap in the window in the ensuite bathroom.

b) There is a large gap in the French doors in the dining room.

c) There is a large hole in the ceiling in the laundry.

83. I am satisfied that the landlord has breached its obligations in respect of the gap in the dining room door, which shows a large, uncovered hole and area covered by another piece of wood.[11] And the large, uncovered ceiling in the laundry. I am satisfied that this is a breach of s66I(bb) RTA.

84. I am not satisfied that the alleged gap in the window to the ensuite bathroom is a breach of the landlord's obligation to these tenants as the ensuite bathroom was not part of their premises [12]

[11] See Photographs a Hole and gap in dining room door- SH09, Page 14 Applicants bundle of documents.
[12] The ensuite bathroom was adjoined to another bedroom, which other tenants had exclusive possession of.

85. Breaching an obligation in s661(bb) obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See S66(1)(4). I find that the Respondent has committed an unlawful act.

86. I have awarded $200.00 for each of the tenancies for [Tenant 2] and [Tenant 4] in this breach. In coming to this amount, I have taken into account the following:

    a) The breach - the holes in the walls were evident and should have been fixed.

    b) The holes in the door would have led to considerable heat loss.

    c) The tenants gave evidence that they complained about the hole in the wall. Mr Pool said that he was aware of the hole and was getting around to fix it.

    d) The tenants did not complain to Mr Pool or Mr Phillips about a potential breach of HHS. In fact, both tenants gave evidence that they only became aware of the breaches when investigators told them about it.

    e) There is considerable complexity around the time frames for compliance. For instance, boarding houses had to be compliant by the 1 July 2021, but if this was a tenancy of a sperate premises then it would not have had to comply to either 90 days after 1 July 2021 or a tenancy beginning or by 1 July 2024 (subsequently amended in 2022 to 2025). Given the Respondent's firm (but incorrect) view that it was not a boarding house tenancy, then it was reasonable for the Respondent to consider that it did not have to or did not know it had to comply.

    f) The breach was for a short period of time over 3 months.

Insulation – under the Healthy Homes Standards.

87. The Residential Tenancies (Healthy Homes Standards) Regulations 2021 replaced the existing requirements for insulation on the 1 July 2021. This meant that until the 1 July landlords had to comply with the Residential Tenancies (Smoke Alarms and Insulation Regulations 2016) and after that date boarding house landlords had to comply with the HHS regulations.

88. The Applicant claims that the landlord breached this standard by failing to install underfloor insulation.

89. I am not satisfied that the Respondent has breached this obligation. When TCIT visited the property in May 2021, they observed the insulation onsite ready to be installed, Mr Pool gave evidence that he was installing it and finished around the end of June 2021. There were no photographs taken of the underfloor when Mr Hayes visited the site in July 2021. I am satisfied that the underfloor

insulation was installed sometime in late June 2021 and therefore there was no breach of the HHS.

Insulation – Prior to 1 July 2021

90. The Applicant claims that the Respondent Failure to comply with Regulation 14 Residential Tenancies (Smoke Alarms and Insulation Regulations 2016) by failing to install underfloor insulation In relation to the tenancies of [Tenant 2] from 1 July 2019 to 30 June 2021), [Tenant 3] from 29 August 2019 to 25 March 2021 and [Tenant 4] from 1 April 2021 to 30 June 2021).

91. Before a legislative change in 2019 (which took effect on the 1 July 2021)[13] All landlords of boarding house tenancies were required to comply with Regulation 14 Residential Tenancies (Smoke Alarms and Insulation Regulations 2016).[14] These regulations required boarding houses to have underfloor insulation unless there was insufficient space to install. Landlords had to comply with this obligation from the 1 July 2019.

92. It is clear that the landlord breached this obligation because photographs taken by investigators in May show the insulation at the property ready to be installed, that the photograph of the underfloor had no insulation installed and Mr Pool gave evidence that he had begun installing the insulation in or about June 2021.

93. I am satisfied that in the period 1 July 2019 to the end of June 2021 the property was not insulated as required. I am satisfied that the Respondent breached s66I(bb) by failing to comply with regulation 14 in respect of the tenancies of [Tenant 2], [Tenant 3] and [Tenant 4]. I am satisfied that the landlord acted intentionally because the insulation was not installed until 2021. I am satisfied that the Respondent committed an unlawful act pursuant to s66I(4) RTA.

