TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Property Brokers Limited As Agent For Barbara Devery And David Ledson

Landlord

TENANCY ADDRESS: 4 Batham Drive, Mount Victoria, Wellington 6011

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant name and identifying details.
2. Property Brokers Limited As Agent For Barbara Devery And David Ledson must pay [The tenant/s] $1,711.30 immediately, calculated as shown in the table below.
3. The Bond Centre is to pay the bond of $4,800.00 ([Bond number suppressed]) to [The tenant/s] immediately.
4. All other claims are dismissed.

Description	**Landlord**	**Tenant**
Rent abatement		$514.28
Compensation: Electricity (fixed charges and usage)		$443.96
Compensation: Gas (fixed charges and usage)		$732.62
Filing fee reimbursement		$20.44
Total award		**$1,711.30**
Bond		$4,800.00
Total payable by Landlord to Tenant		**$1,711.30**

Reasons:

1. Both parties attended the hearing.

2. The tenancy began on 18 June 2022 for a fixed term to end on 17 June 2023. The tenants vacated the property on 27 January 2023 after the landlord issued a 7-day notice terminating the tenancy under section 59 Residential Tenancies Act 1986 (RTA) on the basis that the premises were rendered uninhabitable.

3. The premises are a three-storey building of timber construction sitting under a pitched corrugated iron roof, dating back to the 1890s. The building incorporates four bedrooms over 2 levels. The basement area of the property is a separate dwelling and not part of the tenancy agreement. It has been renovated as a one-bedroom flat that includes a kitchen, bathroom and living area. The basement flat has internal staircase access to the main dwelling above. However, the main entrance to the flat is via an external door.

4. On or about 11 January 2023, a major leak occurred at the property with water dripping from the first-floor ceiling into the floor below ("the flood event"). The tenants were overseas at the time and the flooding was reported by one of the tenant's daughters who was attending the premises on a regular basis to feed their cats. The property manager attended the premises the next day, 12 January, to inspect the problem.

5. The insurance assessor's (McLarens) report dated 27 January 2023 records the property manager's observations. Water was flowing from the kitchen ceiling and wall and also appeared to be dripping down the cabinetry onto the floor. The floor and carpet in the main entrance/hallway staircase was saturated and the main landing wall and ceiling on the first floor was wet. Water could be seen dripping from a window frame in the bathroom and from the door frame leading into bedroom 3. The ceiling and wall in bedroom 3 were also wet. The ceiling of the basement flat had also collapsed.

6. A plumber was appointed and attended the premises on 12 January and traced the leak to a mains water pipe in the ceiling cavity above the first-floor ceiling which had ruptured and expelled water into a small area within the ceiling where it immediately penetrated into the area below. The pipe was repaired, and no further leakage was detected.

7. Following the flood, the owner initiated an insurance claim and loss adjusters, McLarens, assessed the damage. The insurers appointed Jae's to dry out the property with drying equipment. Several areas of carpets were also cut out. Duncan and Taylor were also appointed by the insurers to strip out saturated materials including affected ceiling plasterboard and wall linings.

8. An initial assessment was made, after a few days of drying out and removing saturated materials, that the premises were habitable. However, it was subsequently agreed that the premises were so seriously damaged as to be uninhabitable and would require extensive repairs and remedial work. Therefore, the landlord sent a notice terminating the tenancy under s59 RTA. The tenancy ended on 27 January 2023.

9. The landlord arranged temporary motel accommodation for one of the tenants' daughters on 16 January (1 night) and then for the tenants and their family when they returned home from 19-26 January (7 nights).

