

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**I TE KŌTI-Ā-ROHE  
KI ŌKAHUKURA**

**CIV-2022-044-001154  
[2023] NZDC 5981**

BETWEEN CLARE DINA HARDING  
Appellant  
AND ANDRIES CAROTO  
Respondent

Hearing: 22 March 2023  
Appearances: Ms Harding in Person  
Mr Caroto in Person  
Judgment: 12 April 2023

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**RESERVED JUDGMENT OF JUDGE DAVID J CLARK**

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**Introduction**

[1] Ms Harding appeals against the decision of the Tenancy Tribunal dated 3 July 2021.<sup>1</sup> In its decision the Tribunal ordered Ms Harding to pay the sum of \$3,425 made up as follows:

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Lock/key replacement	\$95.00	
Bond		\$1,920.00
Compensation: unlawful entry		\$500.00
Reimbursement of Rent		\$1,100.00
<b>Total Award</b>	<b>\$95.00</b>	<b>\$3,520.00</b>
<b>Total payable by Tenant to Landlord<sup>2</sup></b>		<b>\$3,425.00</b>

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<sup>1</sup> *Clare Harding v Andries Caroto* [2021] NZTT North Shore 4261473, 4241288.

<sup>2</sup> The Tenancy Tribunal described the amount payable was from Mr Caroto to Ms Harding when it was common ground Ms Harding was to pay Mr Caroto.

## **Procedural Background**

[2] Ms Harding is the owner of a property located at 75 Aberley Road, Schnapper Rock, Auckland. Mr Caroto was the tenant of the property from October 2019 until December 2019.

[3] The Tribunal's decision was the resumption of a long running dispute between Ms Harding and Mr Caroto concerning the tenancy. The matter originally came before the Tribunal in July 2020 when the Tribunal determined it had jurisdiction to hear the claim.<sup>3</sup> Ms Harding argued the Tribunal did not have any jurisdiction because s 5(1)(n) of the Residential Tenancies Act 1986 (the Act) applied which excluded this tenancy from the provisions of the Act.

[4] Ms Harding then appealed the decision to the District Court. Judge G M Harrison in the District Court dismissed the appeal.<sup>4</sup> Ms Harding then appealed the decision to the High Court. As in the District Court, Walker J held<sup>5</sup> s 5(1)(n) of the Act did not apply<sup>6</sup> and dismissed the appeal.

## **Factual Background**

[5] The factual background has been well and truly set out in the various decisions of the Tribunal, the District Court and the High Court. It is therefore unnecessary to repeat the background other than to provide a brief summary:

- (a) The property consists of a two-level house with six bedrooms. The upper level has four bedrooms, a kitchen, a bathroom and the living area while the lower area has a living room, laundry and garage.
- (b) Also included in the lower level of the property are two bedrooms, a kitchenette, a bathroom, laundry and living room. At various times

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<sup>3</sup> *Caroto v Harding and Harding* [2020] NZTT North Shore 4241288, 4261473.

<sup>4</sup> *Harding v Schellevis & Ors* [2021] NZDC 1802.

<sup>5</sup> *Harding v Schellevis & Ors* [2021] NZHC 1265.

<sup>6</sup> *Ibid* at para [40].

Mr Caroto occupied this area. I will refer to it as the “granny flat” as many of the other decisions have also.

- (c) During the term of Mr Caroto’s tenancy the contractual arrangement was noted to be a “flat/house – sharing agreement”. In doing so, Ms Harding contended s 5(1)(n) of the Act applied to exempt the tenancy from the Act. As noted, that position was rejected by the Tribunal, District Court and High Court.
- (d) Mr Caroto initially resided in the premises himself. During the tenancy, he was joined by his wife who had recently immigrated from South Africa. Mr Caroto said it was always intended his wife would join him in the premises and this was communicated to Ms Harding at the outset of the tenancy. Mr Caroto says once his wife joined him the rent was increased by \$30 per week to take into account the additional occupancy.
- (e) Ms Harding rejected there was any such agreement for Mr Caroto’s wife to join him. She contended no details about her were provided to enable her to ‘vet’ her.
- (f) This disagreement appeared to ignite several conflicts between the parties which caused the relationship to quickly deteriorate. They included claims Ms Harding entered the granny flat without authorisation and without notice and where Ms Harding then served a trespass notice on Mrs Caroto.

