[2023] NZTT 4546673

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Daniel Hannibal

Landlord

Warwick John Kiely

Owner

TENANCY ADDRESS: 9 Maungakawa Road, Cambridge, Cambridge 3496

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant name and identifying details.
2. Daniel Hannibal and Warwick John Kiely must pay [The tenant/s] $4,820.44 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Rent arrears	$50.00	
Filing fee reimbursement		$20.44
Exemplary damages: Failure to lodge bond		$250.00
Refund bond		$2,800.00
Exemplary damages: HHS breach		$1,800.00
Total award	**$50.00**	**$4,870.44**
Net award		$4,820.44
Total payable by Landlord to Tenant		**$4,820.44**

Reasons:

1. All the parties attended the hearing. The tenant appeared with a support person.
2. The owner, Mr Kiely, purchased the property in August 2022 and agreed to rent it to Mr Hannibal and his partner
3. For the clarity I will refer to Mr Kiely as the owner, Mr Hannibal as the landlord and [The tenant/s], as the tenant.
4. The owner was not sure at the time of purchase if the premises complied with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS) due to its age, being 50 years old, and because he had not inspected it before renting it out.
5. The premises are a 4-bedroom house with 10 acres of land and shedding. The landlord then signed a tenancy agreement with the tenant renting out the house. The owner consented to this. The landlord continued to rent the balance of the land and sheds for his stock off the owner.
6. The tenancy agreement listed Mr Hannibal as the 'landlord' and [The tenant/s] as the 'tenant'. The start date of this tenancy was 5 November 2022. The tenant received support for the tenancy through WINZ and the landlord became a registered supplier to them receiving the bond and two weeks rent in advance.
7. Mr Hannibal said that he was told that he could not lodge the bond because there was already a bond paid for the premises, so he held on to the money.
8. During the tenancy the landlord used the bond money to cover costs and rent he found owing.
9. The tenant sought compensation, exemplary damages, refund of the bond following the end of the tenancy and reimbursement of the filling fee.

Is this tenancy assigned or was it sublet to the tenant?

10. The respondent landlord is the tenant of the property pursuant to a tenancy agreement with the owner. The issue is whether the tenancy was assigned or whether the landlord is a sub-landlord and the tenant a sub-tenant.
11. The Residential Tenancies Act 1983, RTA, defines assignment as a transfer to a person of all the rights that a tenant has under a tenancy agreement. See section 2, RTA.
12. A tenant may assign a tenancy with the consent of the landlord. The effect of this is that from the date of the assignment, that is that the date a new tenancy begins, the outgoing tenant ceases to be responsible to the landlord for obligations imposed by the agreement and RTA. See section 43B,43C RTA

13. A sub-tenancy however is a tenancy agreement between a tenant (sub-landlord) and another person (sub-tenant) where the tenant remains liable under a tenancy agreement to the landlord.

14. A sub-tenant is the grantee of a tenancy with the right to occupy the premises exclusively or otherwise for rent, reflecting the definitions of ‘tenant and ‘tenancy’ in section2(1) of the RTA.

15. In the current circumstances a tenancy agreement was signed by the parties. The start date of this tenancy was 5 November 2022. The landlord received tenancy entry costs from WINZ on 14 November 2022, communicated with the tenant, managed the tenancy and referred repairs and concerns to the owner.

16. The landlord argued that this was a casual arrangement that he organised to help the tenant out. I disagree. He was fully involved with the tenancy from signing an agreement as the landlord, receiving rent and bond, being called on with the owner for repairs and lawn mowing. The tenant had exclusive rights to occupy the premises.

17. I find that this was a landlord tenant relationship, and that the premises were sublet to the tenant by the landlord. I dismiss the argument that this was a casual agreement between the parties. The tenancy is valid, and the RTA applies to all tenancies between a landlord and tenant.

18. Both the owner and landlord were involved with the management of the tenancy and I find it appropriate to join the owner as a party to the proceedings.

19. For the clarity in this I will refer to Mr Hannibal, as the landlord and [The tenant/s], as the tenant.

How much is owing in rent?

20. The tenant disputed the amount claimed for rent arrears at the end of the tenancy.

21. The rent record provided by the landlords stated $1100.00 owing at the end of the tenancy. The tenant agreed that she had not paid rent for the last two weeks rent for her tenancy.

