TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. [The landlord/s] must pay [The tenant/s] $3,117.86 immediately, calculated as shown in table below.
2. [The landlord/s]'s claim for costs to break the fixed term tenancy is dismissed.

Reasons:

1. [Tenant 1] and [Tenant 2] (tenants) attended the hearings and represented [Tenant 3] with his permission. [The landlord's representatives] represented the landlord.
2. The tenants' application is for:

   a) early release from the fixed term tenancy because they believe they were unable to move into the property because of its condition at the start of the tenancy; the landlord breached their right to privacy and safety as the property manager and others went into the property without giving notice, and the property was not secure as windows and doors were left open, a window was damaged in the garage which enabled access to the house and the garage door remote was removed from the property without any explanation of who had taken it

   b) compensation of $4,170.00 for the breaches set out in a) above

   c) exemplary damages for the breaches set out in a) above.

3. The landlord has applied for:

   a) rent of $2,357.14 to the day before a new tenancy commenced, and

   b) costs incurred of $761.88 to break the fixed term tenancy.

4. Both parties claim the bond and reimbursement of their filing fees.

Background

5. The tenancy premises is a four bedroomed house with 2 living areas and 2 bathrooms. Rent is $750.00 a week.

6. The tenants, who consist of a mother and her adult children, advised they viewed the property while the previous tenants were still living in the property. They said doors and windows were open throughout the property, and there were cats in the property as well as several dogs in the backyard at the time which meant they did not access that area.

7. The tenants signed a tenancy agreement on 14 September 2023 for a fixed term tenancy starting on 29 September 2023 and ending on 28 September 2024. The tenants did not intend to move into the tenancy premises until 4 October when a moving truck was booked for their furniture and belongings, but were intending to move goods into the garage and the house prior to then.

8. The tenants met the property manager at the premises the day before the tenancy started. They were very concerned with the state of the property as it was smelly and unclean. They agreed to the property manager's request that the previous tenants could return on Saturday 30 September to finish cleaning the premises.

9. When the tenants arrived on 30 September with a trailer load of items they intended to be left in the garage, the property was not in the condition they expected. They phoned the property manager about their concerns and sent an email setting out their concerns, specifically that:

   a) the house smelled strongly of animal urine, which they believed was mainly cat urine, and cleaning chemicals. The tenants described the smell in their email as "absolutely putrid and very unsanitary". They said they felt unwell walking through the property, were "nauseated, light headed, [their] eyes were irritated and [their] noses blocked and stinging". The tenants raised their concerns that exposure to cat urine was hazardous to their health as it contains large amounts of ammonia and can effect the respiratory system. One of the tenants is a severe asthmatic and they were very concerned how living in the property would affect his health.

   b) the house was not clean. Ceilings, walls, doors and door handles and floors were dirty and sticky to touch. The floors in the kitchen, bathrooms and entrance were extremely sticky; the expel air was thick with grease. All the

windows were extremely dirty, marked with mud which they believed was from dogs scratching at the windows. Some curtains were damaged and mouldy.

c) The back lawn was covered in dog poo and was not sanitary. There was rubbish, including sanitary pads, cutlery and numerous cable ties around the outside.

d) the garage had an "unpleasant and strong smell"[1] and there was a mould on the garage ceiling and door.

10. The tenants advised in their email they would like to terminate the tenancy. They considered the tenancy agreement had been breached as the property was not in a reasonably clean and liveable standard.

11. The property manager advised on Monday 2 October that:

- a deep clean of the property had been carried out and that their entire team considered the "condition of the house is suitable for a comfortable living environment";
- the "lingering smell has significantly dissipated" and windows would be left open that day;
- the floors had been cleaned, the mould on the curtains addressed, all windows were washed and the gardens tidied up;
- the previous tenant was in the process of reseeding the lawn, and would be cleaning the stains on the garage floor;
- if they decided to terminate the tenancy there would be associated break fees and they would be liable for rent until another tenant was found.

12. The tenants responded that they wanted to terminate the tenancy from 3 October and requested return of their bond and two weeks payment. The tenants never moved into the property.

13. The tenants found windows and a sliding door open with no one at the house on Sunday 1 October, Monday 2 October and Wednesday 4 October.