94. I award the following exemplary damages in respect of each breach.

    a. [Tenant 2] - I award $1500.00

    b. [Tenant 3] - I award $1000.00

    c. [Tenant 4] - I award $500.00

95. These awards take the following factors into consideration:

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[13] Section 66I(1)(bb): replaced, on 1 July 2019, by section 8(1) of the Healthy Homes Guarantee Act 2017 (2017 No 46) – and clause 10A Subpart 1AA, Part 2 Insulation Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, which provides that the Regulations relating to insulation remain in force until the Healthy Homes Standards commencement date for different tenancies.

[14] Regulation 14 Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.

a. The length of the tenancies over the breach period.

b. The fact that the tenants paid a set amount for power and heating, irrespective of how much power they actually used for heating costs. In other words, if the landlord paid for more for heating as a result of not installing insulation, then this was at its cost.

c. The age and style of the villa means it is likely that underfloor insulation would have made the villa far more efficient to heat and warmer and drier to live in.

d. The tenants complained about the cold.

e. The insulation requirements were well signalled for landlords since 2016 giving landlord's a 3-year lead in time and unlike the HHS all tenancies were required to be compliant by the same date.

f. There is considerable public interest in ensuring that tenancies are warm and dry, and insulation helps achieves that purpose. When a landlord does not comply, especially up to 2 years after the compliance date. A sizeable award should be made to act as a deterrent to others.

The Toilet

96. The Applicant claims that the Respondent failed to comply with s66I(1)(c) failure to comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises. (Breach of Schedule 1 Housing Improvement Regulations 1947) failure to provide enough toilets for the number of people occupying the house. (Tenancies of [Tenant 2], [Tenant 3] and [Tenant 4]).

97. Schedule 1 Housing Improvement Regulations 1947 sets out the number of qualifying toilets for a boarding house:

Number of water closets or approved privies of some other form to be provided in boarding houses and lodging houses

Number of persons residing in boarding house or lodging house	Number of water closets or approved privies
Not exceeding 6	1
Not exceeding 14	2

98. The boarding house portion of the Villa had two toilets, one in the ensuite occupied by two tenants and the other in house. In addition, there was a 'portaloo' outside and a long drop toilet on the wider property.

99. I am not satisfied that there was a breach of this Regulation because, only 4 people within the house used the separate toilet (the ensuite could be used by the occupants of the master bedroom). Although the people in the cabins could use that toilet, the evidence was unclear from the Applicant about exactly who in the cabins and the caravans was using the villa toilet and whether they were doing so or if they used alternative toilets. Also although [Tenant 2], [Tenant 3] and [Tenant 4] did not use the outside toilets, the people living in the cabin sometimes did. In addition there was some evidence that the Filipino residents of the ensuite often allowed the other Filipino residents to use their bathroom facilities.

100. I appreciate that the number of people using the toilet often meant that there were sometimes issues with waiting to go to the toilet, but the Applicant has not proven a breach of the Regulations.

Smoke Alarms

101. This alleged breach relates to the same bedroom. [Tenant 3] occupied the room and after his tenancy ended [Tenant 4] rented the same room.

102. S66I(1)(ba) RTA requires a qualifying smoke alarm to be installed in each sleeping space of a boarding house or within 3 metres of the sleeping space. Breaching s66I(1)(ba)RTA is an unlawful act (s66I(1)(4)RTA).

103. I am satisfied that the Respondent has breached its obligations under s66I(1)(ba) because:

a) [Tenant 3] and [Tenant 4] gave evidence that there was no smoke alarm in their rooms.

b) When Mr Hayes attended the premises in July 2021 he measured the distance to the nearest smoke alarm which was over 4 metres (and in another room).

c) Whilst Mr Phillips made submissions that he had always ensured that there were smoke alarms in each room, he did not provide any photographs which would have negated the evidence given by the tenants or Mr Hayes.

104. I award exemplary damages of $500.00 for each of [Tenant 3]’s and [Tenant 4]’s tenancies this amount takes into account the following:

a) That neither [Tenant 3] nor [Tenant 4] complained about the lack of smoke alarms to the Respondent during their tenancies.

b) That the breach was not noticed until Ms Hayes measured the distance in July 2021.

c) That there was no fire at the property and therefore no effect on the tenants.

d) However, if there had been a fire then the consequences of no compliant smoke alarms in this room may have been catastrophic. The villa is an old wooden structure, far away from urban fire stations. During the drought of the summer of 2020 – 2021 there was a profound water shortage at the property, and if there had been a fire it is likely such a fire would have taken hold quickly and not put out by the residents.

e) That it is in the public interest that an award is made to ensure compliance with smoke alarms requirements because smoke alarms save lives.

