

**TENANCY TRIBUNAL AT Whangarei**

APPLICANT: Angela Jinette Shearer  
Tenant

RESPONDENT: Sandra Henderson-Rihari  
Landlord

TENANCY ADDRESS: 152 Three Mile Bush Road, Kamo, Whangarei 0112

**ORDER**

1. Sandra Henderson-Rihari must pay Angela Jinette Shearer \$5,340.44 immediately, calculated as shown in table below:

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Exemplary damages: Non lodgment of bond		\$750.00
Refund of bond		\$1,520.00
Exemplary damages: Failure to repair front door lock		\$800.00
Exemplary damages: Harassment		\$1,500.00
Exemplary damages: Interfering with power supply		\$750.00
Filing fee reimbursement		\$20.44
<b>Total award</b>		<b>\$5,340.44</b>
<b>Total payable by Landlord to Tenant</b>		<b>\$5,340.44</b>

**Reasons:**

1. This is a tenant's application raising the following issues:
  - a. Failure to lodge to bond;
  - b. Failure to repair the lock on the front door;
  - c. Breach of quiet enjoyment and harassment;
  - d. Interference with power supply;

- e. Retaliatory notice.
2. The tenancy was current when this application was filed. Ms Shearer has since left the property.
3. Ms Shearer attended the hearing on 16 November 2018. There was no appearance by Ms Henderson-Rihari.

### Bond

4. A bond of \$1,520.00 was paid when the tenancy began.
5. The landlord did not lodge the bond with the Bond Centre.
6. Ms Shearer sent Ms Henderson-Rihari a breach notice on 16 July 2018 raising a number of issues, including that the bond had not been lodged with the Bond Centre.
7. Ms Henderson-Rihari responded immediately with a 90-day termination notice, and did not lodge the bond.
8. Landlords are legally required to lodge the bond with the Bond Centre within 23-working days of receipt (section 19(1)(b) Residential Tenancies Act 1986).
9. Failure to do so is an unlawful act, and exemplary damages of up to \$1,000.00 can apply.
10. Section 109 of the Residential Tenancies Act 1986 ("RTA") states that the Tribunal may award exemplary damages if the Tribunal is satisfied that the unlawful act has been committed intentionally, and having regard to:
  - a. The intent of the person who committed the unlawful act;
  - b. The effect of the unlawful act;
  - c. The interests of the person against whom the act was committed; and
  - d. The public interest.
11. Ms Henderson-Rihari did not attend the hearing and she did not provide any reason or explanation to the tenant about why she did not lodge the bond. It seems that Ms Henderson-Rihari generally has a casual disregard of her legal duties as landlord.
12. I will award exemplary damages of \$750.00
13. The tenancy has now ended. The landlord has not made any application seeking any amount from the bond. The tenant is entitled to refund of the bond.

### Front door lock

14. The front door has a deadbolt lock. At the beginning of the tenancy the lock would not work unless the door was slammed hard shut and/or bashed with a hammer. The landlord showed the tenant how to do this. After a while, even this did not work and the door could not be locked at all.
15. Ms Shearer raised this issue several times with Ms Henderson-Rihari, including in the breach notice dated 16 July 2018, but no repair was carried out.
16. Ms Shearer was not given a key for other entrance, a ranchslider door.
17. This meant that for most of the tenancy Ms Shearer was not able to secure the property.
18. Landlords have a duty to provide and maintain the premises in a reasonable state of repair. Landlords also have a legal duty to “provide and maintain such locks and other similar devices as are necessary to ensure that the premises are reasonably secure”.
19. Breaches of these duties are unlawful acts. A breach of the maintenance duty is subject to exemplary damages of up to \$4,000.00. A breach of the duty in respect of locks is subject to exemplary damages of up to \$1,000.00.
20. I have no explanation as to why Ms Henderson-Rihari failed to repair the front door lock after it was brought to her attention.
21. It is appropriate to award exemplary damages for these breaches. Having regard to the criteria of section 109 RTA (set out above) I will award exemplary damages of \$800.00.

### Harrassment

22. Section 38(2) RTA states that the landlord shall not cause or permit any interference with the reasonable peace, comfort, and privacy of the tenant in the use of the premises. A breach of this duty, in circumstances that amount to harassment of the tenant, is an unlawful act and exemplary damages of up to \$2,000.00 can apply.
23. During the tenancy Ms Henderson-Rihari lived in a porta-cabin next to the tenanted house. Ms Shearer submitted that Ms Henderson-Rihari harassed her in several ways, including:
  - a. Confronting and shouting at any visitors that Ms Shearer had, in particular her ex-partner;
  - b. Posting bizarre messages on social media about Ms Shearer;
  - c. Banging on the windows early in the morning and shouting at Ms Shearer and her children to get up.
  - d. Turning off the power to the property (this issue is discussed in more detail below).

24. Perhaps the most extraordinary incident discussed by Ms Shearer at the hearing relates to the shower. There was no shower in the house, only a bath. Ms Shearer asked Ms Henderson-Rihari whether she would consider installing a shower. Ms Henderson-Rihari said that she would. Then, bizarrely, Ms Henderson-Rihari fitted a shower on the outside of the house, and began using it herself.
25. Ms Henderson-Rihari's behaviour was harassment of Ms Shearer. Again, it is clear that her actions were intentional. It is appropriate to award exemplary damages.
26. The award of damages must reflect the seriousness of the breach, the impact upon Ms Shearer, and the legitimate public interest in protecting tenants from landlords who flout their legal duties.
27. I will award exemplary damages of \$1,500.00.

#### Power

28. Landlords must not interfere with the supply of services to the property. A breach of this duty is an unlawful act, and exemplary damages of up to \$1,000.00 can apply.
29. One day in July, Ms Henderson-Rihari turned off the power to the property (and to her own porta-cabin, which took power from the house via an extension lead) without warning. Ms Shearer was able to have the power reinstated after about a day.
30. Again, I have no information as to why Ms Henderson-Rihari did this. It seems that it was simply a vindictive act, intended to show Ms Shearer that Ms Henderson-Rihari was in control.
31. It is appropriate to award exemplary damages for this intentional unlawful act. I will award exemplary damages of \$750.00.

#### Retaliatory notice

32. Section 54 of the RTA states that a termination notice is retaliatory if in giving the notice the landlord was motivated by the tenant exercising a legal right or power.
33. If the Tribunal finds a notice is retaliatory, the Tribunal may set aside the notice and may also award exemplary damages of up to \$4,000.00.
34. In this instance Ms Henderson-Rihari issued a termination notice within an hour of Ms Shearer giving Ms Henderson-Rihari a 14-day breach notice. It is abundantly clear that the termination notice was issued in response to Ms Shearer raising legitimate issues about maintenance, lodgement of the bond, and harassment. The notice was retaliatory.

35. Section 54(1) states that an application seeking an order that a notice is retaliatory must be made within 28 working days of receipt of the termination notice. In this instance, the termination notice was given on 16 July and Ms Shearer's application was made on 5 October 2018, considerably outside the 28 working-day period.
36. For that reason, and for that reason alone, I am unable to make an award of exemplary damages.

Filing fee

37. Ms Shearer has been largely successful in her application and is entitled to reimbursement of the filing fee.



N Blake  
26 November 2018

**Please read carefully:**

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

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**Rehearings:**

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

**Right of Appeal:**

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

**Enforcement:**

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to [www.justice.govt.nz/fines/civil-debt](http://www.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.