TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders name suppression of both parties names and identifying details.
2. The Bond Centre is to pay the bond of $3,160.00 ([Bond number suppressed]) to [The tenant/s] immediately.
3. The Landlord shall pay the Tenant $54.42 immediately.

Description	**Landlord**	**Tenant**
Rent arrears	$3,435.58	
Compensation: Rent abate		$2,490.00
Compensation		$1,000.00
Total award	**$3,435.58**	**$3,490.00**
Net award		$54.42
Bond		$3,160.00
Total payable by Landlord to Tenant		**$54.42**
Compensation: Rent reduction at 20%		$2,490.00
Compensation floor repairs and curtain replacement		$1,000.00
Total award	**$3,435.58**	**$3,490.00**
Net award		$54.42
Bond		$3,160.00
Total payable by Landlord to Tenant		**$54.42**

Reasons:

1. Both parties attended the hearing.
2. This was a cross application where the Landlord applied for rent arrears, compensation, refund of the bond and reimbursement of the filing fee.
3. The Tenants applied for compensation, refund of the bond and reimbursement of the filing fee.

Background

4. The tenancy commenced on 12 July 2019 and ended on or about 12 May 2023. The property comprised a four-bedroom double storey house. There were two double bedrooms upstairs, a main bathroom, toilet, lounge, kitchen and dining area. Downstairs there were two bedrooms, an office, bathroom, toilet and laundry.
5. On 27 January 2023 an extreme weather event occurred in [City] which resulted in widespread flooding to many properties in [City].
6. As a result of the weather, the bottom floor of this property was flooded on 27 January 2023. The Tenant's two daughters that occupied the bedrooms downstairs moved upstairs where they shared one of two bedrooms.

Tenants case

7. The Tenants claimed a rent reduction of 50% over a period of 15 weeks because they were only unable to use downstairs due to the flooding. This amounted to $6225.00 They submit that their two daughters had to share a room upstairs which affected their studies due to the loss of their privacy and space. The Tenants sent them to private tutoring to ensure they did not fall behind since they were unable to work effectively at home. Invoices from [redacted] tutoring were provided which confirmed the tuition fees.
8. When the Tenants first reported the flooding to the Landlord on 27 January 2023, they were given fans to dry the floors and then dehumidifiers a few days later. Because of the water in the carpet, the carpet began to smell. The Landlord advised the Tenants that she was making a claim through her insurance company for the damage and was waiting for their response. The Tenants expected the insurance claim to be resolved within a few weeks however there was a delay with processing the Landlords insurance claim.
9. The Landlord submitted the Tenants had 75% use of the property and offered $3000.00 in rent reduction instead. Whilst the Tenants could not use the bedrooms downstairs when the property was first flooded, the Landlord submitted they could use one bedroom downstairs when she installed a temporary carpet and rugs on 10 March 2023. The Tenants also still used the

internal garage, rumpus bedroom, laundry and bathroom downstairs for storage and washing.

10. The Tenants submitted they could not use the downstairs area because it was too dusty and there were nails protruding everywhere which was a safety hazard for their daughters.

Was downstairs uninhabitable?

11. In determining how much rent reduction should be awarded, the first question to determine is, was the downstairs of the property uninhabitable?

12. Section 59 RTA provides:

Destruction of premises

*(1) Where, otherwise than as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), the premises are destroyed, or are so seriously damaged as to be uninhabitable, — (a) the rent shall abate accordingly; and (*b) *either party may give notice to the other terminating the tenancy.*

(2) Where a landlord gives notice of termination under subsection (1), the period of notice shall be not less than 7 days.

(3) Where a tenant gives notice of termination under subsection (1), the period of notice shall be not less than 2 days.

(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.

(5) This section does not apply in relation to damage that is contamination by a contaminant if regulations prescribe a relevant method of testing for, and a relevant maximum inhabitable level of, that contaminant (but see section 59B).