Breaches to include information in the tenancy agreement (breaches listed paragraph 14 (g)(h)(i))

105. The Applicant says the Respondent breached section 13A(lA), 13A(1CA) and 13(2) of the Act by failing to provide insulation statements, 13 (1A), Healthy Homes statements, 13A (1CA) insurance statements s13(2) to [Tenant 3] and [Tenant 4].

106. A beach of these sections is an unlawful act pursuant to s13A(1F) (a) RTA.

107. The Applicant submits that the Respondent has committed six unlawful acts under section 13A(1F)(a) of the Act because it failed to provide [Tenant 3] and [Tenant 4] with insulation statements, insurance statements and healthy homes statements (three unlawful acts per tenant).

108. The Applicant seeks exemplary damages not exceeding $500 per unlawful act in relation to [Tenant 3] 's tenancy pursuant to section 109(3) and schedule 1A (pre February 2021 amendment) of the Act.

109. The Applicant seeks exemplary damages not exceeding $750 per unlawful act in relation to [Tenant 4] 's tenancy pursuant to section 109(3) and schedule 1A of the Act.

110. The Respondent does not dispute that it did not provide the statements in the tenancy agreement. The Respondent says that at the time that it signed the tenancy agreements it had a genuine belief that it was not required to comply with the RTA because [Tenant 3] and [Tenant 4] were flatmates under a flat sharing agreement. As I have determined that [Tenant 3] and [Tenant 4] were boarding house tenants and not flatmates there was an obligation on the landlord to comply with these sections of the RTA.

111. I am satisfied that the landlord did not provide insurance, insulation or Healthy Homes statements to [Tenant 4] and [Tenant 3] and therefore breached sections 13A(lA), 13A(1CA) and 13(2) of the Act.

112. As stated above when an unlawful act has been committed the Tribunal must first consider whether or not there has been an intention to commit and unlawful act.

113. In the leading District Court decision on the intention, the Court had to consider whether the landlord had committed an unlawful act under s13(F) with intention. In that case, like this one, the landlord had not supplied insurance and insulation statements. The Court said:

> [37] The obligation to provide these documents are fundamental obligations on landlords of which it appears Mr Hu was not fully aware despite their being included in the Act since 2016 and 2019 respectively. Like all citizens, corporate or otherwise, he and his company are deemed to know the law and on that basis a failure to provide these fundamental documents is properly seen as intentional. Parliament's intention would be subverted if landlords were able to escape consequences for the unlawful acts involved by claiming ignorance of the law. Applying the other criteria in s 109(3) most notably the public interest in landlords being marked out for failing to comply with these important obligations, I consider it is appropriate to award exemplary damages at a modest level. [15]

114. The Court then agreed with the Tribunal's decision to award $200 for the two separate document failures.

115. The requirements to provide these statements are part of legislative changes that occurred between 2016 and 2019. Whilst the legislation is somewhat complex, because it is encapsulated in three different Amendment Acts, there is easy guidelines on the tenancy services website, which tell landlords what the current law is and the dates of compliance.

116. All landlords were required to provide insulation statements to tenants from 1 July 2016, Healthy Homes statements from 1 July 2019 and Insurance statements from 27 August 2019.

117. [Tenant 3]'s tenancy began shortly after the legislative requirements came into force on the 29 August 2019

118. [Tenant 4]'s tenancy began on the 1 April 2021, well after the requirements came into force.

119. I am satisfied that the landlord has committed an unlawful act pursuant to 13 (1F) of the RTA, in that they have failed to provide insulation, insurance and Healthy Homes Statements to [Tenant 4] and [Tenant 3].

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[15] TMT New Zealand Limited TA Strata Property Management v Sweeney and Sundhal [2021]NZDC 16182.

120. Nevertheless, I consider that only a modest award should be made for these breaches. I award $200 for each of the breaches for [Tenant 3]'s tenancy making a total of $600, and $275.00 for each of the breaches in [Tenant 4]'s tenancy making a total of $825.00.

121. In awarding these amounts, I have taken into account the effect on the tenants which was negligible (by their own admissions they did not know that they should have got these documents until the investigation team told them), the interests of the tenants and the public interest. I consider that it is in the public interest that an award is made. These provisions in the RTA are designed to inform the tenant about the level of compliance, tenants should be able to rely on documents that tell them the house is insulated and meets Healthy Homes requirements. A tenant who is not happy with the level of compliance may then choose not to take on a tenancy. The statements also serve as a good reminder to landlord of the level of compliance they need to offer up their property for rent. Parliament has made it clear that the housing stock that is provided by private landlords should meet minimum requirements and landlords should be careful to ensure compliance with those standards.