Tenant claims

10. The tenants claim a 100% rent abatement from 11-27 January 2023 because the premises were uninhabitable.

11. The tenants also claim that the landlord breached their obligations under sections 45(1)(b) and (c) RTA to provide and maintain the premises in a reasonable state of repair and comply with any relevant enactment in relation to buildings, health and safety. In particular, the tenants claim that there had been leaks at the premises prior to their tenancy which the landlords were aware of and there was also a leak during the tenancy. Therefore, the tenants claim that the flood event was caused by the landlord's failure to repair prior leaks in breach of their obligations under s45 for which the tenants seek compensation as follows:

    a. Compensation for alternative accommodation on 18 January and from 27 January to 17 February—$5,511

    b. Removal costs—$3,772

    c. Storage costs—$951

    d. Cat accommodation from 19 January to 18 February—$1,650

    e. Insurance excess on displacement insurance cover payment—$250

    f. Doctor's appointment—$60

    g. Cleaning and replacement of dirty/damaged tenant chattels—$14,908

    h. Days off work to pack and relocate—$5,000

    Total of $32,101 less insurance payments of $10,250

    Balance claim—$21,851

12. In addition, the tenants seek full refund of the bond, and reimbursement of overpaid electricity and gas costs incurred during the tenancy.

Landlord claims

13. The landlord has filed a cross application seeking rent arrears of $1,680, being rent charged at an abated rate of 70% of the full rent from 13-27 January because the premises were uninhabitable. The landlord paid $3,300 towards the tenants' alternative accommodation costs incurred before the tenancy ended and did not seek reimbursement of this sum from the tenants.

Onus of proof

14. Each party bears the burden of proving their claim on the balance of probabilities. For example, the tenants must establish that a breach of the landlord's legal obligations has occurred, and that loss or damage has resulted from that breach. Put another way, the tenants must persuade me that what they say is more likely than not to be the case. I do not need to be completely certain, but I must be more certain than not.

15. In deciding a particular claim, I must consider all the evidence presented (including oral testimony). I must weigh this evidence to decide what is more likely. Certain types of evidence carry more weight which must be taken into account when weighing all the evidence. For example, written statements made by those who did not attend the hearing as witnesses and cannot be questioned about their statements are of limited weight; Hearsay evidence is not as reliable as direct evidence and must therefore be treated with caution. In the decision that follows I may not have referred to all the oral testimony and other evidence presented, but the parties should know it has been considered.

16. In the days following the hearing, the tenants submitted documents to the Tribunal including some photos, information about the replacement values of some of their belongings, insurance information and proof of some expenses incurred. Some of the information had already been provided as part of the application or at the hearing. Some information was new. I instructed registry to contact the tenants and explain that it is not appropriate for the Tribunal to accept new evidence after the hearing has been completed and usually such evidence will not be considered. However, I understand that the tenants were concerned to ensure they presented all relevant information. I have reviewed what the tenants submitted and confirm that it does not alter the findings and conclusions I have made in this decision.

How much should the rent abate and from what date?

17. The first issue for the Tribunal in these cases is whether premises were destroyed, or so seriously damaged (in whole or in part) as to be uninhabitable and from what date. The second issue is the degree to which rent should abate.

18. The RTA does not define the word uninhabitable. But the Tribunal now has the guidance of District Court cases that were decided on appeal following the Christchurch earthquakes both as to the meaning of the word uninhabitable and how the issue of rent abatement should be decided. See *First Avenue Property Ltd v Malik* DC Christchurch (VIC-2011-009-001539) 23 November 2011; *Watkin v Brazier Property Investments Ltd* DC Christchurch (CIV-201-009-001006) 28

November 2011; *Mauger v Kennard Real Estate Limited*, DC Christchurch (CIV-2011-009- 001428) 28 November 2011.

