

Righting the wrong

Rent refund claims for unconsented building works

By Michelle Igasan*

There has been a collective sigh of relief following the District Court's decision in *Inglis v Parry* (*Inglis v Parry* [2017] NZDC 26365) which has provided a more favourable position for landlords in respect of unconsented building works and tenant's claims for rent refunds.

Prior to the *Inglis* decision, there had been a number of claims in the Tenancy Tribunal where tenants relied on the decision in *Anderson v FM Custodians* in order to seek a refund of rent for premises where building works had been unconsented. In *Inglis*, the Tribunal decided (in reliance on *Anderson*) that the tenant was entitled to a full refund of rent for an amount of \$11,237.14.

The Tribunal in *Inglis* had only "considered that where any residential premise had any form of issue in relation to any Code of Compliance for Building Consent, then the premise could not lawfully be used as a residential premise and was therefore excluded from the definition of 'residential premises' in the Residential Tenancies Act (RTA)."

However, on appeal to the District Court, the Court found the Tribunal's application of *Anderson* was flawed and that the Tribunal had misdirected the law on this question. The Court held that the procedural lack of consent for the building works amounted to no more than a "technical breach" of the RTA and that lack of consent did not affect the status of the property as a "residential premise".

However, the decision in this instance found unconsented works were at the lower end of the scale of non-compliance, as such the Court may find differently depending upon type and extent of building works; for example, the Tribunal might rule in favour of a tenant if a property was found to be dangerous or unsanitary.

The use of *Anderson* as a means of claiming a rent refund has been ripe for review for some time. On the facts in *Inglis*, the tenant had suffered no detriment as a result of the unconsented works; in fact, the tenant had received a benefit from subletting of the tenancy in addition to her tenancy and any other decision would have resulted in the tenant being unjustly enriched at the landlord's expense.

The decision finally corrects what has been seen as unjust by many landlords and observers and brings clarity surrounding the issue of unconsented building works and tenancies.

While the landlord in *Inglis* was successful on appeal, the court ordered that each party pay their own costs, which in the scheme of things meant *Inglis* would no doubt be out of pocket from having incurred significant legal costs.

Consequently, this decision should also serve as a warning for property investors to take legal advice and consider unconsented building works carefully in the context of purchasing investment property, or where undertaking a part conversion of a property – for example, a garage conversion into rental accommodation, or in instances where investors have existing rental properties that have unconsented building works. ■



New law alert

By Michelle Igasan*

Healthy Homes Guarantee Act 2017

The recent regulatory spotlight on landlords now includes new regulations requiring additional standards for landlords providing tenants with a home that is warm, dry and well insulated.

The enactment of the Healthy Homes Guarantee Act 2017 (HHG) sets in motion obligations on landlords to ensure that every rental home in New Zealand meets the minimum standards of heating and insulation.

In all instances, the HHG requires landlords to guarantee that any new tenancy is properly insulated, or contains an adequate heating source, by 1 July 2019, with all tenancies required to comply with the new standards by 1 July 2024.

With the HHG now in effect, the Government will shortly implement the Healthy Homes Standards regulations, which will cover compliance standards in relation to heating, insulation, ventilation, draught stopping, drainage and moisture.

It is envisaged that the consultation process will run for the next 18 months so that key stakeholders, landlords, tenants, Public Health, building experts and industry representatives, amongst others, have the opportunity to be involved in determining these standards (although at the time of writing Parliament's submission portal has not yet opened).

The regulations will also include a mechanism for determining whether the Compliance Standards have been met and will also include different standards for the different descriptions of landlords, premises and areas in New Zealand.

New Zealand typically has a large number of older-style dwellings, many of which may require a full fit-out in order to comply with the legislation. As such, it remains to be seen just what the true impact will be to landlords and how many will exit the market because of significant compliance costs, which in turn will undoubtedly result in a reduction of rental properties available and push rents higher.



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