122. I consider that each breach is a separate unlawful act, because s13(1F) codifies each breach as such.

Breaches of section 137 of the RTA.

123. Section 137 of the RTA provides:

> No person shall—
> **(a)**enter into any transaction, or make any contract or arrangement, purporting to do, whether presently or at some future time or upon the happening of any event or contingency, anything that contravenes or will contravene any of the provisions of this Act; or
> **(b)**enter into any transaction or make any contract or arrangement, whether orally or in writing, or do anything, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act.

124. It is an unlawful act to require any person to enter into any transaction, or to make any contract or arrangement, in contravention of section 137(1) RTA. (See 137(2)). The maximum exemplary damages that can be awarded under s 137(2) is $1800 per breach.

125. The Applicant made the following submissions in their closing submissions dated 1 August 2023.

The Respondent entered into a land access agreement with [Tenant 1]. While the Respondent maintains the land access agreement is completely separate from the tenancy, the agreement contains a number of clauses that defeat, evade or prevent the operation of provisions of the Act, including but not limited to:

a. a clause allowing the Respondent to unilaterally retain a bond/'rental rate' in the event that the tenant owes rent arrears or amenities charges or has caused damage to the property which evades the provisions of the Act requiring lodgement of a bond;

b. a clause terminating a tenant's water supply in the event they are in rent arrears or are overdue with amenities payment which defeats section 45{2} of the Act.

The flat/house sharing agreement provided to [Tenant 3] and [Tenant 4] contained the following clauses which defeat, evade or prevent the operation of provisions of the Act:

a. Clause 6 which states that the agreement can be terminated by 14 days' notice in writing This provision avoids the requirements under section 66U of the Act around the appropriate amount of notice to be given to terminate a boarding house tenancy. This clause was used to terminate [Tenant 3] 's tenancy.

b. Clause 11 which allows the 'head tenant' to deduct any cost outstanding from the bond before returning it This provision evades the requirements under the Act requiring lodgement of bonds and setting out the mechanisms for a landlord to recover funds from a bond before it is returned to a tenant.

The addendum to the flat/house sharing agreement also contains a number of clauses that defeat, evade, or prevent the operation of the provisions of the Act. The Tribunal has asked for submissions on the status of the addendum provided by [Tenant 3]. Given [Tenant 3] 's evidence at hearing that he did not understand or sign the addendum the Applicant proposes not to include the addendum as part of this claim. The Applicant notes that this does not change the application for exemplary damages in respect of [Tenant 3].

[Tenant 4], in her evidence at hearing confirmed that she signed the flat/house sharing agreement, addendum and land access agreement.

The addendum contains a number of clauses that defeat, evade or prevent the operation of provisions of the Act, including clauses which state that tenancies can be terminated with 14 days' notice for any material breach of the agreement, one day's notice for dishonest or illegal behaviour, 14 days' notice for a second 'offence' of cooking smelly food, 5 days' notice at the end of a one month trial, and one day's notice for failing to close the property gate. These provisions avoid the requirements under section 66U of the Act around the appropriate amount of notice to be given to terminate a boarding house tenancy.

> The clauses in the land access agreement referred to in relation to [Tenant 1] 's tenancy also apply to [Tenant 4] 's tenancy.
>
> The Applicant submits that each of these documents breaches section 137(1)(b) of the Act on their own or in conjunction.
>
> The Applicant seeks exemplary damages not exceeding $1,800 for three unlawful acts committed pursuant section 109(3) and schedule 1A of the Act.

126. In order for a breach of section 137 to be an unlawful act the party must **require** the other party to enter into the transaction.

127. Require is defined in the Collins English dictionary as something that is *essential, needed or necessary or compulsory.*

128. As [Tenant 3] did not enter into the Flat Sharing Addendum or the Heartland Farm Access Agreement then it cannot be said that he was required to enter into these documents, because he was allowed to live at the property despite not signing or agreeing to those transactions and therefore no breach can be made in respect of the Flat Sharing Addendum or the Heartland Farm Access Agreement in respect of [Tenant 3]'s tenancy.

