

Case number **2017/SIR000022**

**CASE
INFO**

Applicant(s)

Andrew Battersby
Jane Battersby

Respondent

Mahesh Thapa
Sampurna Thapa

Regarding

Internal Review of Decision (Housing & Civil)

Hearing held on: 10 February 2017

Before Tribunal Member: Justice Parker

In attendance:

Mr Kevin Hodges, agent, Kevin Hodges Real Estate
Ms Wendy Marshall Hodgson, agent, Kevin Hodges Real Estate
Mr Mahesh Thapa, tenant

Findings of the Tribunal:

1. This is an application by the landlords for internal review of a decision made by Member Sudano on 11 January 2017. The case concerns an application for payment of the bond and compensation following the breaking of a tenancy agreement by the tenants. Ms Sudano held that the landlords had not met their obligation under s 78 of the *Residential Tenancies Act* to mitigate their loss by lowering the rent even after the agent had requested in writing that they do so after a period of three months in which there had been little interest by prospective tenants. On that basis Ms Sudano concluded that the tenants were not liable to pay compensation and dismissed the landlords' application.
2. For the reasons set out in the separately published Statement of Reasons, I do not consider that Ms Sudano made the correct and preferable decision. I am satisfied that tenants have not proven that the landlords did not take reasonable steps to mitigate their loss. I therefore uphold the landlords' application, set aside the orders made by Ms Sudano and instead order that the tenants pay compensation on account of their breach of the tenancy agreement.

Orders of the Tribunal:

1. The Tribunal orders of 11 January 2017 are set aside.
2. The tenants owe the landlords compensation in the sum of \$2,320.29. This amount includes:
 - a. \$2,112.85 for rent lost by the landlords;
 - b. \$93.99 for reletting and advertising fees; and

- c. \$113.45 for water supply and usage charges.
3. The compensation is to be paid as follows:
 - a. \$1,800 by way of the bond being released to the landlords; and
 - b. \$520.29 to be paid by the tenants.
4. The tenants must pay \$520.29 to the landlords by close of business on 15 March 2017. This order is enforceable in the Magistrate's Court.
5. The bond in the sum of \$1,800 (BN:4026676-5) is to be paid to the landlords in full.



Justice Parker
President

1 March 2017

**TENANCY
INFO**

Tenancy address	Unit 4 / 40 Clark Ave, GLANDORE SA 5037
Tenancy commenced	8 September 2015
Tenancy term	1 Year
Tenancy type	Fixed Term
Tenants	Sampurna Thapa, Mahesh Thapa
Landlords	Jane and Andrew Battersby
Agent	Kevin Hodges Real Estate
Rent	\$300.00 Weekly

Summary of Justice Parker's decision in A & J Battersby v M & S Thapa (2017/SIR000022)

1. It is a basic principle of contract law that a party who has breach a contract is liable to compensate the other party for the losses they suffer as a result of that breach.
2. However, that duty is subject to the requirement that the party who has suffered loss must take reasonable steps to mitigate (reduce) their loss.
3. That principle is replicated in Section 78 of the Residential Tenancies Act 1995 (the Act) (and Section 94 in relation to abandoned tenancies).
4. The obligation to compensate a landlord (by a tenant who has left a tenancy prior to the expiry of the term of the tenancy) continues until the new tenant is granted possession of the property and accepts the obligation to pay rent.
5. A party who has breached a contract carries the onus of proving that the other party has not taken reasonable steps to mitigate their loss.
6. In cases of this type the issues are:
 - a. Should the landlord reduce the rent; and
 - b. How extensive should the steps be to find a new tenant.
7. There is no hard and fast formula about what is reasonable – it will all depend upon the facts of each case.
8. A landlord is not required to reduce the rent every 3 weeks if a new tenant is not found but the landlord should consider regularly whether or not to do so.
9. A landlord is not obliged to accept new tenants who may be unsuitable (eg poor rental history, lack of references etc).
10. In this case there was evidence from another agent who had found difficulty in renting out another unit in the same group which Justice Parker found to be particularly useful.
11. The landlord commenced advertising before the tenant vacated (but is under no obligation to do so).
12. Ads were placed on 9 websites and 12 open inspections were conducted.
13. Justice Parker found that the landlords had taken appropriate steps to mitigate their loss and therefore the tenants had to pay the rent loss in full (7 weeks and 1 day).