# Tenancy Tribunal

Kelly Alexandra Roe

2020 - ...

# Contents

# Chapter 1

# Judgment of tenancy tribunal (11 Nov, 2020)

**[2020] NZTT Auckland 4279225**

**TENANCY TRIBUNAL AT** Auckland

APPLICANT: Kelly Alexandra Roe

Tenant

RESPONDENT: Gulf View Property Management Limited and Mike Cotton

Landlord

TENANCY ADDRESS: Flat 16, 5 Park Road, Grafton, Auckland 1023

**ORDER**

1. Gulf View Property Management Limited and Mike Cotton must pay Kelly Alexandra Roe $1,020.44 immediately in exemplary damages for a breach of s45 and reimbursement of the Tribunal filing fee.

2. The Tenancy Tribunal declares that the $455.00 weekly rent is above market rent and from 13 November 2020 weekly rent is to be $430.00 per week.

3. Kelly Alexandra Roe's claim that the notice of termination is retaliatory is dismissed.

**Reasons:**

1. Ms Roe makes a claim against both Gulf View Property Management Limited (GVPML), the property manager, and Mr Cotton who is the leaseholder of the

block of apartments in which Ms Roe is currently residing. Mr Cotton did not attend today's hearing but Ms Anderson, representing GVPML stated that she had authority to act on his behalf.

2. Ms Roe claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986 by failing to instal a panel heater in accordance with the manufacturer's instructions. She also seeks a declaration that that the rent increase from $405.00 per week to $455.00 per week from 13 November 2020 is above market rent, and a further declaration that the notice of termination dated 1 October 2020 is retaliatory and therefore of no effect.

*Has the landlord breached s45?*

3. Under section 45, a landlord must comply with any relevant enactment in relation to buildings, health and safety.
4. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $4,000.00. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.
5. Ms Roe presented evidence at today's hearing showing that a panel heater had been installed at the premises in a way that is contrary to the manufacturer's instructions. I accept that she had advised GVPML of the issue in July 2019. GVPML did not present any evidence at today's hearing showing that the installation was safe and so on the evidence provided to me I find that most likely it has in fact been installed contrary to safety instructions and can therefore be deemed to be unsafe.
6. I therefore find that the landlord has committed an unlawful act.
7. 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.
8. The landlord intentionally had the panel heater installed and their intention was to heat the premises. I was unable to garner why GVPML did not provide evidence as to the safety of its installation method and I note that the only response to Ms Roe's concerns was a building report dated 2 September 2020, some 15 months after Ms Roe raised her concern, which states only that a panel heater had been installed. There was no evidence as to whether the installation was safe.
9. I accept Ms Roe's evidence that not being provided with any appropriate reassurance as to the safety of the installation, meant that she was frightened as to whether the heater constituted a safety hazard, causing her to only use it intermittently. That meant that the premises were very cold in winter.

10. Exemplary damages are intended to be punitive in nature, and taking into account all of the above as well as the strong public interest in landlords abiding by their obligations to tenants, particularly where safety is concerned, I am ordering GVPML and Mr Cotton to pay Ms Roe $1,000.00 in exemplary damages for this breach.

*Market Rent*

11. Ms Roe claims the landlord is seeking rent in excess of the market rent. From 13 November 2020 Ms Roe's rent went from $405.00 per week to $450.00 per week. She provided evidence from Tenancy Services website indicating that for similar 1 bedroom apartments, the upper limit of weekly rent was $440.00.

12. Ms Anderson provided evidence showing a range of apartments listed on TradeMe for between $460.00 to $475.00. However, there were dissimilarities with these listed apartments in that some had whiteware included and one had a carport.

13. However, having listened to GVPML's own evidence as to the tenor of people who rented 16 of the19 apartments in the same block where Ms Roe was residing, I consider that $455.00 is significantly in excess of market rent for this apartment. There were accounts of frequent violence and property damage caused by the Lifewise tenants and an acknowledged inability to date to dealing with these issues effectively. I consider that a reasonable rent would be $430.00 per week.

*Termination of tenancy*

14. Ms Roe claims that the notice of termination dated 1 October 2020 was retaliatory and she asks the Tribunal to declare it to be of no effect.

15. Section 54 of the Residential Tenancies Act 1986 provides in essence that the Tribunal may declare a notice of termination to be retaliatory and of no effect if that notice was motivated, wholly or in part, by the tenant's exercise or proposed exercise of their rights, authority, remedies and powers contained in the Residential Tenancies Act or the tenancy agreement.

16. Ms Roe states that the notice of termination was retaliatory because it was motivated by her requests to have the landlord obtain a professional report as to how to get the building up to the Healthy Homes standards required by July 2021, and to have a heatpump installed in compliance with those standards.

17. However, I am satisfied on the evidence before me that the notice of termination was motivated by the landlord's desire to obtain Ms Roe's apartment, which is the only one to have views out the front and back of the building, to house a live-in security guard to manage the Lifewise tenants. I am therefore dismissing this part of Ms Roe's claim.

*Filing fee reimbursement*

18. Ms Roe has substantially succeeded with the claim against GVPML and Mr Cotton and so I consider it appropriate that they reimburse her the filing fee.


C ter Haar
23 November 2020

# Chapter 2

# Rehearing granted (11 Jan, 2021)

**[2021] NZTT Auckland 4279225**

**TENANCY TRIBUNAL AT** Auckland

APPLICANT: Kelly Alexandra Roe

Tenant

RESPONDENT: Gulf View Property Management Limited And Mike Cotton

Landlord

TENANCY ADDRESS: Unit/Flat Flat 16, 5 Park Road, Grafton, Auckland 1023

**ORDER**

1. The application for rehearing is granted only in respect of the tenant's application under s.45 Residential Tenancies Act 1986 as to the safety of the heater.
2. The parties will be notified by Tenancy Services of the time, date, and place of the next hearing.
3. A different adjudicator will hear the claim.
4. If either party intends to produce any additional documents at the next hearing, they should send two copies to the Tribunal no later than 10 days after the date of this order, for service to the other party.
5. A stay of proceedings is granted until the date of the rehearing.