22. On 14 November WINZ paid the landlord 3 payments of $2000.00, $800.00, and $400.00. On 8 November a further $1000.00 was paid. This was amounted to $2800.00 for the bond and $1400.00 for 2 weeks rent in advance.

23. A ‘bond record’ was supplied by the landlord and recorded a starting amount of $2800.00. The record showed where the landlord deducted rent owing from this amount.

24. The rent record did not record the $1400.00 payment from WINZ as 2 weeks rent in advance.

25. When this was taken into consideration the rent became $300.00 in credit. The parties agreed that the tenant owed half rent for the first week she was at the tenancy being $350.00.

26. I find that the tenant owes $50.00 in rent arrears at the end of the tenancy.

How much is owed for water?

27. There was no individual water metre installed at the premises and no way to determine the water use exclusively attributable to this tenancy. See section 39 RTA. The claim for compensation for water use Residential Tenancies Act 1986.

Heathy Homes standards.

28. [The tenant/s] claims that the landlord has breached the landlord's obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 (RTA), which requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS). [The tenant/s] considers that the landlord has failed to comply with the HHS ventilation standard, the HHS draught stopping standard and the HHS insulation standard.

29. The District Court has confirmed that when there are multiple claims for a breach under a single section (section 45 here), then only one order of exemplary damages can be made. I will therefore address the question of exemplary damages for all claimed section 45 breaches below.

Ventilation

30. The ventilation standard sets out minimum expectations around windows and doors, and in particular the area of doors and windows that are openable. The standard also requires that each kitchen and bathroom have extractor fans installed with a minimum defined extraction capacity.

31. The HHS does provide exemptions in specific circumstances.

32. The landlord and owner agreed that the premises did not have an extractor fan installed in the kitchen or the bathroom saying that the premises was rented on the condition that the tenant knew that it may not comply with the HHS.

33. The landlord and owner confirmed that they relied on the tenant telling them what was wrong and then they would fix it immediately. They said money was not the issue but getting service people to attend was delayed due to increased demands.

34. The landlord took 5 months to install an extractor fan in the bathroom which was completed just before the tenancy ended. The kitchen range hood was still in the garage. I find that they have breached the ventilation standards.

Draught stopping

35. [The tenant/s] claims that the landlord has breached the landlord's obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 in relation to the HHS draught stopping standard.

36. 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.

37. The windows in the main bedroom did not shut properly, some of the hinges were bent and there were gaps to the outside. The tenant said that it was a sunny warm house, but she needed to be able to open and shut the windows. She said that at the start of the tenancy she told the landlords partner about them, but nothing was done. Photographs were provided in support.

38. The owner found a Facebook post later in the tenancy where the tenant raised concern about the standard of the premises and noted the problem with the windows. The owner organised to get them replaced. They were repaired on 2 March 2023.The tenancy ended on 7 March 2023.

39. The landlord said that he did not know about the windows before this and they were waiting for the tenant to let them know what needed repairing. A tenant has the obligation to inform the landlord of any damages or repairs as soon as possible after a tenancy begins, but a landlord is required to comply with the HHS within 120 days of any tenancy that commenced after 28 August 2022.

40. When I consider this with the statement that the landlord had not looked at the premises before renting it out, I find that the landlord has breached the obligation comply with the HHS ventilation standard.

Insulation

41. [The tenant/s] claims that the landlord has breached the obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 by failing to insulate the premises in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.

42. From 1 July 2019, all residential premises must be insulated to a minimum standard. Where the premises were insulated before 1 July 2016, the ceiling insulation must have an R-value of at least 1.9 (or 1.5 for houses of a brick or concrete block construction). The underfloor insulation must have an R-value of at least 0.9. The insulation must be in reasonable condition.

43. Where insulation is installed after 1 July 2016, the minimum R-value for ceiling insulation is 2.9 in Zones 1 and 2, and 3.3 for Zone 3 (Zone 3 covers the South Island and central North Island). The minimum R-value for underfloor insulation is 1.3.

44. There are exceptions to these requirements, for example, where it is not reasonably practicable, or where there is a habitable space above or below the ceiling or floor that would otherwise have to be insulated.

45. The parties agreed that the premises were not insulated.

46. I find they have committed an unlawful act by breaching the ventilation standard the draught standard and the insulation standard.

47. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) RTA.

48. 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 (1)(A) and Schedule 1A RTA.