[6] The tenancy terminated in December 2020. At issue in the Tribunal was whether the tenancy was a fixed term tenancy, whether a bond needed to be paid, whether either Mr Caroto and/or Ms Harding attempted to prematurely terminate the fixed term tenancy and in doing so, whether there were any arrears of rent which needed to be paid. In addition, and on its own volition, the Tribunal considered whether the premises were unlawful premises for the purposes of s 78A of the Act.<sup>7</sup>

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<sup>7</sup> At para [5] of the Tribunal’s decision.

[7] As noted, Mr Caroto left the premises in December 2020. The flat sharing arrangement was due to expire on 15 January 2021. Accordingly, the Tribunal found that the tenancy was a fixed term tenancy with the expiry date being 15 January 2021. The issue was whether Mr Caroto's early departure of the tenancy meant that he needed to pay arrears of rent from the date he left the premises to 15 January 2021.

## **Findings of the Tribunal**

### *Unlawful Premises*

[8] The Tribunal raised this issue because in tenanting the granny flat it considered whether it was unlawful to do so because the tenancy potentially did not comply with the Building Act 2014 (the BAct), Building Code and associated building regulations.

[9] The relevant parts of s 78A of the Act provide:

#### **78A Orders of Tribunal relating to unlawful residential premises**

- (1) This section applies in any matter where the Tribunal, on application by a party or otherwise on the evidence before the Tribunal in respect of any claim within its jurisdiction, determines or declares that the premises are, or were at any material time, unlawful residential premises.
- (2) For the purposes of this Act, unlawful residential premises means residential premises that are used for occupation for a person as a place of residence but—
  - (a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and
  - (b) where the landlord's failure to comply with the landlord's obligations under section 36 or 45(1)(c)

...

[10] The Tribunal held the granny flat was an unlawful premise. It did so because it found there was a failure by Ms Harding to comply with s 45(1)(c) of the Act which requires compliance with any enactments or regulations to do with buildings. In this instance the relevant enactment was the BAct and Buildings (Specified Systems, Change the Use and Earthquake Prone Buildings) Regulations 2005 (the BSSR).

[11] The Tribunal held Ms Harding was required obtain a change of use<sup>8</sup> of the premises. Schedule 2 of the BSSR states as follows:

SR (Sleeping Residential)	Attached and multi-unit residential dwellings, including household units attached to spaces or dwellings with the same or other uses, such as caretakers' flats, and residential accommodation above a shop	Multi-unit dwellings, flats or apartments
SH (Sleeping Single Home)	Detached dwellings where people live as a single household or family, including attached self-contained spaces such as granny flats when occupied by a member of the same family, and garages (whether detached or part of the same building) if primarily for storage of the occupants' vehicles, tools, and garden implements.	Dwellings or houses separated from each other by distance

[12] The Tribunal held the consented use of the premises was a "Sleeping Single Home" or "SH" but because of the tenancy, the consented use should have been a "Sleeping Residential" or an "SR". On that basis the Tribunal found a change of use between an SH and an SR was required under ss 114 and 115 of the BAct. To do so would mean Ms Harding needed to obtain written notice from Council that its new use as a SR would comply with the Building Code.<sup>9</sup> The Tribunal stated:<sup>10</sup>

There is no evidence of such written notice, nor is there evidence that the conversion of the premises into two flats was consented by the council or compliant with the Building Code. In fact, the council served a notice on the landlord in 2015 prohibiting the use of the granny flat as a separate household unit as there was no firewall between the two premises.

[13] The Tribunal held Ms Harding was in breach of s 45(1)(c) of the Building Act and therefore the premises were unlawful residential premises for the purposes of s 78A of the Act.

[14] The Tribunal then turned to consider whether there were special circumstances under s 78A(4)(a)(ii) of the Act which warranted a reduction in the rental that should be refunded.

<sup>8</sup> Pursuant to ss114 and 115 of the BA and Regulation 6 and Schedule 2 of the BSSR.

<sup>9</sup> See paras [33] to [34].

<sup>10</sup> Ibid at 36.

[15] Noting Parliament’s intention behind the introduction of s 78A was to ensure landlords do not rent out inappropriate premises which exposed tenants to health and safety risks,<sup>11</sup> the Tribunal found there was no intent behind renting out the (unconsented) premises and the granny flat was otherwise safe and sanitary. In the circumstances the breach was a “technical” breach which justified a finding of special circumstances.