129. I have considered all of the evidence and the submissions by both parties and I consider that the landlord has breached the s137(2) RTA and therefore committed an unlawful act as follows:

a) In respect of [Tenant 1]'s tenancy by requiring her to sign the Heartland Farms Land Access Agreement – the Respondent says that this agreement is completely separate both in nature and in rights from the tenancy agreement. I disagree, the landlord access agreement confirms that it is in conjunction to the tenancy agreement and "*override[s] and takes precedence over any tenancy or flat/house sharing agreement*" It then has specific clauses relating to the way [Tenant 1] could live in the property, including the use of facilities, and the retention of bond and the provision of water. I am satisfied that a number of these clause contravene provisions of the RTA, but specifically the retention of bond and the clause which states

> "If rent due of any tenancy is not paid up to date, or if amenities are overdue then the person so in default is to make provision for their own separate water supply (e.g collect rainwater themselves of buy clean water and have it delivered at their cost to the property) and then not use spring water from the property"

this clause is a direct contravention of the provisions of s45(1) (ca) which provides that landlords must have adequate means for the collections and storage of water. In other words that tenants must be given access to the provision of water.

b) In respect of [Tenant 4]'s tenancy I am satisfied that both the flat sharing agreement and the addendum contained clauses as set out in the Applicants submissions and that those clauses were a breach of section 137(2) of the RTA.

c) In respect of [Tenant 3]'s tenancy I am satisfied that his flat sharing agreement contained the clauses as set out in the Applicant's submissions and that those clauses were a breach of s137(2)of the RTA.

Exemplary damages for the breach of s137.

130. I am satisfied that the Respondent has acted intentionally in committing this breach because the documents are intentional in the manner in which they have been drafted. The Heartland Farm Access and the addendum to the flat sharing agreement are long, confusing, and contradictory. The terms are unclear and heavily favour the Respondent. Mr Phillips has submitted that the Farm Access agreement was necessary to protect the integrity of the values of the farm, i.e by ensuring that occupants only used organic sprays etc, but the access agreement went far beyond saying that. It instructed occupants how to use the property, even giving them instructions on where to urinate. The Heartland Farm access agreement makes it clear that the landlord was aware of the Residential Tenancies Act and the law – it says "*but nothing in this agreement is to take precedence over any lawful right under the NZ Residential Tenancy Act 1986 and amendments"* and then in the next paragraph " i*t is noted that the flatmate or house sharing agreements do not come within the scope of the RTA."* I consider that the contradictory nature of these paragraphs demonstrates that the insertion of these clauses was intended to confuse any occupants about their lawful rights.

131. [Tenant 1] was asked to pay (and subsequently did pay) thousands of dollars to the landlord, Mr Phillips and Mr Pool for improvements to the farm over the course of her tenancy. Mr Phillips and Mr Pool regard these payments as gifts. [Tenant 1] gave evidence that she was unsure of the nature of payments (whether they were a gift or not) but that she understood that they were given for a purpose that was not fulfilled. It is clear from watching her give evidence that she was vulnerable to advances made for payment of money, she is elderly and her own personal values, of being a nature and animal lover, mean that she 'brought' into the idea of the farm sanctuary.

132. I award $1500 exemplary damages for this breach in respect of [Tenant 1]'s tenancy, this amount is at the higher end of the scale and reflects the complexity and confusing nature of the documents that [Tenant 1] was given which confused her as to what recourse she had in respect of her tenancy and the monies she had paid. It is in the public interest that tenancy documents are

simple, balanced and reflect the RTA and importantly that tenants understand that they can bring questions or disputes to the Tribunal for determination.

133. I award [Tenant 4] $1200.00 for the breaches in respect of her tenancy. Again, I consider the documents are a concerted effort to confuse any tenant as to what their rights were.

134. I award [Tenant 3] $1200.00 for the breached of the flat sharing agreement. This amount takes into account that the landlord used the unlawful provisions in the flat sharing agreement to end [Tenant 3]'s tenancy.

135. It is my observation after hearing and reading all of the evidence and submissions that there was a concerted effort by the landlord and Mr Phillips to evade the RTA, and any oversight of the occupancies by the law. Mr Phillips gave many submissions that he felt unfairly targeted and that he was merely providing a place that likeminded people could live together without unnecessary oversight by the state, whilst I do not have doubt that this view was shared by many of the occupants at the farm, it does not allow Mr Phillips or the Respondent to ignore the law and do as they please. There is no contracting out of the RTA, if you offer up the property for residential tenancy, then you are captured by the law and must adhere to the law.

Name suppression.

136. I suppress the names of the tenants in this matter. I do not consider it in the public interest to know the identities of the tenants, but in any reporting of the matter the tenants can be known as [Tenant 1], [Tenant 3], [Tenant 2] and [Tenant 4]. They are all vulnerable, they have been successful in many of their complaints and the disclosing of their identities does not outweigh their own hardships that they may endure if their names are published.

T Prowse
28 September 2023

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.