14. On 5 October the previous tenants cleaned the mould in the garage and the stain from the garage floor. The tenants discovered that the garage door remote that had been in the garage was missing, a window in the garage was broken, and that the latches securing a garage window were damaged[2]. The garage has internal access to the house and anyone entering the garage would be able to access the house.

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[1] Described in the hearing by the tenants as a smell similar to that of dead meat
[2] One latch was missing and the other was broken off and bent upwards.

15. The tenants told the landlord on 9 October they would be submitting a claim to Tribunal. On 10 October the landlord confirmed resolution of the matter would be left to the Tribunal but said that if the property no longer suited the tenants' needs the keys could be returned which would allow them to start the process of finding new tenants. The tenants were overseas and unable to return the keys; the landlord used their own keys to access the property. A new tenant was found and their commenced on 4 November. The tenants did not learn that a new tenant had been found until they drove past the property on 5 November.

The tenants' claim:

Has the landlord breached obligations owed to the tenant under the RTA?

16. The tenants claim is based on obligations the landlord has under the RTA which the tenants say the landlord has breached. I will consider those obligations and whether they have been breached, before going on to consider whether the alleged breaches are grounds to reduce the term of the tenancy and whether compensation and/or exemplary damages should be awarded.

Was the tenancy provided in a reasonable state of cleanliness?

17. After considering all the evidence presented by both parties, including the photographs presented by both parties, I am satisfied that the tenancy was not provided to the tenants in a reasonable state of cleanliness. This is a breach of the landlord's obligation under s 45(1)(a) of the Residential tenancies Act 1986 (RTA).

18. In relation to the smell present at the start of the tenancy I find the tenants' evidence persuasive that the property smelled strongly of cat urine and a chemicals. The property manager [The property manager/s] said she believed the previous tenants had cleaned the carpets on 25 September and that the smell was mainly caused as the carpet was still damp and the property had been closed up for several days before the tenants went through on 28 September.

19. However the tenants had the property tested for methamphetamine residue on 2 October and the tester's report states "Pungent smell throughout entire house". The testing was done on the same day that the landlord confirmed the smell had "significantly" dissipated". I find the evidence of the tester more convincing that the landlord's evidence. The landlord has continued to leave doors and windows open from 2 to 4 October to air the premises. The landlord carried out a professional carpet clean on 17 October. The carpet cleaner has stated that the carpet did not smell when he was on site, however I note that this is 18 days after the tenancy commenced.

20. The tenant's photographs support that the outside of the property was in an unacceptable condition at the start of the tenancy particularly the dog poo that had disintegrated to cause a sludgy layer in areas in the back yard.

21. Whether the premises was let in a reasonable state of cleanliness is an objective standard. I am satisfied that the tenants' evidence has proved a breach of that standard occurred.

Has the landlord or others acting for the landlord entered the premises without giving notice?

22. I find the landlord and other persons arranged by the landlord, have entered the premises without the consent of the tenants and without giving the appropriate notice of entry required under s 48, RTA and that a breach has occurred.

23. The tenants agreed to the previous tenants entering the premises on 30 September, however they have entered after that date without consent from the tenants. Various contractors and the landlord (owner) have carried out work at the property without the tenants being notified. The property manager has continually entered the property to open windows and doors, in an effort to air the property and reduce the smell without giving the tenants any notice.

Was the property secure?

24. The tenants found the garage door remote was missing on 5 October, and that a garage window was unsecure. The tenants asked the property manager three times where the remote was but never received a response. They were concerned that someone had the remote that should not have it, who may then access the house and take any items they placed in the house or garage. At the hearing the property managers said they had overlooked responding and that they had the remote as it needed repair.

25. The tenants were very concerned that the house was not secure. The landlord had left a sliding door open on at least two occasions that the tenants knew of. The property manager confirmed the door had been left open from around 9.00am to 4.00pm on two occasions. While the door was not visible from the road, there was nothing preventing anyone from accessing the house.

26. The latches on a garage window were damaged and could not be securely shut. The garage is attached to, and has internal access to, the house. The landlord said the damage was caused by the previous tenants levering open the window to gain access when they did not have keys to enter. I am satisfied the garage window in its damaged state could easily have been levered open from the outside.

27. I note the landlord had the window latch fixed on 12 October. The landlord had expected the latch to be repaired by the previous tenants before the end of their tenancy, but the previous tenants had failed to do so.