19. The principles that emerge from the cases are these:

- Whether premises are uninhabitable will be decided on a case-by-case basis. There is no statutory definition or test of uninhabitability;
- The Tribunal will want to know what damage was caused to the premises by the event and what effects it has had on the tenant;
- In making its finding on uninhabitability, the Tribunal should take a liberal approach;
- Uninhabitability should be assessed in the light of prevailing conditions and expectations of the particular community at the particular time;
- If services such as water, sewerage and electricity are cut off the premises will probably be considered uninhabitable for the period the services are unavailable;
- The Tribunal must have regard to the personal circumstances of the tenants. Are they young and/or robust and better able to cope with what has happened? Or are they vulnerable, elderly or a family and less able to cope;
- In some cases, the Tribunal will need to decide whether it would be unreasonable to require the landlord to reinstate the property or to require the tenant to continue with the tenancy even at a reduced rent;
- If the premises are uninhabitable but the tenancy continues, a 50% rent abatement is often considered reasonable, although the individual circumstances of the parties might mean that the Tribunal sets a higher or lower amount by which the rent should abate.

20. In this case, there is no dispute that the premises were uninhabitable to the extent that the tenants could not continue to remain at the premises and the landlord gave notice to terminate the tenancy. However, the date they became uninhabitable and the amount of an appropriate rent abatement is in dispute.

21. I have carefully considered the evidence, including the description of the damage observed by the property manager on 12 January 2023 and recorded in the McLarens report dated 27 January 2023; the witness statement from the tenant's daughter; photos of the premises; and the tenants observations and evidence regarding the impact of the state of the premises upon them when they visited for short periods. I am satisfied that the flooding which occurred on 11 January 2023 was serious and had a far-reaching effect. Damage was immediately caused and affected the most important amenities such as the kitchen facilities, main bathroom and the main stairs connecting the floors as well as one of the

bedrooms. Areas of the house were described as saturated. Jae's reported that there was a presence of green mould consistent with the flood event occurring 5 days or so before being discovered. However, they stated that this was immediately and effectively treated, as green mould spores can be killed by anti-microbial spray within 30 seconds.

22. The tenants had a 6-month baby at the time. One of the tenants has asthma which he says was exacerbated when being at the house for short periods and resulted in him seeking medical attention and being described antibiotics.

23. During the first week after the flood, six large blowers and dehumidifiers were operating 24 hours/day from 13 January to dry out the premises and contractors were on site removing saturated materials. This was noisy, messy work.

24. After considering all the evidence and the tenants' particular circumstances, I find that the premises were uninhabitable from the date of the flood event on 11 January 2023, and it was not reasonable to expect them to continue living at the premises from that point onwards. In those circumstances, I also consider rent should fully abate by 100% from that date onwards. The tenants have paid rent covering the period 11-13 January (3 days) of $514.28. This is to be reimbursed to them. It follows that the landlord's counter claim for 70% of the rent from 14-27 January is dismissed.

Did the landlord fail to provide and maintain the premises in a reasonable state of repair?

25. While both parties accept that the premises were uninhabitable after the flood event on 11 January 2023, there is dispute as to whether the leak was caused by the landlord's failure to comply with their obligations under s45 or whether it was a one off event that they could not have foreseen and for which fault cannot be attributed to them.

26. Where residential premises are destroyed or so seriously damaged as to be uninhabitable, and the damage or destruction occurs other than through a breach of the tenancy agreement, rent shall abate and either party may give notice to terminate the tenancy under s59 RTA (the landlord gave notice on these grounds). Compensation for any loss suffered by the tenant as a result of the damage to the premises cannot normally be awarded under s59 because there is no breach.

27. Where the damage or destruction of premises results from a breach of the tenancy agreement, different rules apply. If the tenant is not in breach, the rent abates, and the tenant may be entitled to compensation for loss suffered as a result of the landlord's breach causing the premises to be damaged and uninhabitable. See section 59A RTA.

28. There is no dispute that the premises were uninhabitable, and the damage was not caused by any breach by the tenants of their obligations. However, the issues to be determined in relation to the claims are:

    a. Is the landlord in breach of their obligations under s45(1)(b) and/or (c) RTA;

    b. Are the tenants entitled to compensation for any loss suffered?