[16] The Tribunal found there should be a reduction in the total rent which would otherwise be refunded. This sum was 25 percent of the total rent which was paid or \$1,100.

#### *Unlawful Occupant*

[17] Ms Harding argued Mrs Caroto was an unlawful occupant and sought exemplary damages. The Tribunal found, on the evidence, Ms Harding was aware Mrs Caroto would be joining Mr Caroto from the outset of the tenancy and therefore dismissed this claim.

#### *Rent Arrears*

[18] The Tribunal held there was a fixed term tenancy which expired on 15 January. The early departure of Mr Caroto meant there was a shortfall in the rental which should have been paid which Ms Harding claimed was \$1,920.

[19] The Tribunal held because of the finding the premises were unlawful, s 78A carried a presumption rent arrears would not be ordered unless the interests of justice required arrears to be paid. The Tribunal found no special circumstances existed to justify any arrears to be paid, especially given both parties had contributed to the unhappy situation which caused the tenancy to end. Ms Harding’s application was therefore dismissed.

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<sup>11</sup> See paras [43] to [44].

### *Unlawful Entry*

[20] The Tribunal had little difficulty in finding Ms Harding had breached her obligations as a landlord where Ms Harding was caught looking through personal documents belonging to Mr Caroto. Whilst dismissing the other claims by Mr Caroto in terms of unlawful entry, the Tribunal upheld this ground and awarded the sum of \$500 in exemplary damages against Ms Harding.

### *Payment of the Bond*

[21] Mr Caroto sought exemplary damages for the non-payment of the bond to the Bond Centre. The Tribunal found the non-payment was unintentional given Ms Harding's contention from the outset the tenancy did not fall under the Act. Accordingly, the Tribunal dismissed the claim but awarded the refund of the amount which had been paid as a bond.

[22] The above findings have all been appealed by Ms Harding. I note Mr Caroto also made claims which were dismissed by the Tribunal. It is unnecessary for me to consider them further as Mr Caroto has not pursued them on appeal.

### **Grounds for Appeal**

[23] As noted, Ms Harding appeals against the findings in relation to the payment of the bond, compensation for unlawful entry, unauthorised occupant, and unlawful premises.

[24] For the first three grounds she contends the Tribunal was wrong in reaching the findings based on the available evidence which was before the Tribunal. She maintains the entry was lawful given notice had been given. She accepts she looked through private information but believes she was justified in the circumstances where she was endeavouring to find out more information about Mrs Caroto. She also says the only reason why she was discovered was through a private surveillance camera which she says was illegally set up by Mr Caroto.

[25] Her principal argument on appeal however focuses on the finding by the Tribunal the premises were unlawful. She says the use of the property is a sleeping residential unit (multi-unit) property (or an “SR”), with the use being changed by Auckland Council in 2019. She argues for this to occur, Council must have been satisfied the property complied with the Building Code.

[26] The change of use she says occurred in 2019 when Council, having become aware of Ms Harding renting of the granny flat, changed the use and increased her rates as a consequence. She says she objected to this and sought a change back to a SH use.

[27] On 28 February 2020 she received an email from Council confirming the status of the premises. The relevant parts of the email state as follows:

We have investigated your concerns and confirm that the decision regarding the number of separately used or inhabited parts will remain as two.

Rates are based on actual use of the property. The definition of a separately used or inhabited part (SUIP) is as follows: “any part of a rating unit that is separately used or inhabited by the rate payer, or by any other person having the right to use or inhabit that part by virtue of a tenancy, lease, licence or any other agreement.” This is in accordance with our Long-Term Plan 2018-2028.

As per our previous conversation, you have advised that your (sic) rent out a portion of your property to students, and will therefore be under an agreement. In this case the property will remain as having two SUIPs, with added findings further leading to a conclusion of a second SUIP at the applicable link: ...

[28] Ms Harding argues that the Tribunal failed to consider this evidence by assessing a change of use had occurred. She also referred to the ratings information on Auckland Council’s website for the property which records the property is rated as a multi-unit dwelling.

### **Approach on Appeal**

[29] Section 117 sets out the right to appeal under the Act:

... Any party to any proceedings before the Tribunal who is dissatisfied with the decision of the Tribunal in the proceeding may appeal to the District Court against that decision.