28. I find the house was not secure and that the landlord had breached its obligation to provide the house in a reasonable state of repair (section 45(1)(b)). The landlord has also breached its obligation under section 46 to provide and maintain locks and other similar devices as necessary to ensure the premises are reasonably secure.

Did the landlord breach the tenants right to quiet enjoyment?

29. Tenants are entitled to quiet enjoyment of the premises without interruption of the landlord. In particularly the landlord must not cause or permit interference with the reasonable peace, comfort, or privacy of the tenant (section 38 (1) and (2), RTA). Effectively this imposes a duty on the landlord not to do anything to interrupt the tenant's use of the premises and preserves the tenant's right not to have the quality of the tenancy significantly or unreasonably impaired by actions of the landlord or their agent/s.

30. The District Court in *Lucas v Patterson* [3] considered the definition of peace, comfort and privacy to be:

> "Peace" in the use of the premises is freedom of the mind from annoyance, distraction, dissension, anxiety, insecurity or noise that might arise from unwarranted attendance, challenge or intrusion
>
> "Comfort" in the use of the premises is a state of ease and satisfaction, and overlaps with peace" to the extent that it also includes freedom from anxiety
>
> "Privacy" in the use of the premises is freedom from unwarranted or undue intrusion or disturbance in one's private life; the freedom to be left alone. It overlaps with "peace" to the extent that it includes freedom from unwarranted attendance or intrusion.

31. I find from the evidence that the tenants' right to quiet enjoyment was affected by actions undertaken by the landlord from the start of the tenancy in cleaning and carrying out maintenance work that should have been done before the tenancy started, and by not providing it in a secure state.

32. The landlord submits that the tenants had no intention of moving in and the premises was generally in a condition that tenants could move in. I am not of that view after considering the evidence. The tenants' have paid a bond and two weeks rent in advance. They took goods to the premises in a trailer expecting to be able to leave them in the garage.

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[3] [2005] DCR 76

33. I find the cumulative effect of the landlord's breaches, including the constant entry of the landlord and others, was the cause of the tenants not moving into the premises, and as I have stated above I find the tenants' reaction to the landlord's breaches reasonable.

34. Accordingly I find the landlord has breached the tenants' right to quiet enjoyment of the premises.

Should the term of the tenancy be reduced?

35. The tenants seek to have the term of the tenancy reduced because they believe they were unable to move into the property because of its condition at the start of the tenancy; the property manager and others went into the property without giving notice; and the garage door remote was removed from the property without any explanation of who had taken it which raised their concern that the property was not secure.

36. Having considered the grounds the application to reduce the terms of the tenancy has been made under, and having determined the landlord's breaches in relation to those grounds, I will now consider whether the grounds meet the threshold test required under section 66, RTA.

37. The Tribunal may reduce a fixed term tenancy under section 66 where:

    a. there has been an unforeseen change in the applicant's circumstances; and

    b. there would be severe hardship to the applicant if the term is not reduced; and

    c. the applicant's hardship would be greater than the hardship to the other party if the term is reduced.

38. The burden of proof is on the tenants as the applicants to establish that the fixed term tenancy should be reduced by the Tribunal. To be successful the tenants must first establish that their circumstances have changed during the tenancy. Section 66 does not apply where the circumstances existed at the outset of the tenancy but were not discovered until after the tenancy commenced.

39. In this case the circumstances of which the tenants complained existed at the start of the tenancy. The only exception to this is the missing garage remote, which I am satisfied was taken from the property sometime between the tenancy commencing and 5 October.

40. The issues that the tenants have based their application to reduce the term of the tenancy on were capable of remedy. The appropriate remedy for these breaches being cleaning and carrying out maintenance, including providing the remote.

41. The Tribunal has previously held that while the state of the property was a breach of the landlord's obligation for which the tenants could seek compensation, it did not justify an immediate termination of the tenancy. This is in keeping with the usual legal position in considering a fixed-term contract - that the term of the contract will be applied strictly, and it is only in limited circumstances that a court or Tribunal will interfere with it. There is a high threshold that needs to be met, as set out in s 66, before the Tribunal will reduce the term.

42. The tenants have not established a crucial element of a claim under section 66 as they have not established that their circumstances have changed since the start of the tenancy. I must therefore dismiss their application for the reduction of the fixed term tenancy.

Are the tenants entitled to compensation and exemplary damages for the landlord's breaches?