**Reasons:**

1. Gulf View Property Management Ltd has applied for a rehearing of the Tribunal order dated as they have evidence to establish the heater was installed correctly in July 2019 but they were unbale to present this evidence at the last hearing.

2. For the reasons set out below, I am satisfied that a miscarriage of justice may have occurred and a rehearing is granted. See section 105 Residential Tenancies Act 1986.

3. I am satisfied that new evidence may affect the outcome of the decision.


J Robson
11 January 2021

# Chapter 3

# Rehearing (11 Mar, 2021)

**[2021] NZTT Remote Location 4279225**

**TENANCY TRIBUNAL AT** Remote Location

APPLICANT: Kelly Alexandra Roe

Tenant

RESPONDENT: Gulf View Property Management Limited And Mike Cotton

Landlord

TENANCY ADDRESS: Unit/Flat Flat 16, 5 Park Road, Grafton, Auckland 1023

**ORDER**

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision
2. Gulf View Property Management Limited and Mike Cotton must pay Kelly Alexandra Roe $1,020.44 immediately as calculated in the table below.

| **Description** | **Landlord** | **Tenant** |
|---|---|---|
| Exemplary damages – breach s 45 | | **$1,000.00** |
| Filing fee | | **20.44** |
| **Total award** | | **$ 1,020.44** |

**Reasons:**

1. Both parties attended the hearing which was held by telephone on the 5 March 2021 due to COVID 19 level 3 restrictions in Auckland.
2. On the 25 November 2020, the Tribunal heard the tenant's claims for a breach of section 45 Residential Tenancies Act 1986 (RTA) relating to the incorrect installation of a wall heater, that the proposed rent exceeded the market rent and that the termination notice given was retaliatory.

3. On the 1 December 2020 the landlord applied for a rehearing of the tenant's claims that the landlord had further evidence that it had not been able to produce at the hearing on the 25 November 2020. The application for a rehearing of the tenant's claim that the landlord has breached s45 relating to the installation of a wall heater was granted.
4. The only claim before me, therefore was the tenant's claim that the landlord breached s 45 by incorrectly installing a wall heater which breached the manufacturer's installation instructions.
5. On or about the 28 November 2018, before the tenancy began the landlord installed a wall panel heater. Ms Roe believes that similar heaters were installed in all of the apartments in the complex managed by GCPML.
6. When the tenant went to turn on the heater, she read the manufactures instructions, which had been left for her, and noted that the instructions specifically told the installers to ensure that the cord was not positioned between the heater panel and the wall, as this was a fire hazard.
7. Ms Roe's heater had the cord between the heated panel and the wall. She contacted GVPML on or about July 2019 about the issue.
8. Under section 45, a landlord must comply with any relevant enactment in relation to buildings, health and safety and must provide and maintain the property in a reasonable condition.
9. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $4000.00 See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.
10. The landlord submitted that after it was notified of the issue, that it inspected the heater, that neither the compliance contractors nor the landlord thought that the heater was installed incorrectly and therefore was safe to use. That the heater had been installed by a registered electrician who had produced a certificate for the work, and that Auckland Council had visited the site to ensure compliance with building warrant of fitness standards and did not raise any issues. The landlord also said that the same heaters were installed in other apartments and no other tenants had raised any issues about the installation.
11. I am satisfied that the landlord did not ensure that the heater was installed in compliance with the installation safety instructions and therefore was in breach of s45. My reasons include:
    a) The tenant produced photographs of the wall heater and the safety instructions. The photographs show that the cord is placed in the exact position that the installation instructions warns installers not to place it in.
    b) The landlord's electrical certificate and report does not mention the installation of the wall heater. This certificate is for all electrical work, but

there is no reference to the installation of wall heater as being part of that scope, nor did the landlord produce any evidence from the electrician who completed the certificate which showed that the wall heaters installation was included in what was being certified.

c) The landlord's evidence that the heater installation complied was given by the receptionist at CBD electrical, there was no evidence given by the electrician on what enquiries had been made with the manufacturer and what details the manufacture/supplier had been provided with (for instance was Gold air provided with the photographs provided to the tribunal?).

d) The landlord did not make any enquiry with the electrician until these Tribunal hearings. The landlord relies on the compliance reports from Prestige and Auckland Council but there is no evidence that Prestige and Auckland Council were ever shown the specific issue the tenant had with the installation of the heater and therefore asked to confirm that it was compliant. Nor was there evidence that the installation of heaters in accordance with the manufacturers instructions was something that the report writers would check or had expertise in.

12. I find the landlord has committed an unlawful act.

13. 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.

14. I am satisfied that the landlord acted intentionally as they installed the panel heater. When the tenant raised the issue with the landlord the landlord did not make the necessary enquiries, such as getting the installing electrician to inspect and the confirm in writing that it complied and why it came to this conclusion, when the manufacturers installation instructions were not to install in this manner.

15. The tenant tells me that she was cold in the apartment as she did not want to turn on the heater because of the fire risk, she also worried about other apartment owners using their heaters, which she believed had also been incorrectly installed and the risk of fire to everyone in the building. Ms Roe told me that she felt ignored and powerless that the landlord would not take her complaints seriously.

