

**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
<b>Total award</b>		<b>\$ 1,020.44</b>

**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

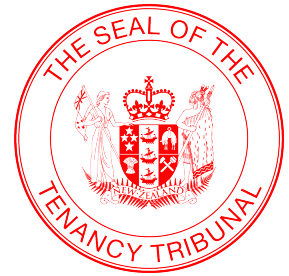
there is no reference to the installation of wall heater as being part of that scope, nor did the landlord produce any evidence from the electrician who completed the certificate which showed that the wall heaters installation was included in what was being certified.

- 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

## **Please read carefully:**

Visit [justice.govt.nz/tribunals/tenancy/rehearings-appeals](https://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](https://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](https://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](https://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.

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If you require further help or information regarding this matter, visit [tenancy.govt.nz/disputes/enforcing-decisions](https://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](https://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](https://tenancy.govt.nz/disputes/enforcing-decisions), pe fesootai mai le Tenancy Services i le numera 0800 836 262.