29. A landlord is required to provide and maintain the premises in a reasonable state of repair, having regard to the age and character of the premises, and must also comply with all requirements in respect of buildings and health and safety under any enactment so far as they apply to the premises under sections 45(1)(b) and (c) RTA.

30. It is well settled that, the landlord's obligation under section 45 is to investigate and repair a defect brought to its attention within a timeframe which is reasonable in the circumstances, and as to what that time is, depends on the gravity of the problem but also on the objective attempts made by the landlord to investigate, and put right, whatever the problem might be. Furthermore, a tenant has a statutory duty to advise of any defects under section 40(1)(d) of the Act. Therefore, a tenant should promptly notify a landlord of any defects and a landlord should be given a reasonable opportunity to remedy the defect before being liable for any failure to do so.

31. One of the tenants gave evidence that a week or so after moving into the property in June 2023, one of the owners met her at the house to discuss the property. The owner told her the house leaks sometimes in bad weather and they didn't know why. The owner showed the tenant a manhole cut in the ceiling in the bathroom by the stairs. The owner said it was used to easily open up the ceiling when it leaks. She advised the tenant that they had spent a lot of money fixing the leak but could not find the source. She asked the tenants to keep an eye on it.

32. On or about 8 August 2022, there was a leak in the middle bathroom ceiling which the tenants reported to the landlord. The landlord advised that they would have a contractor check it and asked the tenants to monitor the leak as they were wondering whether rain was driven in by strong winds. The tenants report that the area did not leak again.

33. The tenants claim that the owner's knowledge of the prior leaks at the premises and the leak in August 2022 is evidence that the premises were not maintained in this regard, in breach of s45. They suggest that there was already a problem that the landlord knew or should have known would get worse if not addressed. The suggestion is that the problem did get worse; the landlord failed to take reasonable steps to deal with it and this failure caused the flood in January 2023.

34. The landlord relies on the reports from McLarens, the insurance assessor, dated 16 and 27 January 2023, produced in evidence at the hearing. Following their

appointment, McLarens arranged a site visit and held discussions with the property manager and plumber to better understand the circumstances surrounding the incident. The plumber confirmed that the water leak traced back to a mains water pipe within the ceiling cavity above the landing area which had ruptured and expelled water into a small area within the ceiling where it immediately penetrated the area below. The McLarens triage form dated 16 January records that the plumber discovered *"a pinhole leak occurring which affected the ceiling space and flowed through to the kitchen area and downstairs area."* The McLarens 27 January report records: *"It would appear that there has been a slow leak in the ceiling cavity…for some time, however, the damage as a result appears to be minimal. The leak appears to have worsened and the pipe completely failed expelling a large amount of water into the address approximately 5-7 days prior to discovery. The loss is sudden and accidental…."*

35. The landlord argues that the McLarens reports support their claim that the leak was caused by a sudden burst pipe which was a one off and unforeseen event and was not through any negligence or failure to repair by the landlord. Notably, there had been no further signs of leaking since August 2022 and, prior to that, the tenants' own evidence is that the owners advised that they had spent a lot of money repairing a leak.

36. After carefully considering the available evidence, I find that the tenants have not proved on the balance of probabilities that the leak occurred because of some breach by the landlord of their obligations to maintain and repair the premises. There is insufficient evidence to link the burst pipe to any failure by the landlords. While a leak in the middle bathroom was reported to the landlord in August 2022, it stopped with no further leaking noticed. There is no evidence to prove that the leak in August 2022 is connected to the January 2023 leak nor that the landlords could have done something further to prevent the flood. The landlord had already spent considerable money on repairs. In the absence of any further leaks or signs of leaking, there was no reason for the landlord to take further steps. They had asked the tenants to monitor the situation and nothing else happened to indicate an ongoing or serious problem. There were no visible or physical signs of leaking reported by the tenants such as mould or dampness at the premises. I accept that the insurance assessors report supports the landlord's argument that there was a gradual slow leak, which did not cause any visible signs of damage until the water pipe completely failed and expelled a large amount of water.