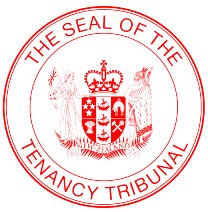
16. The landlord says that it investigated the concerns and that it thought that the heater was compliant. The landlord says that despite Ms Roe's concerns that the heater might be a fire risk, nothing happened.

17. It is in the public interest that all landlords ensure that when any work is done that it is done in accordance with the manufacturer's instructions and by qualified competent tradespeople. When issues are brought to landlord's attention,

especially when they are issues relating to a fire risk, these should be investigated thoroughly and quickly.

18. Taking these factors into account, I have awarded Ms Roe the sum of $1000.00 in exemplary damages.

19. Because Kelly Alexandra Roe has substantially succeeded with the claim I have reimbursed the filing fee.




T Prowse
11 March 2021

# Chapter 4

# Rehearing (21 Apr, 2021)

**[2021] NZTT [Event location suppressed] 4279225**

**TENANCY TRIBUNAL AT** [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: Unit/Flat Flat 16, 5 Park Road, Grafton, Auckland 1023

**ORDER**

1. The Tribunal orders suppression of both the tenant's and landlord's name and identifying details.
2. [The tenant/s] claim for failure to comply with section 45(1) Residential Tenancies Act 1986 in respect of faulty/incorrect installation of a wall heater is dismissed.

**Reasons:**

1. All three parties attended the rehearing of the tenant's claim for exemplary damages against the landlord and his agent for failure to comply with section 45(1) Residential Tenancies Act 1986 ('RTA') in respect of faulty/incorrect installation of a wall heater.
2. Being a rehearing, I am not bound by the previous findings of the initial adjudicator who heard this claim. My determination must be based on my own assessment of the evidence and the applicable law before me.

3. [The tenant/s] claims that the landlord has breached their obligations under section 45 RTA because the wall heater at her unit had not been installed

properly nor in accordance with the manufacturer's instructions. The tenant also contends that the present installation is unsafe and causes a fire hazard.

4. Under section 45, a landlord must provide and maintain the premises in a reasonable state of repair and comply with any relevant enactment in relation to buildings, health and safety.

5. I understand the tenant's point that a literal reading of the manufacturer's instructions manual indicates that the power cord to the heater should not "run behind the heater."

6. Here the heater had been installed in such a manner that the power cord is running vertically behind the heater, on the right side of the panel, downward to a power point nearby. I accept that this technically goes against the manufacturer's express instructions.

7. However I accept the opinion expressed by the importer of the Goldair heater CBD Electrical that it is in order for the power cord to run down the inside of the panel in this manner, even though this appear to contradict the instructions manual itself. CBD Electrical confirmed the supplier Goldair's clarification that what the instruction is meant to prohibit is the running of the cable diagonally behind the heater ie., passing from right to left of the heater. The tenant's heater had not been installed diagonally behind the heater.

8. No evidence has been adduced from electricians or other experts to contradict the landlord's evidence before me. There is no direct evidence from electricians or other experts to show that the wall heater has been installed in an unsafe manner or that it constitutes a fire hazard.

9. For those reasons, the tenant's complaint that the installation is unsafe and causes a fire hazard is rejected.

10. In the event the wall heater had been installed incorrectly as alleged by the tenant, I nevertheless am not satisfied that the landlord is liable to pay exemplary damages to the tenant.

11. The landlord had relied on its electrician in the installation of the device and had duly engaged an electrician to re-check the heater after being notified of the tenant's concerns. The electrician advised the landlord that the heater was correctly installed and safe. The landlord was entitled to rely on its electrician's advice.

12. For an award of exemplary damages to stand, section 109(3) Residential Tenancies Act 1986 requires a finding that the offending party has committed an unlawful act intentionally.

13. I am satisfied in the circumstances that the landlord has not committed any unlawful act intentionally.

14. Consequently, the tenant's claim for exemplary damages fails.

15. Lastly I note that the tenant is no longer residing at premises as the tenancy has since ended.

J Tam
21 April 2021

# Chapter 5

# Filing for District Court Appeal (filed 22 Apr, 2021)

**IN THE DISTRICT COURT OF NEW ZEALAND**

**AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA**

**TĀMAKI MAKAURAU ROHE**

**[2020] NZTT Auckland 4279225**

---

FIRST APPEAL

---

Applicant: Kelly Roe

Filed: 22 April, 2021

Address for Service: email@kellyroe.org

(1) Ms Roe lodged a complaint to the tenancy tribunal regarding her tenancy of 16/1 Park Road, Grafton in spring of 2020. The named landlord on her lease was: Suede 2003 Ltd C/ - Mike Cotton, C/O Gulf View Property Management, 87 Hurstmere Road, Takapuna, Auckland.

(2) Ms Roe was shown the property by Simone Anderson of Ray White and her card is stapled to the front of the lease. Mike Cotton leases from Samsung Corporation. Mike Cotton stated in the re-re-re-hearing that he is the person responsible for electrical installation / compliance rather than Simone Anderson. Ms Roe has had no contact with the Samsung Corporation.

(3) The three issues Ms Roe brought before the tenancy tribunal were:

> (a) She was concerned that a wall panel heater installed in her flat (also in many other flats in the same building) had been installed in a manner prohibited by manufacturers and therefore was likely to present a fire hazard.

She requested that an electrician be allowed onto the property to provide a costing as to what would be required to bring the apartment into health and safety compliance and Mike Cotton refused to sign the form to allow this. Ms Roe complained to the tribunal that

> (b) the rent increase (after she complained about the heater and requested an electrician come out to the building) was above market rate and
>
> (c) the subsequent notice to vacate (after she complained about the heater and requested an electrician come out to the building) was retaliatory.