43. The Tribunal may award compensation where a party has breached the tenancy agreement or any provisions contained in the RTA and where the other party has suffered a loss because of that breach. It is a well-accepted principle when awarding compensation that, so far as money can do it, the injured party shall be put in the same position as they would have been in but for the breach.

44. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.

45. The District Court in *Birch v Otautahi Community Housing Trust*[4], noting the decision of the Tribunal in *Palmer v Housing New Zealand (No.2)*[5], confirmed that the Tribunal must take into account the following factors:

- the nature of the breach;
- the duration of the breach; and
- the effect of the breach on the party.

46. Exemplary damages are different. They are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell*[6] the Court of Appeal (Cooke P) said:

> Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish. They are like a fine, though they go to the citizen who has been the victim of conduct.

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[4] [2020] NZDC 17667
[5] Auckland TT 2378/92
[6] [1986] NZLR 732

47. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a breach that is defined in the RTA as an unlawful act. If that is proved, before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA:

    a. the intent of the person committing the unlawful act.

    b. the effect of the unlawful act

    c. the interests of the landlord or tenant against whom the unlawful act was committed.

    d. the public interest; and

    e. whether it is just to make the award.

Compensation claim:

48. The tenants claim compensation for the two weeks rent they have paid to 12 October ($1,500.00), an extra moving truck cost ($2,217.00) and storage costs for their goods and belongings ($850.00). The tenants' application is for total compensation of $4,170.00 which was not increased by an amendment to the claim. That means the maximum compensation that can be awarded is $4,170.00.

49. During the hearing I raised that the tenants had not specified in their application that they sought return of the two weeks' rent they paid. I was incorrect in making this statement. On reflection I am satisfied the claim for two weeks rent was part of the compensation the tenants are seeking for the landlord's breaches that are set out in their application and is able to be considered.

50. The landlord did not provide the property in a reasonable state of cleanliness or repair. The landlord treated the premises as if the tenancy had not commenced by entering as they (the property manager, the owner and others as arranged by the property manager) saw fit and without giving the appropriate notice. The property was not secure as doors were left open, the garage window latch was ineffective. The garage door remote was missing and its whereabouts unexplained by the property manager.

51. The tenant's concern about the missing remote and the unsecure garage window is legitimate. The latches on the garage window were not fixed until 12 October. The landlord never responded to the tenants about the missing garage remote. The tenants' concerns that the previous tenants or others may have taken the remote and used it to access the house and/or garage are genuine and valid.

52. I also note broken tiles in the bathroom were not repaired until 15 October.

53. The tenants had to move in with family until they found a new tenancy, however they could not all live together. They had to arrange for their pets to go to a cattery and kennels.

54. For the above reasons I find the tenants have suffered a loss of amenity and that one and a half week's rent ($1,125.00) is reasonable compensation for this loss. I have not awarded the full two weeks rent in acknowledgement that the tenants were overseas for part of this period.

55. The tenants brought a trailer load of items to the premises on 30 September intending to store them in the garage. As set out above, the garage smelled and was mouldy, which resulted in the tenants not putting any items into the garage and taking them elsewhere. I am persuaded that these items went into paid storage after 4 October. A moving truck was booked to take their furniture and the remainder of their goods to the property on 4 October. Instead the tenants say all of their goods went into storage. As a result the tenants' claim they have incurred storage costs for their goods as well as an extra moving truck cost.

56. I am satisfied that due to the landlord's breach the tenants have reasonably not moved into the property and have incurred storage and moving costs they would otherwise not have incurred had the landlord not breached its obligations outlined above.

57. The tenants' evidence is that the movers charged more to move their goods into storage than if they had been moved to the tenancy premises, as the goods had to be packaged for storage. The tenants have established they were charged $2,217.00 for the movers to take their goods to storage.

58. The losses incurred by the tenants relating to moving are the cost of any additional packing required for the goods to go into storage in addition to what was needed to move the goods to the tenancy premises, and the cost of the second move from the storage unit to the tenancy they later moved into. Neither of these two costs have separately been proven however I am satisfied the tenants incurred losses and find an award of $1,000.00 reasonable. In doing so I acknowledge that the actual costs would be higher, but given only proof of the move to storage has been provided I have erred on the side of caution in making this award.