37. In summary, I find on the evidence that the leak was a one off, unforeseeable event that was not caused by the landlord breaching their obligations in s45.

Are the tenants entitled to be compensated for their losses resulting from the leak?

38. The only financial remedy available under s 59 is to refund any rent paid in advance for premises that are rendered uninhabitable. Compensation would only

be payable if it was established that there was a breach of the tenancy agreement. In *Khorozova v A J McPherson & Associates Ltd Christchurch* TT 09/02957/CH, 5 August 2009, a severe rat infestation had caused substantial damage to water pipes in the roof and walls rendering the premises uninhabitable. Accordingly, the Tribunal found that the tenancy could be terminated and rent ought to abate accordingly. However, the Tribunal dismissed the tenant's claim for compensation for inconvenience and other costs because it found no breach by the landlord of any obligation in the Act or the tenancy agreement.

39. It follows that because I find the flood was not caused by any breach of s45, the landlord is not liable to compensate the tenants for any loss suffered as a result of the flood.

40. However, the tenants also claim that the contractors engaged to carry out works at the premises to remove damaged and saturated items (such as carpets, ceiling plaster board and wall linings) did not take reasonable care and damaged their belongings during the process. They claim that the contractors failed to remove belongings or cover them appropriately which caused further unnecessary damage to bedding, clothing and small appliances. They say that their expensive Persian and silk rugs were not covered up and protected from the debris. The tenants had to arrange professional cleaning of furnishings and clothing and some items were damaged beyond repair and required replacement. This raises the issue: Can the landlord be held liable for losses caused by contractors engaged to carry out works at the premises?

41. There are several legal issues that arise in this case including those relating to the law of agency; a party's duty of care to another party and whether a principal (landlord) can be held vicariously liable for an independent contractors negligence; and, the jurisdiction of the Tenancy Tribunal and its overriding purpose of determining disputes concerning the rights and obligations between a tenant and landlord.

42. Compensation can be awarded in the Tribunal where a tenant or landlord is found to have breached its obligation(s) to the other. It must also be shown that any such breach caused a loss to the other party. To succeed with a claim that the landlord is liable for damage caused by an independent contractor, the tenants must prove: first, that the landlord owes a duty to the tenants in relation to the acts of the independent contractor; second, that the contractor has performed its tasks negligently causing damage; and, third, that the tenants have suffered a loss for which they should be compensated.

43. In the High Court decision of *Cashfield House Ltd v Syme & Co Ltd & ors* CP398/93 [1994] NZHC (13 December 1994), the Court held the starting premise at common law was there '…is no liability resting on a principal for the conduct of an independent contractor' . The Court summarised its conclusions and held that under the common law:

1. *A principal has no vicarious i.e. secondary, liability for the negligence of an independent contractor on the basis that the activity involved is a particularly hazardous one or on any other basis.*

2. *The principal may nevertheless in some circumstances owe a primary non-delegable duty of care and thus be liable to those to whom the independent contractor is liable if the independent contractor is negligent.*

3. *The principal may well owe a primary duty of care to those who could foreseeably be damaged by the acts or omissions of the independent contractor. That duty may be to select, instruct and sometimes supervise the independent contractor with reasonable care. The greater the expertise of the independent contractor and the more specialised the task the less call there may be for the involvement of the principal beyond selection and instruction. If the principal has selected and instructed the independent contractor with the skill and care appropriate to the occasion, the principal should generally be entitled to leave the task to the independent contractor without further supervision. If the principal does so there will be no liability unless, of course, the principal owes a non-delegable primary duty to those damaged by the independent contractor's negligence.*

44. The tenants argue that the contractors did not take reasonable care to ensure that the tenants' belongings at the premises were suitably covered or moved so as not to be damaged when carrying out works. They argue that the landlord sent them in, and they should be responsible for them. In that regard, the landlord could easily have given the contractors some instructions to take care of the tenants' belongings by shifting and covering items as necessary.