(4) Ms Roe supplied to the court the manufacturers installation instructions that prohibited the cord running behind the heater. Ms Roe supplied to the court photographs of the cord running behind the heater. Ms Roe supplied to the court evidence that she notified Simone Anderson and Mike Cotton of concerns about the safety of the heater in July of 2019.

(5) The first adjudicator states at paragraph 5 *`Ms Roe presented evidence at today's hearing showing that a panel heater had been installed at the premises in a way that is contrary to manufacturer's instructions. I accept that she had advised GVPML of the issue in July 2019. GVPML did not present any evidence at today's hearing showing that the installation was safe and so on the evidence provided to me I find that most likely it has in fact been installed contrary to safety instructions and can therefore be deemed to be unsafe.'*

(6) At paragraph 7 *'I therefore find that the landlord has committed an unlawful act.'* At paragraph 8 *'I was unable to garner why GVPML did not provide evidence as to the safety of its installation method and I note that the only response to Ms Roe's concerns was a building report dated 2 September 2020 some 15 months after Ms Roe raised her concern, which states only that a panel heater had been installed. There was no evidence as to whether the installation was safe.'*

(7) At 9 *'I accept Ms Roe's evidence that not being provided with any appropriate reassurance as to the safety of the installation, meant that she was frightened as to whether the heater constituted a safety*

*hazard…'* At 10 *'Exemplary damages are intended to be punitive in nature, and taking into account all of the above as well as the strong public interest in landlords abiding by their obligations to tenants, particularly where safety is concerned, I am ordering GVPML and Mr Cotton to pay Ms Roe $1,000.00 in exemplary damages for this breach.'*

(8) The adjudicator also ruled that the rent increase from $405.00 to $450.00 pw was significantly in excess of market rent and considered reasonable rent would be $430.00 pw. The adjudicator also ruled that Ms Roe's notice to vacate was lawful because not retaliatory because she believed them to require her apartment to house a live-in security guard to manage the criminal behavior of LifeWise tenants rather than the notice to vacate being motivated by her having complained about the fire hazard present from heaters that had been installed throughout the building complex in a manner prohibited by the manufacturer.

(9) An application for re-hearing was granted on the grounds that the landlord had evidence that the installation of the heater was safe but didn't have the information with them on the day of the previous hearing.

(10) The evidence brought before the court in the re-hearing or the second hearing was more information from the builder and a customer services representative of the importer of the heaters. The new information did not show either of them or Mike Cotton or Simone Anderson to hold electrical engineering or electrician qualifications such that they were authorized to okay the installation of a heater in a manner prohibited by the electrical engineers in the installation guide to accompany the heater. The adjudicator stated in the meeting that Mike Cotton should bring evidence before the courts because if he failed to do so and the building caught fire and people died he could find himself up on criminal charges.

(11) The judgement of the second adjudicator was the same as the judgement of the first adjudicator.

(12) 18 March 2021 the second adjudicator T Prowse granted a re-re-hearing or a third hearing on the grounds that 'Mr Cotton has evidence regarding the installation of the heater which was not presented because he was unaware of the hearing and which was NOT presented at the hearing by the landlord's representative Ms Anderson.'

(13) 30 March 2021 Mike Cotton sent a series of emails to Ms Roe that do not provide viewable attachments. In the hearing Mike Cotton handed up to 3 pages of information to the adjudicator and he did not supply copies of those those same papers to Ms Roe. Ms Roe stated in the court room at that time that he was required to supply copies of the new evidence to her. Ms Roe stated clearly to the adjudicator that the adjudicator needed to consider whether there was in fact any new evidence of the safety of the heater installation.

(14) Ms Roe reiterated that the court already had reports and opinions from builders, Mike Cotton, Simone Anderson, and customer service representatives who are all irrelevant when it comes to whether or not the heater installation was safe. Unless the court obtained

evidence that one or more of these people hold electrical qualifications anything they supply to the court with respect to electrical safety of the heater installation is irrelevant.

(15) Ms Roe reiterated that the court already had an electrical report from electricians where heaters are notably absent from the list of things they signed off on. Heaters aren't light switches and the fact that light switches were signed off by electricians is irrelevant to whether or not the heater installation was electrically safe. Heater is listed as a chattel in Ms Roe's lease and it is not plausible to think it subsumed under any of the other headers on the electrical sign off list. The heater installation was not signed off by electricians.

(16) Ms Roe pointed out to the adjudicator that Mike Cotton had MONTHS (years since June 2019) in which to arrange a qualified electrician to come out to the building and write a note / report saying that the heater installation method contrary to manufacturers instructions was signed off, by a registered and qualified electrician, to be electrically safe. Or, if they were are unwilling to do that, to do the work required to move the wire and / or install a fit for electrical sign-off appliance in it's place. Mike Cotton still has not done this and supplied evidence of his having done this to the court.

(17) The previous amount of damages were awarded to Ms Roe primarily on the grounds of her psychological state (fear) as the result of what was reasonable for her to have believed at that time (that the heater had been installed in a manner prohibited by manufacturers and was therefore likely to present a fire hazard throughout the building). Even if evidence is supplied years later that the installation actually is safe that doesn't alter what was rational for Ms Roe to have believed or felt at the time when her landlords refused to provide credible evidence of safety to her in the fact of the heater having been installed contrary to manufacturers instructions.

