

**IN THE DISTRICT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKĀURAU ROHE**

[2020] NZTT Auckland 4279225

FIRST APPEAL

Applicant: Kelly Roe

Filed: 22 April, 2021

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(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'.