59. The storage invoices establish storage costs from 4 October to 3 December, being the date the tenants moved into another tenancy. I find these costs were incurred due to the breaches of the landlord, however as the tenants were overseas for two weeks in October, I find it is likely that it took the tenants two weeks longer to find a rental than it would have done had they been in New Zealand. I award $500.00 and reduce the amount claimed by $350.00, being half (two weeks) of the later invoice.

60. Accordingly compensation of $2,475.00 is awarded.

61. The tenants have also claimed return of their bond. The payment of the bond is considered at the end of my decision.

Exemplary Damages Claim:

a) Reasonable state of cleanliness

62. As set out above I find the landlord has not provided the premises in a reasonable state of cleanliness at the start of the tenancy and breached section 45(1)(a), RTA.

63. Breaching any of the obligations set out in section 45(1)(a) to (ca) is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45(1A) (4)(a) and Schedule 1A, RTA.

64. A prerequisite to awarding exemplary damages under section 109 is that the landlord must have acted intentionally. The landlord (property manager) met the tenants at the property the day before the tenancy started. The landlord was clearly aware the property was not reasonably clean, both inside and outside, and arranged for cleaning to be carried out, as well as airing of the premises during the first week of the tenancy. I find the landlord had full knowledge of the condition of the premises and that intention is established.

65. The landlord raised that the tenants agreed to the previous tenants returning to clean the premises during the first week of the tenancy. However I consider this is an unreasonable view for a landlord to take, particularly a professional property manager. As set out by Judge Harrop in *TMT New Zealand Limited v Sweeney and Sundahl*[7] acceptance by tenants of anything less that the premises being provided in a reasonable state of cleanliness is not binding. Section 11(3), RTA provides that any agreement entered into by the landlord and the tenant which waives the tenant's rights under the RTA is of no effect.

66. The breach has had a significant effect on the tenants, particularly the strong smell that persisted in the property during at least the first week of the tenancy. It has meant they did not feel they could move in especially given one of the tenants is a severe asthmatic.

67. The property manager's photographs of the property taken at the end of the tenancy paint a different picture to the photographs taken by the tenants. I find the property manager's photographs to be selective and not to show the true state of the premises on the day the tenancy started.

68. It is in the public interest that tenants are provided residential tenancies in a reasonable state of cleanliness. A landlord should not consider it is appropriate to fail to meet this standard.

69. I find an award of exemplary damages for this breach is justified.

b) Failure to secure the premises

[7] [2021] NZDC 16182

70. I have found that the landlord breached their obligation to provide the property in a reasonable state of repair as the window latch was damaged (section 45(1)(b) and failed to provide the garage remote, being a device needed to ensure the premises was secure (section 46). Together these breaches mean the property was not secure.

71. Breaching both of these obligations is an unlawful act for which exemplary damages may be awarded. As stated above breach of section 45(1)(b) attracts a maximum award of $7,200.00. Breach of section 46 attracts a maximum award of $1,500.00. See Schedule 1A, RTA.

72. The property manager knew the previous tenants had broken the window latch when they forced the window to get into the property. Even if this was not the case the landlord carried out an inspection the day before this tenancy started. There is no reason why the property manager should not have found the damage at that inspection. It should have been fixed before the tenancy started.

73. The property managers' evidence is that they had taken the garage remote as it intermittently was not working. The tenants asked about the remote three times and made known their concerns that it was missing. The property managers explanation for not responding was that they overlooked it. I find intention is established.

74. The effect on the tenant has been that they lost trust in the property manager. The failure of the property to be secure has added to their hesitancy to move into the premises, or to move any of their belongings into the premises. The tenants could not immediately move into another property together and had to live apart until they found another tenancy. The tenants' evidence is that they have been stressed by the situation and badly inconvenienced.

75. It is in the public interest to ensure that properties are to the standard required by the RTA when a tenancy starts. From the start of the tenancy tenants are entitled to quiet enjoyment of the property. If the premises is not able to be secured the tenants comfort in living in the property is affected.

76. I find an award of exemplary damages is also justified for these breaches.

c) entering the premises without permission or notice

77. Breaching any of the obligations to give notice before entering premises under section 48 is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,500.00. See section 48 and Schedule 1A, RTA.

78. The property manager and the owner have entered the property without giving the appropriate notice to the tenants. The property manager has arranged for contractors to carry out work inside the property without giving notice to the tenants, and arranged for the previous tenants to enter at a time not agreed to by the tenants. I find intention is established.