(18) Mike Cotton has already had months or years (since June 2019) in which to get an electrician on sight to sort out the heating and he simply refuses. The building owner is the Samsung Corporation. Ms Roe has no reason to believe them wishing the building to burn to the ground anytime soon and the Samsung Corporation might well be in the position to assist with supply of electrical products and perhaps even installation if Mike Cotton would bring issues of building compliance to their attention instead of arranging for mis-wired heaters that present a fire hazard while not being capable of heating even one room of the apartment to 18 degrees. Mike Cotton claimed responsibility in the for electrical sign off and he stated that the building was to be demolished and he was not interested in re-investing rent into building maintenance and / or development.

(19) Ms Roe maintains that Mike Cotton's repeated refusal to allow an electrician onto the premises to ascertain electrical safety and arrange for building compliance with health and safety has accumulated to the point where wilful negligence is apparent. Ms Roe requests the amount of punitive damages to be increased to the maximum such that Mike Cotton understands that it will be more costly to him to refuse to comply with regulations than to fail to comply with regulations for his own person profits at the expense of the health and safety of both his tenants and a building that only Mike Cotton seems to wish to see burned to the ground.

(20) The adjudicator stated that if Ms Roe was still residing in the building then the court could instruct various things to happen that it cannot because she was given notice to vacate. Ms Roe pointed out to the court that it is only because of court delays (hearing, re-hearing, re-re-hearing) and because the notice to vacate was not ruled to be retaliatory by the court that she is not presently still residing in the building.

(21) The Court needs to consider willful endangerment of lives of those presently residing in the building. Ms Roe was clear with Mike Cotton that she was seeking for an electrician to provide a quote as to what needed to be done to bring the home into electrical compliance with healthy homes standards. Ms Roe stated she was willing to contribute (or seek sources of funding for contribution) towards the costs of installing something fit for purpose (likely a heat pump) as a permanent chattel. Mike Cotton stated to the adjudicator that the building was to be demolished. In other words Mike Cotton has chosen to invest in maximum short term profits for himself (ascertained by attempts to obtain more than market rent) without reinvesting profits into legally required maintenance or developments of the building at the expense of the health and safety of his tenants. There is no reason to believe the Samsung Corporation to be implicated and Mike Cotton has claimed personal responsibility for his choices where he claims that he is responsible for his tenants. He stated in court he would evict the tenants if he was required to provide healthy homes for them. It seems to go beyond what is financially most lucrative for him, even, to keep people living in unsafe conditions.

(22) The third adjudicator ruled differently from the previous two adjudicators who both heard the case. Paragraph 5 he states that he understands the tenants point that 'a literal reading of the manufacturer's instructions manual indicates that the power cord to the heater should not ``run behind the heater" and that it has been wired such that in 6 it ``technically goes against the manufacturer's express instructions."

(23) The adjudicator then goes on to judge that the adjudicator (rather than the manufacturer) knows best about heater installation and the adjudicator thinks the customer services representative is a preferred authority to the manufacturer. The adjudicator maintains it is the tenants responsibility to arrange for an electrician to come out and write a report that the building is an electrical hazard otherwise it is deemed safe. Since Ms Roe was not able to get an electrician to come out to the building without the landlord signing off that that was okay (the electricians she tried to get out required landlord permission) then the building must have been okay.

(24) Ms Roe doesn't know what to say except that this line of reasoning is absurd. It amounts to landlords doing whatever they want whenever they want because they want. If the building burns down then who is responsible? The manufacturers of the heater aren't because it was installed contrary to their instructions. The landlord chooses to put his tenants lives in danger and he chooses to risk the building he is responsible for maintaining / developing.

(25) At 11 the third adjudicator states that an electrician installed the device. Ms Roe believes that the evidence supports that a builder and not an electrician installed the device. So this is an error of fact. Ms Roe maintains that a builder not an electrician re-checked the installation only after the first judgement from the courts. Two men came out and stated they were electricians. Ms Roe stated she believed them to be builders and not electricians and she asked for their card / electrical registration number so she could phone their regulatory body because she did not believe that a qualified and registered electrician would sign off that it was okay to violate manufacturer's instructions on hardwire installation of an appliance. They refused to supply credentials or identification and then they left the site. Those men were not electricians. Mike Cotton refuses to employ electricians. It is disingenuous for Mike Cotton to pretend he doesn't comprehend 'beside' vs 'behind' or 'electrician' vs 'builder'. He is intentionally putting people's lives at risk – because he is getting away with it.

(26) In sum: The third re-hearing was granted on grounds that new evidence was to be provided to the courts. Irrelevant material was provided only. There was no evidence that an electrician had been involved in the installation or sign off on the heater as at June 2020 and there has been no new evidence of an electrician having been called to the site and either signed off that the heater installation is okay or removed it so it is no longer an issue or replaced it with something fit for purpose. The only thing that has changed is that the courts have now accumulated evidence that Mike Cotton is wilfully endangering the people in his case by pretending to be too stupid to understand the difference between 'behind' and 'beside' and 'builder' and 'electrician'.

# Chapter 6

# Filing for District Court (filed 07 Jun, 2021)

**IN THE DISTRICT COURT OF NEW ZEALAND**

**AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA**

**TĀMAKI MAKAURAU ROHE**

**[2020] NZTT Auckland 4279225**

---

**MEMORANDUM ON DISPENSING WITH SECURITY FOR COSTS**

---

Next Event Date: security for costs hearing, 10am June 10, Auckland District Court

Apellant: Kelly Roe

Filed: 7 June, 2021

Address for service: email@kellyroe.org

**Background**

1. In 2020 Ms Roe complained to the tenancy tribunal that:

    a. Her landlord, Mike Cotton, was in breach of s45 in virtue of there being a fixed wall heater that had been installed in a manner prohibited by manufacturers which was thus likely to pose a fire hazard.

    b. When the prohibition on rent increase (to do with Covid lockdown) was lifted Ms Roe's rent was increased above market rate. She maintained that her rent had been increased by too much and this was retaliatory for her having complained about the wall heater.

    c. When the prohibition on notice to vacate was lifted Ms Roe was given notice to vacate. Ms Roe maintained notice to vacate was retaliatory for her having complained about the wall heater.