49. Over and above the requirement to comply with the Healthy Homes Standards, landlords are to provide and maintain premises in a reasonable state of repair. See Section 45 (1)(b).

50. In considering the requirements of section 109(3)RTA I conclude that by not looking at the premises before renting them out, and stating that they probably do not comply, that the landlord and owner have ignored their responsibilities. Ignorance is no excuse for noncompliance.

51. It is not the role of the tenant to alert the landlord to their noncompliance with the requirements of the RTA or HHS. There is a positive obligation on the landlord to comply.

52. I find that these breaches are intentional. This is strengthened by the reliance on the tenant to tell the landlord and owner what was wrong with the premises. This hands-off approach does not absolve the parties from their responsibilities.

53. The effect of the unlawful acts for the tenant was a draughty and possibly a premises unable to be secured. Without extractor fans mould is far more likely to occur and homes with windows that do not seal are very hard to heat. The legal requirement to provide a warm insulated healthy home for tenants is what the HHS have been introduced for and this is in the public interest.

54. I consider it just to make an order.

55. The maximum award for breaching this section 45 (1A) is $7,200.00 and there have been three breaches of this section. I find it just to award an order of 25% of the maximum, being an order of $1800.00.

Was there a breach of the tenant's quiet enjoyment.?

56. [The tenant/s] claims the landlord has harassed them.

57. 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.

58. 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.

59. 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.

60. The tenant provided a text from landlord's partner saying that she had to leave because she had people at her property that the landlord did not like. This was later changed.

61. The landlord also sent the tenant a text saying that the '*owner could do what the fuck he wants m8,he is the owner, so do what you have to*.'

62. The texts were inappropriate and incorrect, but I do not find that these texts amount to a breach of the tenant's quiet enjoyment amounting to harassment.

63. This claim is dismissed.

Bond

64. [The tenant/s] claims the landlord has not lodged the bond with the Bond Centre within the required time.

65. A landlord must send any bond payment to the Bond Centre within 23 working days after the payment is received. See section 19(1) Residential Tenancies Act 1986.

66. Breaching this obligation is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of $1,500.00. See section 19(2) and Schedule 1A Residential Tenancies Act 1986.

67. The landlord agrees that he was paid the bond by WINZ and tried to lodge it but because he had paid the owner his bond, he was told that he could not lodge a bond for this tenancy.

68. The bond centre confirms that there is no bond lodged with this address and the owner confirmed that he had not lodged the first bond.

69. The landlord could have lodged the bond and failed to. When asked where the money was, he said it was long gone and put toward the tenants costs and rent arrears he believed that the tenant owed. He did not have the funds now to cover the bond.

70. I find they have committed an unlawful act.

71. 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.

72. In consideration of the section 109(3) RTA,I find that this was an intentional breach. A bond is not the landlords money but the tenants to be held in trust by the bond centre for end of tenancy claims. The landlord has used the tenant's money and confirmed that none of it is left.

73. The landlord said that he was a first-time landlord and did not know the requirements of the RTA. This is no excuse; it is the responsibility of a landlord to know and comply with the requirements of the RTA.

74. The consequence for the tenant is that she could not access the bond money for which she could be held liable to repay to WINZ.

75. It is in the public interest that tenants bond money is held by an independent bond centre as security for all parties.

76. I find it just to make an award of $250.00.

Bond refund

77. The tenant has applied for refund of the bond. The landlord has a claim against the bond, but has not filed a counterclaim with Tenancy Services.

78. Section 22B(2) Residential Tenancies Act 1986 provides that, where a tenant applies for refund of the bond, and the landlord seeks payment from the bond, the landlord must file an application setting out the details of the counterclaim.

79. Because the landlord has not filed a counterclaim the bond is refunded in full to the tenant.

Fencing

80. The tenant claimed that the premises were not fully fenced for children and that this was agreed upon. The premises were located down a long driveway and were situated on a working farm. There was an incident where a child was found down the road.

81. There was no evidence that the parties agreed this was a term of the tenancy.

82. This claim is dismissed.

Gardens

83. The tenant said that she was told her rent included the lawns being mown and the gardens being done. This never happened. The landlord said that this was

not agreed to but the owner and himself mowed the lawns on occasions and when asked.

84. There was no evidence provided that the rent included lawn and garden maintenance. This claim is dismissed.

85. Because [The tenant/s] has substantially succeeded with the claim I have reimbursed the filing fee.

T Harris
14 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.