

**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

## **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.