2. Issue (a) has been heard by the tenancy tribunal three times and the third judgement on issue (a) is the subject of this appeal.

**First Hearing**

3. The matter was first head by the tenancy tribunal in 2020 and the first tenancy tribunal judgment or order was issued 23 November 2020.

4. The adjudicator found that Mike Cotton was in in breach of s45 and ordered him to pay Ms Roe $1,020.44 in exemplary damages and filing fee reimbursement. The adjudicator also found the $455.00 weekly rent to be above market rent and set weekly rent to be $430.00 per week. The adjudicator also dismissed the claim that notice to vacate was retaliatory.

5. The judicial reasoning was given in paragraphs 3-10.

6. *`Ms Roe presented evidence at today's hearing showing that a panel heater had been installed at the premises in a way that is contrary to the manufacturer's instructions'* (paragraph 5).

7. *`I was unable to garner why GVPML did not provide evidence as to the safety of its installation method and I note that the only response to Ms Roe's concerns was a building report dated 2 September 2020, some 15 months after Ms Roe raised her concern, which states only that a panel heater had been installed. There was no evidence as to whether the installation was safe.'* (Paragraph 8).

8. *`I accept Ms Roe's evidence that not being provided with any appropriate reassurance as to the safety of the installation, meant that she was frightened as to whether the heater constituted a safety hazard.'* (Paragraph 9).

9. *`Exemplary damages are intended to be punitive in nature, and taking into account all of the above as well as the strong public interest in landlords abiding by their obligations to tenants, particularly where safety is concerned, I am ordering GVPML and Mr Cotton to pay Ms Roe $1,000.00 in exemplary damages for this breach.'* (Paragraph 10).

**Second Hearing**

10. Mike Cotton applied for a re-hearing on the grounds that the *`landlord had further evidence that it had not been able to produce at the hearing on 25 November 2020*' (paragraph 3). The re-hearing of issue (a) only was granted.

11. There was a rehearing by the tenancy tribunal in 2021 and the second tenancy tribunal judgement or order was issued 11 March 2021.

12. The adjudicator found that Mike Cotton was in breach of s45 and ordered him to pay Ms Roe $1,020.44 in exemplary damages and filing fee reimbursement.

13. *`When the tenant went to turn on the heater, she read the manufacturer's instructions, which had been left for her, and noted that the instructions specifically told the installers to ensure that the cord was not positioned between the heater panel and the wall, as this was a fire hazard.'* (Paragraph 6.)

14. *`Ms Roe's heater had the cord between the heated panel and the wall. She contacted GVPML on or about July 2019 about this issue.'* (Paragraph 7.)

15. *The landlord submitted that after it was notified of the issue, that it inspected the heater, that neither the compliance contractors nor the landlord thought that the heater was installed incorrectly and was therefore safe to use. That the heater had been installed by a registered electrician who had produced a certificate for the work, and that Auckland Council has visited the site to ensure compliance with building warrant of fitness standards and did not raise any issues.* (Paragraph 10).

16. *I am satisfied that the landlord did not ensure that the heater was installed in compliance with the installation safety instructions and therefore was in breach of s45. My reasons include:*

    a. *The tenant produced photographs of the wall heater and the safety instructions. The photographs show that the cord is placed in the exact position that the installation instructions warn installers not to place it in.*

    b. *The landlord's electrical certificate and report does not mention the installation of the wall heater. This certificate is for all electrical work, but there is no reference to the installation of wall heater as being part of that scope, nor did the landlord produce any evidence from the electrician who completed the certificate which showed that the wall heaters installation was included in what was being certified.*

c. *The landlord's evidence that the heater installation complied was given by the receptionist of CBD electrical, there was no evidence given by the electrician on what enquiries had been made with the manufacturer and what details the manufacture / supplier had been provided with (for instance was Gold air provided with the photographs provided to the tribunal?)*

d. *The landlord did not make any enquiry with the electrician until these tribunal hearings. The landlord relies on the compliance reports from Prestige and Auckland Council but there is no evidence that Prestige and Auckland Council were ever shown the specific issue the tenant had with the installation of the heater and therefore asked to confirm that it was compliant. Nor was there evidence that the installation of heaters in accordance with the manufacturer's instructions was something that the report writers would check or had expertise in'.* (Paragraph 11)

17. *`I am satisfied that the landlord acted intentionally as they installed the panel heater. When the tenant raised the issue with the landlord the landlord did not make the necessary enquiries, such as getting the installing electrician to inspect and confirm in writing that it complied and why it came to this conclusion, when the manufacturers installation instructions were not to install in this manner'.* (Paragraph 14).

18. *`It is in the public interest that all landlords ensure that when any work is done that it is done in accordance with manufacturer's instructions and by qualified competent tradespeople. When issues are brought to landlord's attention, especially when they are issues relating to a fire risk, these should be investigated thoroughly and quickly'.* (Paragraph 17)

**Third Hearing**

19. Mike Cotton applied for a re-hearing and the third tenancy tribunal judgement or order was issued 21 April 2021.

20. The adjudicator dismissed Ms Roe's claim that Mike Cotton had breached s45.

21. *`I understand the tenant's point that a literal reading of the manufacturer's instructions manual indicates that the power cord to the heater should not ``run behind the heater".''* (Paragraph 5)

22. *`Here the heater has been installed in such a manner that the power cord is running vertically behind the heater, on the right side of the panel, downward to a power point nearby. I accept that this technically goes against the manufacturer's express instructions.* (Paragraph 6).

