

**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*

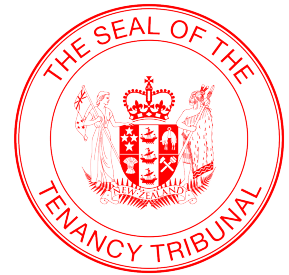
11. Ms Roe claims the landlord is seeking rent in excess of the market rent. From 13 November 2020 Ms Roe's rent went from \$405.00 per week to \$450.00 per week. She provided evidence from Tenancy Services website indicating that for similar 1 bedroom apartments, the upper limit of weekly rent was \$440.00.
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 the 19 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

### **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.