[2023] NZTT 4535329

TENANCY TRIBUNAL - Hutt Valley | Te Awakairangi

APPLICANT: Deborah Maureen Brodie - Tenant

RESPONDENT: Jeanette Cotter - Landlord

TENANCY ADDRESS: 46 Mabey Road, Avalon, Lower Hutt 5011

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Jeanette Cotter must pay Deborah Maureen Brodie $3,419.00 immediately calculated as follows:

Description	**Tenant**
Compensation: Rent refund 28 Feb to 1 April	$2,952.86
Compensation: Cattery costs	$445.70
Filing fee reimbursement	$20.44
Total payable by Landlord to Tenant	**$3,419.00**

3. The Bond Centre is to pay the bond of $2,120.00 (6313964-011) to Deborah Maureen Brodie immediately.

Reasons:

Should the landlord refund rent and if so, how much?

4. Jeanette decided to replace the vinyl in the kitchen of the premises and Deborah agreed to this. There would be a polished concrete floor. Prior to removing the vinyl a corner of it was lifted and Jeanette became aware that there was asbestos backing on the vinyl. Despite this she agreed for the work to proceed. Jeanette did not tell Deborah that there was asbestos involved in

the removal of the vinyl. The work commenced on 8 March and had to be stopped that day because of the asbestos. Deborah was unable to live in the premises. After two weeks Jeanette told Deborah that the property was clean. Jeanette gave Deborah a rent rebate for two weeks. Deborah went back to the property and noticed dust. She assumed it was asbestos. She did not move back to the property. Because many of Deborah's contents had been damaged by asbestos, she made an insurance claim. State Insurance contracted Precise Consulting Limited (PCL)to conduct testing. PCL's report found the lounge was unsafe. The premises continued to be uninhabitable. Jeanette immediately arranged for further asbestos cleaning. The lounge was cleaned by 29 March. Before that date Deborah gave notice to terminate the periodic tenancy. She paid rent to 19 April. She has requested a refund of rent to 19 April.

5. The relevant section of the Residential Tenancies Act 1986 (the Act) is s.59(4).

> Where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable,—
>
> (a) the rent shall abate accordingly; and
>
> (b) either party may apply to the Tribunal for an order terminating the tenancy, and the Tribunal may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

6. The effect of the provision is this case is that the rent stops immediately from the date of the premises became uninhabitable (8 February) until it was safe to live in the premises again. Bearing in mind that Deborah could not arrange to move in exactly on the day Jeanette was notified that the premises was safe, I have allowed rent to be deducted to 1 April. That was a Saturday when it could be reasonably assumed that Deborah could move back in. I have calculated rent to be refunded from 22 February because Jeanette already refunded rent from 8 February to 21 February. The amount Jeanette needs to refund for rent is $2,952.86.

7. After 1 April Deborah was able to move back to the premises and see out the remainder of her 28 days notice. A refund from 1 to 19 April cannot be ordered under s.59(4) of the Act.

Should the cost of the cattery be paid for by Deborah?

8. Normally Deborah would be responsible to cover her own losses where there was an unexpected event during a tenancy. However in this case the damage

to Deborah's goods and the uninhabitability and the cattery expense was avoidable. Jeanette made an unwise decision to go ahead with the vinyl removal during the tenancy. She knew there was asbestos involved but decided to go ahead anyway. The vinyl removal was not urgent. Jeanette's decision resulted in Deborah having to house her cat. Jeanette caused that loss for Deborah and so is liable for the cost of the cattery.

Should exemplary damages be ordered?

9. Deborah has applied for exemplary damages.

10. For the Tribunal to order exemplary damages the tenant must prove that the landlord intentionally committed an unlawful act. The only act that could be considered unlawful in this case was a failure to maintain the premises. However Jeanette was maintaining the premises at the time of this unfortunate event. When the asbestos problem arose, she acted swiftly to have it remediated. When Deborah found it had not been remediated by the contractors Jeanette again acted quickly to address that problem.

11. I do not find that there was any unlawful act that Jeanette committed regarding this event. Exemplary damages are not ordered.

Should the bond be ordered?

12. Deborah has applied for her bond. Jeanette has not made a cross application for payment from the bond. The bond must be released to Deborah.

Filing Fee

13. Because Deborah has been partially successful with the claim, the filing fee of $20.44 is ordered.

THE SEAL OF THE TENANCY TRIBUNAL

B Smallbone
29 April 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.