23. *'However, I accept the opinion expressed by the importer of the Gold air heater...'* (Paragraph 7).

24. *`There is no direct evidence from electricians or other experts to show that the wall heater has been installed in an unsafe manner or that it constitutes a fire hazard.'* (Paragraph 8).

25. *`For those reasons, the tenant's complaint that the installation is unsafe and causes a fire hazard is rejected'* (Paragraph 9).

26. *`In the event the wall heater had been installed incorrectly as alleged by the tenant, I nevertheless am not satisfied that the landlord is liable to pay exemplary damages to the tenant'* (Paragraph 10).

27. *The landlord had relied on it's electrician in the installation of the device and had duly engaged an electrician to re-check the heater after being notified of the tenant's concerns. The electrician advised the landlord that the heater was correctly installed and safe. The landlord was entitled to rely on its electrician's advice'* (Paragraph 11).

**Appeal**

28. Ms Roe does not accept paragraph 23. That is to say in the face of what appears to be contradictory or conflicting evidence between the manufacturers of the heater's installation manual and a receptionist of the importers of the heater's opinion the adjudicator thinks the receptionist is more likely to be correct.

29. Ms Roe does not accept paragraph 24. 3/3 adjudicators agreed with Ms Roe that the heater was installed in a manner expressly prohibited by the manufacturer's instructions. The installation manual from the manufacturers of the heater does constitute *`direct evidence from electricians or other experts'* where it is plausible to think the manual written by the electrical engineers who designed and tested the heater to be safe when installed and operated in a manner consistent with their instructions only.

30. With respect to Ms Roe obtaining evidence from an electrician that the installation was unsafe Ms Roe was unable to get an electrician onto the premises without them having prior approval from her landlord and Mr Cotton refused to allow Ms Roe to engage the services of an electrician to see what could be done to bring the property into healthy home compliance.

31. As such, Ms Roe does not accept either of the reasons the third adjudicator had for rejecting the view that the installation was likely unsafe and a fire hazard.

32. At paragraph 26 and 27 the third adjudicator maintains that since Mr Cotton relied on an electrician he was not responsible for the safety of the wall heater.

33. Ms Roe accepts that if Mr Cotton relied on an electrician then he would not be responsible for the safety of the wall heater. Ms Roe maintains that there is no evidence that Mr Cotton relied on an electrician, however.

34. The only evidence of an electrician was a compliance report that makes no mention of a fixed wall heater (Paragraph 16b). The landlord supplied to the court evidence of his relying on a number of parties none of which were qualified electricians. For example, he relied on builders (paragraph 7), Auckland Council employees (paragraph 15), his own opinion (paragraph 15), building compliance contractors (paragraph 15), receptionists of importers (paragraph 16c). There is no evidence that any of these people are electricians or qualified to sign off on electrical compliance of wall heaters.

35. As the second adjudicator describes `*The landlord relies on the compliance reports from Prestige and Auckland Council but there is no evidence that Prestige and Auckland Council were ever shown the specific issue the tenant had with the installation of the heater and therefore asked to confirm that it was compliant. Nor was there evidence that the installation of heaters in accordance with the manufacturer's instructions was something that the report writers would check or had expertise in'.*

36. Insofar as Mr Cotton has refused to rely on his electrician for electrical sign off on a fixed wall heater he is liable for the fact that there was a fixed wall heater that has been installed in a manner that three out of three adjudicators agreed is expressly prohibited by the manufacturer's installation guide which would have been written by electrical engineers who had designed and tested the appliance for safety when installed and operated in accordance with their instructions only.

37. Mr Cotton has had months and months and three re-hearings and he still has not engaged the services of an electrician with respect to fixed wall-heaters for the properties where he is landlord.

**Security for Costs**

38. Ms Roe is incredulous that Mr Cotton wasn't immediately ordered by the court to engage the services of an electrician or prosecuted for non-compliance. Ms Roe is

incredulous that there have been three re-hearings of this issue. No new evidence was presented in the third re-hearing. Ms Roe is incredulous that the third adjudicator found against her and the courts are now instructing her to pay security for costs to proceed with an appeal of this issue when the landlord is willfully or recklessly endangering the buildings and tenants lives in the properties where he is landlord.

39. It would be preferable if the government were to do it's job and arrange for prosecution when people violate the law. Three out of three adjudicators have found that the heater had been installed contrary to manufacturer's instructions and Mr Cotton has still not contracted electricians to come out to the properties that he manages and fix up the electrical work that was not done by an electrician and has not been signed off on by an electrician for the obvious reason that the installation method employed was one prohibited by the electrical engineers who designed the heater.

40. Ms Roe requests waiver of hearing fee and punitive damages to be re-set at the maximum allowable ($4,000) so Mr Cotton understands the more he delays the more costly it is to him to refuse to comply with the legislation. If there is a fire in a building where he is landlord and he is violating the law then is open to charges of murder. Perhaps Ms Roe is expected to try that too in the civil courts? Ms Roe requests that the government do its job of prosecuting landlords for non-compliance to the fullest extent of the law in a timely fashion. There was no reason for 3 hearings of this issue even less 4 and there is no reason why Ms Roe should be expected to bear the costs involved in holding Mr Cotton to account to the laws of New Zealand.

