

TENANCY TRIBUNAL AT Whangarei

APPLICANT: Premkamon Janlar
Tenant

RESPONDENT: Hanjoong Kim
Landlord

TENANCY ADDRESS: Room 2, 56 Maunu Road, Avenues, Whangarei 0110

ORDER

1. Hanjoong Kim must pay Premkamon Janlar \$300.44 immediately, calculated as shown in table below:

Description	Landlord	Tenant
Partial refund of bond		\$180.00
Exemplary damages: Non lodgment of bond		\$100.00
Filing fee reimbursement		\$20.44
Total award		\$300.44
Total payable by Landlord to Tenant		\$300.44

Reasons:

1. The tenant's application raises issues relating to the bond and breach of quiet enjoyment.
2. Both parties attended the hearing. Ms Janlar attended by telephone.

Bond

3. Ms Janlar rented a room and had shared use of the facilities at 56 Manu Road.
4. The rent per week was \$180.00. Ms Janlar paid a bond of \$360.00.

5. Mr Kim did not lodge the bond with the Bond Centre. The tenancy ended in May 2020. Ms Janlar has not received her bond back.
6. Mr Kim submitted that he has not refunded the bond because Ms Janlar failed to return the keys.
7. Ms Janlar submitted that she left the keys at the property when she departed, but she departed the property before the end of her notice period.
8. I accept that Ms Janlar left the keys behind, but I also accept that the keys were not there when Mr Kim carried out the final inspection. Tenants are obliged to “return to the landlord all keys” at the end of the tenancy (section 40(1)(e)(iv) Residential Tenancies Act 1986).
9. Ms Janlar did not return the keys to Mr Kim, and she is liable to Mr Kim for the reasonable cost of cutting new keys or changing the locks.
10. Mr Kim did not provide any evidence establishing the actual cost of changing locks. Mr Kim suggested refunding half of the bond to Ms Janlar (\$180.00), which I agree is a reasonable and conservative estimate of the cost of change of locks.
11. Having regard to Ms Janlar and Mr Kim’s description of the premises and of the type of arrangement that was entered to, I am satisfied that the property meets the definition of “boarding house” in the Residential tenancies Act, and that this was a “boarding house tenancy”. The relevant definitions are:

boarding house means residential premises—

- (a) containing 1 or more boarding rooms along with facilities for communal use by the tenants of the boarding house; and
- (b) occupied, or intended by the landlord to be occupied, by at least 6 tenants at any one time

boarding house tenancy means a residential tenancy in a boarding house—

- (a) that is intended to, or that does in fact, last for 28 days or more; and
- (b) under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house, and has the right to the shared use of the facilities of the boarding house

12. Section 19 of the Residential Tenancies Act 1986 (“RTA”) states that landlords must lodge all bonds with the Bond Centre within 23-working days of receipt. Failure to do this is an unlawful act, and landlords can be fined up to \$1,000.00.
13. Mr Kim submitted that because his tenants come and go frequently, it is difficult for him to manage lodging bonds with the Bond Centre. It is more convenient to hold the bonds himself.
14. Mr Kim is legally permitted to take this approach if he requires a bond equating to one weeks’ rent or less (see section 66D RTA 1986). Because he required a bond equating to two weeks’ rent, he was legally obliged to lodge it, and his failure to do so was an unlawful act.

15. Section 109 RTA states that the Tribunal may make an award of exemplary damages if an unlawful act has been committed intentionally. The Tribunal must have regard to:
 - a. The intention of the person who committed the unlawful act; and
 - b. The effect of the unlawful act; and
 - c. The interests of the person against whom the act was committed; and
 - d. The public interest.
16. In this instance I accept that Mr Kim was not familiar with this legal duties, and in particular he was not aware that he is operating a boarding house. Mr Kim failed to lodge the bond as he was legally required to, and I will make an award of exemplary damages, but at the low end of the scale.
17. I will award exemplary damages of \$100.00.

Breach of quiet enjoyment

18. Ms Janlar explained how the behaviour of some of the other tenants in the property caused her stress and inconvenience during from around mid-2019 until the end of her tenancy.
19. Ms Janlar wrote to Mr Kim twice, detailing these concerns, and asking him to take action.
20. Mr Kim submitted that on each occasion he spoke to the people that Ms Janlar had identified as the trouble makers, but those tenants denied the allegations.
21. Section 66G(2) RTA states that the landlord shall not “cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant”. A breach of this duty, in circumstances that amount to harassment of the tenant, is an unlawful act.
22. Ms Janlar’s evidence shows that her co-tenants engaged in behaviour that amounted to harassment of her. However, Mr Kim is not legally responsible for that behaviour unless he “permitted” it.
23. I am satisfied that Mr Kim did not permit it. He took reasonable and appropriate steps in response to Ms Janlar’s letters. He talked to the tenants about the issues raised in Ms Janlar’s letters, asked them to stop any inappropriate or anti-social behaviour, and encouraged them to get along. It would not have been appropriate for Mr Kim to adjudicate the dispute between the tenants.
24. Therefore this part of the application is dismissed.

Filing fee

25. The applicant has been partly successful in the application and I will also award the filing fee (section 102 RTA).



N Blake
12 November 2020

Please read carefully:

Visit 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

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

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 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.

If you require further help or information regarding this matter, visit 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, 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, pe fesoatai mai le Tenancy Services i le numera 0800 836 262.