[30] Subsection (4) of s 117 of the Act provides that the provisions of s 85 of the Act apply in an appeal hearing:

**85 Manner in which jurisdiction is to be exercised**

- (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
- (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

[31] The effect of s 117(4) was summarised by Judge Joyce QC in *Housing New Zealand Corporation v Salt*<sup>12</sup> as follows:

So s 117(4) simply tells this court that, like the tribunal in its original jurisdiction, it is to approach the exercise of its appellate jurisdiction in a practical (not rule-bound) and fair way; and, like the tribunal, though bound to adhere to general principles, need not do what otherwise the law might strictly require or impose.”

[32] The appellate body will only differ from the factual findings of the Tribunal if any conclusions reached were not open on the evidence before it, or where there was no evidence to support the conclusion or, where the Tribunal was plainly wrong in the conclusion it reached.

[33] Section 18 of the Act provides options to a District Court on appeal to quash any order made; order a rehearing by the Tribunal, substitute any orders the Tribunal could have made or, dismiss the appeal.

**Discussion**

[34] I deal firstly with whether the premises were unlawful premises as this will determine whether the compensation payable for the bond or the arrears of rent should have been payable.

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<sup>12</sup> *Housing Corporation New Zealand v Salt* District Court Auckland CIV 2007-004-002875, 9 May 2008 at para 49.

## *Unlawful Premises*

[35] The starting point is to consider again the definition of a “household unit”. This definition is found in s 7 of the BA which states:

### ***Household unit—***

- (a) means a building or group of buildings, or part of a building or group of buildings, that is—
  - (i) used, or intended to be used, only or mainly for residential purposes; and
  - (ii) occupied, or intended to be occupied, exclusively as the home or residence of not more than 1 household; but
- (b) does not include a hostel, boarding house, or other specialised accommodation

[36] Prima facie, the Tribunal was correct in finding the premises were unlawful because the granny flat could not be lawfully occupied under s 78A unless a change of use from a SH to an SR has occurred. This is because as a “household unit” the consented single home, needed to be exclusively occupied as a home or residence of *one* household. Because there were two independent tenancies operating from the house, it was unlawful.

[37] Ms Harding’s principal argument is the premises have had a change of use from an SH to an SR. She accepts a change of use is required by ss 114 and 115 of the BA and regulations 5 and 6 of the BSSR but says compliance with these sections must have occurred for Council to make the changes it did. Sections 114 and 115 of the BA state:

### **114 Owner must give notice of change of use, extension of life, or subdivision of buildings**

- (1) In this section and section 115, ***change the use***, in relation to a building, means to change the use of the building in a manner described in the regulations.
- (2) An owner of a building must give written notice to the territorial authority if the owner proposes—
  - (a) to change the use of a building; or

- (b) to extend the life of a building that has a specified intended life; or
- (c) to subdivide land in a manner that affects a building.

### **115 Code compliance requirements: change of use**

- (1) An owner of a building must not change the use of the building,—
  - (a) in a case where the change involves the incorporation in the building of one or more household units where household units did not exist before, unless the territorial authority gives the owner written notice that the territorial authority is satisfied, on reasonable grounds, that the building, in its new use, will comply, as nearly as is reasonably practicable, with the building code in all respects...

[38] Regulations 5 and 6 of the BSSR state:

#### **5 Change the use: what it means**

For the purposes of sections 114 and 115 of the Act, change the use, in relation to a building, means to change the use (determined in accordance with regulation 6) of all or a part of the building from one use (the old use) to another (the new use) and with the result that the requirements for compliance with the building code in relation to the new use are additional to, or more onerous than, the requirements for compliance with the building code in relation to the old use.

#### **6 Uses of buildings for purposes of regulation 5**

For the purposes of regulation 5, every building or part of a building has a use specified in the table in Schedule 2.

A building or part of a building has a use in column 1 of the table if (taking into account the primary group for whom it was constructed, and no other users of the building or part) the building or part is only or mainly a space, or it is a dwelling, of the kind described opposite that use in column 2 of the table.<sup>13</sup>

[39] It is clear from these provisions, the owner of premises has the regulatory responsibility to ensure a change of use is correctly undertaken. In doing so, the owner must ensure the Building Code is complied with. In this instance, Council had already confirmed to Ms Harding in 2015 she was unable to rent out the premises as a self-contained separate premises because a firewall was not present. Consented work

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<sup>13</sup> See the relevant parts of the table at [11] above.

would need to have been undertaken and a code compliance certificate issued. None of this occurred.