# Chapter 7

# Judgment of District Court (21 Jan, 2022)

**IN THE DISTRICT COURT**
**AT AUCKLAND**

**I TE KŌTI-Ā-ROHE**
**KI TĀMAKI MAKAURAU**

**CIV-2021-004-000734**
**[2022] NZDC 855**

| | |
|---|---|
| BETWEEN | KELLY ALEXANDRA ROE<br>Appellant |
| AND | GULF VIEW PROPERTY MANAGEMENT LTD AND MIKE COTTON<br>Respondents |

Hearing: 19 January 2022

Appearances: Ms Roe in Person
Mr Cotton in Person

Judgment: 21 January 2022

---

**DECISION OF JUDGE G M HARRISON**

---

**NAME SUPPRESSION ORDERS APPLY TO THIS DECISION**

[1] Ms Roe appeals against a decision of the Tenancy Tribunal of 21 April 2021.

[2] The claim brought by Ms Roe in the Tribunal was for exemplary damages against the respondents for an alleged failure to comply with s 45(1) of the Residential Tenancies Act 1986 in respect of faulty/incorrect installation of a wall heater. Her claim was dismissed.

**Approach on appeal**

[3] Section 117 of the Act provides in subs (4) as follows:

> The provisions of s 85, with any necessary modifications, shall apply in respect of the hearing and determination by the District Court of an appeal brought under this section.

[4] Section 85 provides:

> (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
>
> (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[5] That section was interrupted by Asher J in *Ziki Investments (Properties) Ltd v McDonald*[1] as follows:

> [69] Section 85(2) states specifically that each dispute shall be determined "according to the general principles of law relating to the matter". Significantly the reference to determining in accordance with the substantial merits and justice comes after the reference to determining the dispute according to the general principles of law. The overarching application of those general principles is not undermined by the provision that the Tribunal is not bound to give effect to strict legal rights or obligations or to legal forms or technicalities. This simply means that technical requirements, such as matters of form and time, may not be strictly applied. In this the subsection indicates that general principles of law should be interpreted or applied consistently with the merits and justice of the case where possible.

**Background**

[6] At the material time Ms Roe occupied Flat 16, 5 Park Road, Grafton, Auckland.

[7] Gulf View Property Management was the owner's agent, and Mr Cotton owned the building through another entity. The Adjudicator did not specify the legal owner of the building and in view of his conclusions was not obliged to.

[8] The proceedings before the Tribunal were somewhat complicated. Ms Roe succeeded at the first hearing of her complaint, but a rehearing was ordered. Ms Roe succeeded again at the second hearing but that also was directed to be reheard.

---

[1] *Ziki Investments (Properties) Ltd v McDonald* [2008] 3 NZLR 417.

[9] It is understandable that Ms Roe would endeavour to rely upon the previous decisions of the Tribunal in her favour but as stated correctly by Adjudicator Tam in this case:

> 2. Being a rehearing, I am not bound by previous findings of the initial Adjudicator who heard this claim. My determination must be based on my own assessment of the evidence and the applicable law before me.

[10] Ms Roe's claim was that the landlord had breached its obligations under s 45 of the Act because the wall heater at her unit had not been installed properly nor in accordance with the manufacturer's instructions. She also contended that the installation was unsafe and a potential fire hazard.

[11] The Adjudicator referred to s 45 of the Act as requiring a landlord to provide and maintain the premises in a reasonable state of repair and comply with any relevant enactment in relation to buildings, health and safety.

[12] That is a correct statement of the relevant law.

[13] Section 45 as relevant provides:

> (1) Landlord shall—
>
> (c) comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises.

**Did the Tribunal err?**

[14] In my view, no. Ms Roe's submission was essentially that the wall heater in question should have been certified by a registered electrician as being safe. She did not refer to any statute or regulation imposing that requirement.

[15] For his part Mr Cotton claimed that an electrician had conducted the necessary supervision.

[16] At [11] of the decision the Adjudicator stated:

> The landlord had relied on its electrician in the installation of the device and had duly engaged an electrician to recheck the heater after being notified of the tenant's concern. The electrician advised the landlord that the heater was correctly installed and safe. The landlord was entitled to rely on its electrician's advice.

[17] That was an evidentiary finding open to the Adjudicator with no evidence to the contrary. Not only that, but the Adjudicator had evidence from the importer of the heater.

[18] He said:

> [7] However, I accept the opinion expressed by the importer of the Gold Air heater CBD Electrical that it is in order for the power cord to run down the inside of the panel in this manner, even though this appear (sic) to contradict the instruction's manual itself. CBD Electrical confirmed the supplier Gold Air's clarification that what the instruction is meant to prohibit is the running of the cable diagonally behind the heater i.e. passing from right to left of the heater. The tenant's heater (sic, cord) had not been installed diagonally behind the heater.

[19] The Adjudicator also noted that no evidence had been adduced from electricians or other experts to contradict the landlord's evidence, or that the wall heater had been installed in an unsafe manner or that it constitutes a fire hazard.

[20] On that basis the Adjudicator dismissed Ms Roe's application. I am of the view that the decision accords with the relevant law and has not been demonstrated to be incorrect.

**Conclusion**

[21] The Adjudicator went on to consider that if the heater had been installed incorrectly whether an award of exemplary damages was justified.

[22] The Adjudicator recorded that s 109(3) of the Act requires a finding that a party committed an unlawful act intentionally before an award of exemplary damages may be made. The Adjudicator concluded that the landlord had not committed any

unlawful act intentionally. Indeed, at the hearing Ms Roe accepted that she was not claiming that Mr Cotton had intended to burn the building down.

[23] For the foregoing reasons the decision of the Adjudicator has not been established to be wrong in any respect, and the appeal is dismissed accordingly.

[24] The Tribunal supressed the names and identifying details of the parties, and that order continues in force.

G M Harrison
District Court Judge