15. The RTA does not define the word uninhabitable. But the Tribunal now has the guidance of District Court case law 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 (CIV2011-009- 001428) 28 November 2011.*

16. It emerged from these cases that where premises are uninhabitable but the tenancy continues, a 50% rent abatement is often considered reasonable, although individual circumstances can vary the amount by which the rent should abate.

17. In considering the evidence, only the downstairs area of the property was ‘uninhabitable’ but the upstairs was not affected. The Tenants submitted the impact of this was they had to share rooms, they could not study effectively and one Tenant suffered persistent migraines. I consider the rent should not be reduced by 50% but rather 20% because the Tenants still had use of the upstairs facilities from the 27 January 2023 to the end of the tenancy.

18. The amounts ordered are proved.

Tenants claim for stress and trauma

19. The Tenants claimed $5000.00 for the emotional stress they experienced as a result of the flooding and delayed repairs. The Tenants were stressed out because they were unable to study effectively and everything was always untidy. They stated they were “*being made to live in horrible conditions, being caused inconvenience and being left with serious health and safety hazards*”.

20. One Tenant began suffering from severe headaches and was referred to a neural specialist which cost $530.00 for the appointment. An invoice was provided to substantiate this. They were then recommended to undergo an MRI head scan which cost the Tenant $2100.00. A quote was provided by [Clinic] to confirm this.

21. The Tenants were also unable to bring their parents to visit and they had to fund their daughters to attend [redacted] tutoring because they could not study at home.

19. The Landlord claimed that the stress was the repercussions of this extraordinary natural event that happened. They were all victims of this unforeseeable event and she was apologetic towards the Tenants. It was however out of her control. She also noted if the conditions were as bad as the Tenants claim, they still renewed their lease for a further two months.

20. The Tribunal can award compensation to a Tenant if the losses they suffered were caused by the Landlord’s breaches of their obligations. Sometimes it can be awarded for less tangible effects of proven breaches such as stress. The Tenant would have to prove that the emotional stress was caused by the Landlords breaches.

21. In considering the evidence, the Tenant has complained their emotional stress was caused by the damages from the flooding and Landlords delay in repairing. The medical evidence from the neurologist however failed to link the cause of the Tenants headaches to the stress from the Landlords failure to repair. There

was also a lack of evidence to prove that the Tenants daughter's education suffered due to the lack of study space. For these reasons, the claim is dismissed.

Tenants claim for withholding the bond

22. The Tenants claimed $2000.00 because the Landlord withheld their bond at the end of the tenancy. They submit before they vacated the property, the house was cleaned to very high standard and there were no damages, only normal wear and tear. They believed the Landlord's actions in withholding the bond was retaliatory because they requested a rent reduction.
23. The Landlord submitted the Tenants claim was unreasonable as the bond is frozen as soon as an application to the Tenancy Tribunal is made.
24. In considering the evidence, the Landlord has not withheld their bond in this case. The Bond is held at the Bond Centre and the distribution of the Bond is subject to the applications before the Tribunal.
25. The claim is dismissed.

Landlords claim for rent arrears

26. The Landlord claimed the tenancy ended on 12 May 2023 and provided a rent summary which proved the amount owing. The Landlord also provided evidence of text message correspondence between the parties where the Tenants confirmed the vacate date was the 12 May 2023. The Tenants also submitted evidence of a letter written between the parties where the Landlord has confirmed the notice to end the tenancy from the Tenants was for the 12 May 2023.
27. The Tenant claimed the tenancy ended on 11 May 2023 because that was when they vacated. There was a discrepancy of one day.
28. in considering the evidence, I find the Landlord has provided a rent summary and correspondence which confirms the agreement for the tenancy to end on 12 May 2023.
29. The amount ordered is proved.