45. The landlords argue that they are not responsible for the contractors because they were engaged by the insurers, not by the landlord. Therefore, the landlord had no control over the appointment or supervision of the contractors. The contractors had to access the premises as a matter of urgency, and it would not have been possible nor reasonable for the property manager to attend the premises each day to supervise the contractors' work. Presumably the insurer chose the contractors based on their knowledge of the contractors' work and ability to exercise the required skill and care required. Arguably, the insurer was the party responsible for giving any required briefing or instructions. It might also be argued that the work was straight forward, and it would be reasonable to expect that a contractor in those circumstances would know to take care of any belongings, unless they were already damaged by flooding.

46. In view of the *Cashfield House* decision, I find that the landlord in this case was not the principal who engaged the contractors. The insurer appointed the contractors to carry out certain work at the premises and the insurer was responsible for providing the contractor with instructions. Furthermore, I find it difficult to accept that the activity undertaken by the contractors was particularly hazardous. It was rather conventional work. It is difficult to see that the landlord had any primary or non-delegable duty in relation to the performance of the work.

For those reasons, I find that the landlord is not liable for any negligence of the contractors in carrying out the works.

47. Even if I am wrong, there is insufficient evidence presented by the tenants to establish a case for negligence against the contractors and to prove the loss claimed. For example, there is little evidence to establish exactly what the contractors did or omitted to do which might amount to negligence causing damage, and whether or not they acted reasonably in the circumstances; there is insufficient evidence to distinguish between belongings that were damaged by the flood and belongings damaged by the contractors actions or inaction; there was insufficient evidence such as photographs and/or an independent assessment to prove the extent of any damage and whether the items affected required cleaning, repair or replacement as appropriate. The tenants were unable to provide, in relation to items replaced, evidence of their age so that depreciation could be considered.

48. Notably, the tenants made a claim on their insurance cover, which is the appropriate remedy and accords with Clause 14b of the tenancy agreement in which the tenants acknowledge *"…that they have been advised by the landlord to ensure that they have their own contents insurance and this is solely up to the tenant to arrange this."* The tenants received an insurance payment of $4,050 for contents items and $1200 for dry cleaning. Therefore, the tenants have likely been appropriately compensated through insurance cover.

49. In summary, I find that the landlord is not liable for any damage caused by the negligence of contractors and, in any event, there is insufficient evidence to prove negligence and insufficient evidence to prove the loss suffered as a result. The tenants' claims for compensation in paragraph 11 above must be dismissed.

50. I have considerable sympathy for the tenants and appreciate they have suffered losses and been put through stressful events through no fault of their own. At the same time, the landlord cannot be criticised for their insurers engaging qualified contractors to carry out clean-up and demolition type work and are entitled to a fair expectation that it would be carried out in a workman-like manner.

51. This Tribunal has no jurisdiction to make orders against other parties except those specified in Section 77 RTA. I note that alternative causes of action may sit in a different jurisdiction (such as the Disputes Tribunal) where compensation for damages may be sought directly against the contractors. However, I find the landlord is not liable to compensate the tenants in these circumstances.

Is the landlord liable to reimburse the tenant for electricity and gas usage?

52. The tenants are entitled to some reimbursement of power used by the insurers' contractors when drying and clearing out the property after the flood. The landlord

provided an estimate from Jae's for $367.54 and confirmed that payment of this sum will be made directly to the tenants.

53. The tenants set up electricity and gas for the premises including for the basement flat, which was not part of the tenancy. Therefore, the tenants claim, and I accept, that they are entitled to recover one half of the fixed daily charges for the connections. The tenants prepared a table showing the amounts recoverable.

54. The tenants also seek recovery of the power usage for the downstairs flat which was on a separate check meter. Generally, no-one was using the downstairs flat, but electricity charges were nevertheless generated and paid. On two occasions in August and October 2022 the tenants' visiting family stayed in the basement flat for a total of 30 days as arranged with the landlord. The tenants paid $50/day for use of the basement flat which I accept included power usage. Therefore, the electricity charged during those periods should also be reimbursed by the landlord as they already received payment for the usage.

