

TENANCY TRIBUNAL - Whanganui

APPLICANT: Peter Orchard, Stephanie Louise Fraser, Bryce Mathew
Reid Smith As Trustees For The Duncan Trust

Landlord

RESPONDENT: Rachael Mary Tobeck

Tenant

TENANCY ADDRESS: 5A Rawhiti Place, Saint Johns Hill, Whanganui 4501

ORDER

1. Based on the calculations in the table below, the Bond Centre is to pay the bond of \$1,680.00 (5603575-003) as follows:
 - a. \$1,615.27 to Peter Orchard, Stephanie Louise Fraser, Bryce Mathew Reid Smith as Trustees For The Duncan Trust immediately.
 - b. \$64.73 to Rachael Mary Tobeck immediately.

Description	Landlord	Tenant
Rent arrears	\$1,475.00	
Electricity	\$63.27	
Bathroom floor	\$50.00	
Filing fee	27.00	
Total award	\$1,615.27	
Bond	\$1,680.00	
Balance of bond payable to Tenant	\$64.73	

Reasons:

1. Both parties attended the hearing, the landlord represented by Peter Orchard and Stephanie Fraser.
2. The landlord has applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
3. The onus is on the landlord to prove their claim and the standard of proof is on the balance of probabilities.

Rent and lock replacement

4. The tenancy ended on 13 May 2024 as a result of the landlord giving a 90-day notice for renovations. The landlord provided rent records to 14 May 2024. They also sought a contribution to the cost of changing the locks.
5. The tenant said that she left all keys in the letterbox on 13 May 2024. The landlord said that when they visited the property on 14 May 2024 they found another key in the lock of the front door. They therefore felt they needed to change the locks and sought a contribution towards that.
6. I am not satisfied that the landlords needed to change the locks. This is not a case of the tenants failing to return the keys. It appears that one of the keys was not returned on 13 May and so I have allowed rent until 14 May.
7. The landlord provided a rent summary showing that the rent owed at 14 May was \$1,475.00. The tenant agreed that she had withheld some rent towards the end of the tenancy. She said that this was because she should be compensated for mowing the lawn. The lawnmowing was included in the rent, but she had looked after her own lawn after her dog had become upset by the person who attended to the grounds of this tenancy and the other flat, also owned by the landlord.
8. Based on the evidence the tenant has not established that there was any agreement that her rent would be abated or by what amount. The landlord has established that the tenant owed the rent claimed and that amount is ordered.

Electricity

9. The tenancy commenced on 22 November 2022.
10. Before the tenant moved in, the power had been in the name of one of the trustees while they attended to matters in the property. When the tenant took possession, she arranged for the power to be transferred to her name, but inadvertently entered the wrong flat number. That was later rectified, but in the meantime, the landlord had paid a small amount of electricity on the property.
11. An invoice was produced for \$63.27 for a billing period from 21 November to 19 December 2022. This covered a period after the commencement of the tenancy. Accordingly, the sum of \$63.27 is ordered.

Carpet

12. The landlord seeks compensation for replacement of the carpet.
13. 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. The landlord said that at the end of the tenancy the carpet was stained and smelt of dog urine. They produced photographs which showed some dark discolouration and some faeces by the wall. They also produced a letter from Flooring Brothers, which said:

Thanks for calling our team in for a assessment on your rental property.

We remember installing this property before your tenant had moved in, we replaced new vinyl in kitchen and bathroom area.

And we also assessed carpet back then, at that stage the carpet was fine for another ten years or more.

Upon our inspection the carpet was heavy soiling with pet urine and stained faeces, which has soaked through into the underlay and smooth edge in flooring.

We also have investigated the kitchen areas as there were significant stains and what appeared to be hot residue spilt on the area.

We have 15 years experience in the flooring business, it's very bad and we recommend a full replacement of all flooring areas due to the damage, its beyond repair.

The tenant has had total neglect for this home, and it's a shock to see such a nice property in this state.

19. The tenant denied that her dog had caused any damage. She said that he did not urinate inside. She acknowledged that there was a coffee stain that she had not realised was there until furniture was moved. She said that her relative had cleaned the property for her and she knows it would have been very clean.
20. I acknowledge that at least one of the marks looks like a coffee stain. In fact, it does not appear that the house was cleaned at the end of the tenancy.
21. I am satisfied that it is more likely than not that the carpet was damaged by pet urine. The landlords said that it smelt and they produced evidence from a foorer who confirmed that. There were faeces in the photographs. It appears that the tenant may not have realised that her dog was not always going outside to urinate. I find that the carpet required replacement.
22. 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.
23. The landlords were unsure of the age of the carpet but said it was in pristine condition when they bought the flat in 2016.
24. According to the Inland Revenue General Depreciation Rates, the expected lifespan of a carpet in a rental property is 8 years. That does not mean that an 8- or 10-year-old carpet has no value to a landlord. In many instances such a carpet will be in reasonable condition and there would be no reason to replace it. In those circumstances the Tribunal may order a contribution towards the replacement costs.
25. Based on the photographs and the email from Flooring Brothers, I find that in many respects the carpet was in good condition. However, there was an area by the ranch slider that was threadbare and coming away from the wall. This had been covered with a mat.
26. The tenant said that the landlord had told her at the start of the tenancy that she could have a dog because the landlords were intending to replace the carpet at the end of her tenancy. The landlords denied they had said that.
27. I have decided that no compensation should be ordered for the following reasons:
 - a. The carpet was more than 8 years old.

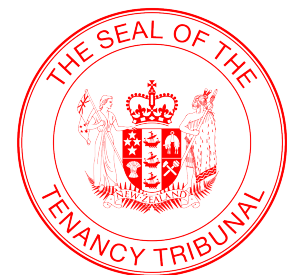
- b. There was considerable wear in one part of the property.
 - c. For a termination notice for renovations to be valid under section 55(2)(f) there needs to be “extensive alterations, refurbishment, repairs, or redevelopment of the premises”.
28. I find that the landlord intended to undertake renovations. I find it more likely than not that the landlords were intending to replace the carpet at the end of the tenancy and in any event the value of the carpet was minimal because of the existing poor condition by the ranch slider. No compensation is ordered for the carpet.

Kitchen sink

29. The landlord said that the sink in the kitchen and fallen down on one side. It was from the 70s and at that time sinks were glued from below. They believe that the tenant might have left heavy plants in the sink, causing damage.
30. The tenant denied that she did so.
31. The landlord has not proved that the tenant's careless or intentional actions caused any damage to the kitchen sink. The claim for the sink is dismissed.

Bathroom floor

32. The landlord produced a photograph showing a black mark on the bathroom floor. This flooring had been new at the start of the tenancy. The landlord has not replaced the floor but seeks compensation of \$50.
33. The tenant does not know how the mark got there.
34. I find it is more than fair wear and tear. Compensation of \$50 is reasonable.
35. The amounts ordered are proved.
36. Because Peter Orchard, Stephanie Louise Fraser, Bryce Mathew Reid Smith As Trustees For The Duncan Trust has substantially succeeded with the claim I have reimbursed the filing fee.



T Baker
22 August 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.