Landlords claim for emotional stress

30. The Landlord claimed $5000.00 for the emotional stress, turmoil and unreasonable conduct of the Tenants. The Landlord submitted this was caused by the Tenants ceasing to pay rent, insurance companies delaying their

processes and having to manage Tradespeople. The Landlord relied on the rent to pay her mortgage and all of this was compounded by her husband passing away in June 2020. She said she suffered anxiety, stress and sleepless nights. There was no medical evidence provided to substantiate her emotional stress as she turned to a lot of friends for moral support.

31. The Tenants claimed they never acted unreasonably towards the Landlord and never harassed her. They had a good relationship with the Landlord prior to the floods occurring and were very patient with her. The only time they contacted her was to obtain updates regarding the insurers because the process was so protracted but they were never aggressive or impolite with her.

32. In considering the evidence, the Landlord never provided any medical evidence or third party evidence to prove that she suffered from emotional stress. I find it more likely than not, from the Tenants demeanour and conduct at the hearing that they would have acted reasonably when contacting her. For this reason, the claim is dismissed.

Landlords claim for cleaning mould and carpet stains

33. At the end of the tenancy the Tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986. The tenant must also replace standard light bulbs.

34. The Landlord claimed $390.00 because the curtains in the lounge, three bedrooms and downstairs rumpus rooms had mould which the Landlord had to clean or replace. Receipts were provided for the new replacement curtains to substantiate this. Photographs were also provided to show the mould damage and an ingoing inspection report which indicated there was no issues with the curtains at the start of the tenancy.

35. The Landlord also claimed for carpet to be replaced due to multiple stains on the lounge and bedroom carpets. Photographs were provided of the stains and an ingoing inspection report.

36. The Tenants submitted they never noticed the mould on the downstairs curtains. The house was not properly insulated so this could have caused the mould. They submitted the house was more than 10-15 years old and they had spent approximately $1400.00 on cleaning when they vacated.

37. The Tenants submitted they had the carpet professionally cleaned when they vacated the property. The carpets were also nearly 10 years old so a lot of the stains were present before they moved into the property. There was however no

invoice provided by the Tenant to prove there was an attempt to clean the carpet stains.

38. In considering the evidence, the Landlord provided evidence of the stains in the carpet, but they did not show that the stains were extensive enough to require carpet replacement. There was also no evidence of the cost to replace the carpet.

39. For these reasons, the claim for carpet replacement is dismissed.

40. In terms of the mould, the Landlord provided photographs of the curtains and an invoice for the replacements. The initial ingoing inspection report did not indicate an issue with the curtains at the start of the tenancy. For this reason, I find the amount of $390.00 for the replacement curtains reasonable.

41. The amounts ordered are proved.

Landlords claim for kitchen floor damage

42. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the damage. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.

43. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.

44. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

45. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

46. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

47. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a

person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

48. The following damage was caused during the tenancy: damage to the wooden kitchen floor.

49. The Landlord claimed $610.00 due to green bleach marks on the kitchen wooden floor. The whole floor was sanded back and coated which cost approximately $2000.00. The Landlord submitted photographs and an ingoing inspection report.

50. The Tenant acknowledged the stains were caused by some food colouring spilt on the floor that they could not remove with bleach or cleaning. They submitted the cost to repair should be $300.00 instead.

51. In considering the evidence, there was no evidence from a builder or floor specialist to confirm the amount to repair the stains in the floor. The stains were fairly prominent and although the whole floor was sanded back which cost approximately $2000.00, the Landlord did not claim this entire amount. I therefore consider $610.00 to be reasonable.

52. The amounts ordered are proved.

53. I have taken into account betterment and depreciation. The landlord should be returned to the position they would have been in had the tenant not breached their obligations, and should not be better or worse off. In calculating depreciation, I have taken into account the age and condition of the items at the start of the tenancy and their likely useful lifespan.

54. As the Tenants and Landlord have both been substantially successful, name suppression is granted to both parties however each party shall pay their own filing fees.

A Aiolupotea
25 September 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.