55. Given that the insurers are to pay the tenants for power usage in January as detailed above, I consider the landlord is not liable to further refund the power usage charged in January of $84.96 plus GST (which totals $97.70) and this sum should be deducted from the claim.

56. In relation to gas usage, the tenants noticed that their gas costs for the central heating were extremely high. When family came to stay in the basement flat in October, they discovered that the flat was warm and that they were heating both the flat (not part of the tenancy) and the main house. They notified the landlord who arranged for a plumber to come and shut off the two basement vents leaving seven vents open to heat the tenanted premises. The plumber discovered that the ducting under the house was ripped and likely a lot of heat was escaping. The tenants claim that the plumber told them that 30% of the heating was dissipating as a result. The tenants therefore seek to recover compensation for gas usage in the flat and for the heat wasted because of the damaged ducting. As two out of nine vents serviced the bottom flat, they claim 2/9ths (22%) of the gas bill is attributable to the basement flat. However, they seek a total of 50% reimbursement of the gas bills to cover wastage resulting from the damaged ducting as well.

57. The landlord provided evidence, including a statement from the plumbing company (not the plumbing technician who attended) that the ripped ducting was likely caused by cats. The landlord suggests that the tenants' cats were responsible for the damage. However, the tenants deny this and note that other cats in the neighbourhood could access the area under the house where the ducting is located. They also say that their cats remained inside for the first month of the tenancy until a cat door was installed on 13 July 2022. Given that the first gas bill on 19 July was extremely high, they say this demonstrates that the ripped ducting was an existing problem at that stage.

58. The plumbing company also said that the tenants may have set the thermostat too high to 26 degrees all day, and the technician advised them not to go above 23 degrees They advised that if that was the case, there would be a huge gas bill as the system will keep running. The tenants denied ever setting the thermostat that high and say that they only ever set it to 21 or 22 degrees during the day and 12 degrees overnight.

59. The plumbing company also advised the landlord that hot air coming out of the vents in the basement flat would not necessarily have an impact on the overall gas bill because the system would turn off when the thermostat reaches its set temperature.

60. It is difficult to determine with any certainty how much gas was used to heat the downstairs flat and how much was wasted as a result of the damaged ducting. Statements from the plumbing company are of limited weight because the technician who serviced the heating was not present to be questioned. I consider based on the available evidence that some heating would have been wasted because of the damaged ducting and there is insufficient proof that the damage was caused by the tenants' cats. In addition, heating the basement flat must have some impact on the gas bill. There is insufficient evidence to establish that the tenants were keeping the thermostat at 26 degrees, which would also impact the gas heating bills. Taking all factors into account, the tenants ought to be reimbursed for gas usage wasted as a result of the damaged ducting and open vents into the basement flat.

61. The tenants' calculation of a 22% reimbursement based on the number of vents is probably too simplistic. The apparent reference by the plumbing technician to 30% wastage also sounds high. While, the gas bills did dramatically reduce after the heating was serviced, this also coincided with summer when you would expect heating bills to drop anyway. On balance I consider that applying a reduction of 30% is fair and reasonable in the circumstances to cover the open vents and the damaged ducting.

62. The tenants prepared a table showing the amounts owed for the fixed daily power charges and power usage. Deducting $97.90 as discussed above, the amount owed for power usage and fixed charges is $443.96.

63. The tenants also prepared a table showing the amounts owed for the fixed daily gas charges and gas usage. Applying a reimbursement rate of 30% to gas usage charges , the total amount owed for gas usage and fixed charges is $732.62.

64. As the tenants have largely succeeded, they are entitled to suppression of their names and identifying details and reimbursement of the filing fee.

K Stirling, 15 August 2023

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.