79. The effect of this breach on the tenants is as recorded above for breach of section 45(1)(b).

80. It is in the public interest that landlords, or others at their request, do not enter tenancy premises when they wish. The tenant has the exclusive right to possession of the tenancy premises from the start of the tenancy.

81. I find it is just and appropriate to make an award for exemplary damages. The landlord has treated the property as if the tenancy had not started. Of particular significance is that there has been repeated entries. Regardless of whether the tenants have moved in or not the premises were tenanted and subject to the RTA provisions. This award is also made to deter the landlord in the future from committing the same breach.

d) breach of quiet enjoyment, amounting to harassment

82. Where a landlord interferes with the reasonable peace, comfort and privacy of the tenant in circumstances that amount to harassment it is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See sections 38(3), 109 and Schedule 1A RTA.

83. "Harassment" is not defined in the Act. The District Court in *MacDonald v Dodds*[8] considered that the dictionary definition of "harassment" was appropriate in the context of s 38(3). The Court in that case adopted the definition in the Oxford English Dictionary, which defines "harassment" as meaning "to trouble, worry, or distress" or "to wear out, tire out or exhaust". The Judge accepted that harassment indicates a particular pattern of behaviour directed towards another person.

84. As set out above, I find the cumulative effect of the landlord's actions in carrying out the breaches of sections 45 and 48 of the RTA has resulted in harassment.

85. I find intention has been proven on the part of the landlord for the reasons set out above, and that the tenant has not been able to have exclusive use of the premises without interruption by the landlord. That is the fundamental basis of a tenancy agreement.

86. I find an award of exemplary damages for this unlawful act is justified.

Award of exemplary damages

87. The premises has been let without any time between tenancies. The property manager said this is because the owner/landlord did not want to lose any rent. My view is that it is reasonable for a landlord to expect to carry out work,

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[8] *MacDonald v Dodds*, CIV-2009-019-001524, DC Hamilton, 26 February 2010.

particularly maintenance and cleaning, between tenancies. That means it is generally unreasonable to arrange for a tenancy to begin the day after an earlier tenancy ends. The landlord's action in letting the property without any time between the previous tenancy and this tenancy is the cause or event that caused the landlord's breaches of sections 38,45,46 and 48 of the RTA.

88. The District Court has held in *Manage My Rental Limited v Baxter*[9] that where there could be a number of exemplary damages orders made for the same underlying event, only one order should be made.

89. Accordingly I make one award of $3,000.00 for all of the unlawful acts set out above as they are made for the same underlying action/event. The exemplary damages award is made to deter this landlord and others from departing from the legislative standards the landlord is required to meet at the start of a tenancy and to ensure there is time between tenancies for legislative standards required at the start of a tenancy to be met.

The landlord's claim:

How much is owed for rent?

90. The tenancy ended on 3 November 2023. I find the tenants are liable to pay rent until the tenancy ended. The first two weeks rent was paid. The tenants are liable for rent from 13 October to 3 November 2023 ($2,357.14)

Are the tenants liable to pay the break fee claimed?

91. The landlord claims costs it says it has incurred in breaking the term of this tenancy and arranging a new tenancy.

92. Section 44A, RTA enable\s a landlord who consents to the tenant parting with the possession of the premises to recover from the outgoing tenant any expenses the landlord reasonably incurs in finding a new tenant. However a landlord is only entitled to recover expenses if they first provide the outgoing tenant with an itemised account of the expenses. I am not satisfied that the landlord provided an itemised account before filing its application and for that reason dismiss this part of the landlord's application.

The Bond

93. As a result of my decision the landlord does not have a claim on the bond. The bond is to be returned to the tenant by the Bond Centre.

[9] [2015] NXDC 12011

Reimbursement of filing fees

94. As the tenants have been wholly successful in their claim and the landlord has been partly successful in its claim I order reimbursement of both party's filing fees (section 102(4), RTA).

Suppression

95. The Tribunal must, on the application of a party that has wholly mainly succeeded in proceedings, order that a party's name or identifying particulars not be published (see section 95A, RTA). Both parties have applied for suppression and suppression is granted.

W Lang
27 May 2024

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 fesootai mai le Tenancy Services i le numera 0800 836 262.