[40] Ms Harding is correct Council has assessed the premises as “multi-use”. However, this assessment is for rating purposes and is a different consideration than an assessment of the premises for its regulatory use. As the Council email says, rates are based on the actual use of the property and whether there are a number of SUIPs<sup>14</sup> operating within the premises. The “multi-use” of the premises can occur by virtue of a tenancy but also by a lease, licence or any other agreement. Council elected to rate the premises as “multi-use” (and derive additional rates from the property) because Ms Harding acknowledged she was renting the granny premises under her flat sharing arrangement. As such she was deriving income which triggered Council to rate it as a multi and not a single SUIP.

[41] Because Council’s decision is based on the contractual arrangement between the owner of the premises and the “tenant”, it will have the effect of treating the premises as a “multi-use” premises but that does not mean it complies with the requirements under the Act, the BAct and BSSR, and in particular, the requirement for Ms Harding to implement the change of use under ss 114 and 115 of the BAct. The failure to do this means there was no compliance, and therefore the premises were unlawful.

[42] I turn then to consider whether, for the purposes of s 78A, the rental rebate which was awarded is appropriate in the circumstances.

[43] In the recent case of *Johnson v Clements*<sup>15</sup> I summarised the position on this issue as follows:

[35] The issue of what constitutes special circumstances has been considered in several recent decisions. The starting point is the decision of the Court of Appeal in *Want v Sunnor Dennis Parbhu & Kumud Patel as Trustees of the Impala Trust*<sup>16</sup> which considered the conflict between the

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<sup>14</sup> This assessment is then used to determine what Council services are provided to the property and how they are paid for based on the type of rates charged for the property.

<sup>15</sup> *Johnson v Clements* [2022] NZDC 20805, 28 October 2022.

<sup>16</sup> *Want v Sunnor Dennis Parbhu & Kumud Patel as Trustees of the Impala Trust* [2019] NZCA 6 and 4.

decisions of *Anderson v F M Custodians Limited*<sup>17</sup> and *Parbhu v Want*.<sup>18</sup> In *Want* the Court of Appeal held:

Fourthly, we agree with Cook J that s 137 does not justify the approach taken in *F M Custodians*. The effect of relying on that provision is that any relative breach by a landlord (for instance, the incomplete planning or building consent of an otherwise imminently safe and sound accessory unit) would mean the reasonable dispute resolution provisions of that would not apply ... but ... would compel total restitution of rent paid regardless of the degree of benefit achieved by the tenant under the voided tenancy. ... The purpose of s 137 is not to apply the twin sledgehammers avoiding and total restitution at every incidental repertory and non-compliance.

[36] Although the Court of Appeal was dealing with the refund of rental under s 137(4) of the Act the principles to be applied under s 78A of the Act are the same. An otherwise compliant premise should be recognised as such thereby avoiding the “sledgehammer” approach of having to refund all rent which was paid during the tenancy.

[37] I adopted the same approach in the decision of *Ting Han Chen v Ashok Kumar*<sup>19</sup> which was an appeal from the Tribunal. In my decision I found the Kumar family wanted to stay in the premises. It was only because of the termination of the tenancy Mr Kumar decided to file a claim in the Tenancy Tribunal.

[38] I agreed with the Tribunal the premises were unlawful premises,<sup>20</sup> however I held the Kumar’s were provided with premises which were otherwise safe and sanitary, and compliant in terms of healthy homes standards. On that basis, I found “special circumstances” existed justifying a reduction in the refund of rental which was ordered to be paid by the Tribunal. I reduced the refund of rent from an award of \$45,000 down to an award of \$2,000, the \$2,000 reflecting the breach of s 78A of the RTA in the circumstances of that case.

[39] I adopted a similar approach in the case of *Kemp v Elliot*<sup>21</sup> where a house which had failed to obtain code compliance certificates in respect of the build and a woodburner was an otherwise complaint premise as both the house and woodburner had received building consents and were built/installed in accordance with those consents. I emphasised the approach in assessing “special circumstances” was:

Whether special circumstances exist under s 78(4)(a)(ii) ... I am entitled to consider the nature of the unlawful breach in conjunction with the benefit of the utility ... received during the tenancy.

[44] In a further case of *Exclusive Estates Limited v Hoffman*<sup>22</sup> I noted:

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<sup>17</sup> *Anderson v F M Custodians Limited* [2013] NZHC 2423.

<sup>18</sup> *Parbhu v Want* [2018] NZHC 2079.

<sup>19</sup> *Ting Han Chen v Ashok Kumar* [2022] NZDC 7783 (16 May 2022).

<sup>20</sup> There being a breach of ss 114 and 115 of the BA.

<sup>21</sup> *Kemp v Elliott* [2022] NZDC 17792.

<sup>22</sup> *Exclusive Estates Limited v Hoffman* [2022] NZDC 25495

[77] While I accept the decisions in *Johnson, Chen* and *Kemp* had not been delivered when either the substantive or the rehearing decisions were delivered, the same does not apply to the Court of Appeal decision in *Want*. A further reduction in the rental to be refunded was justified given the quality of the premises and benefit of its utility to Ms Hoffman ... In considering the appropriate refund of rental, I am of the view these premises are more compliant than the premises which were considered in *Johnson, Chen* and *Kemp*. These premises are a modern home where consents were issued including a code of compliance certificate. In all respects it complied with modern building standards and expectations of what constitutes a healthy home. There can be no question therefore it was fit for purpose for residential use.

[78] In these circumstances, a rental refund is justified for the purposes of s 78A(4). However, given the clear wording and expectations of the Court of Appeal, I disagree with the Tribunal the refund should be fixed at 25 per cent of the total rental paid. In each of the cases I have mentioned, I have found the award should be \$2,000 which is not fixed as a percentage basis<sup>23</sup> but rather acknowledges that whilst the premises were “unlawful premises” the premises were otherwise safe and compliant, and the benefit of the utility received by the tenant was significant.

[79] Given my finding these premises are more compliant than the other premises in the other cases I have mentioned, I consider the rental amount which is to be refunded should be fixed at \$1,500. I order accordingly.

[45] In my view, the fixing of a percentage of what constitutes special circumstances for the rental rate will not always be appropriate. To do so runs the risk of a skewed result where a landlord receives a punitive monetary penalty greater than another tenancy (but has a similar technical breach) just because the rental period is longer than that other tenancy. The focus needs to be on the nature of the breach measured against the benefit of the utility, considered against all the relevant circumstances which will include the length of the tenancy period.

[46] In considering all the circumstances of this case, I accept the Tribunal’s finding that this is a technical breach. I also consider the rental period was relative short, but in terms of the granny flat it was relatively safe and sanitary although, failed to provide a firewall as identified by Council. I also consider the issues raised in these proceedings are matters of some complexity which has led to some confusion and inconsistency. Given all of the above, including the total amount of rental that was

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<sup>23</sup> Section 78A(4)(a)(ii) does not express the sum to be refunded as a percentage but only a sum which should be paid “having regard to the special circumstances of the matter, including the nature of the premises, it is fair to deduct”.

paid, in my view the amount that should be rebated can be fixed at the sum of \$975. I order accordingly.

*Arrears of Rent / Payment of the Bond*

[47] I see no reason to disagree with the Tribunal's analysis of whether any arrears were owed or whether the bond payment should have been made. There was an obligation on Ms Harding to lodge a bond which she failed to do so. I also agree, in the circumstances of this case no arrears of rental should be payable. This is especially so for not only the unlawfulness of the premises but also the contribution Ms Harding made towards why the tenancy ended prematurely.

*Unlawful Entry*

[48] Ms Harding confirms she went through the personal documents of Mr Caroto. Her primary complaint was she was caught doing this because Mr Caroto had illegally set up a security camera which observed her going through his personal information. I have no difficulty in finding, as the Tribunal did, under no circumstances was Ms Harding entitled to go through Mr Caroto's personal items. It is irrelevant as to how she was observed doing this, the fact remains she was not lawfully entitled to look at Mr Caroto's personal information. Accordingly, I dismiss this ground of appeal as well.

**Result**

[49] The appeal is upheld in part. For the reasons provided I quash the orders made by the Tribunal in relation to the refund of rent under s 78A(4)(a)(ii) which I confirm is \$975. All other orders made by the Tribunal will stand.

Signed at Auckland this 12<sup>th</sup> day of April 2023 at 10.00 am

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Judge D J Clark

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 12/04/2023