[2025] NZTT 4951333, 5089450, 5168197

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenant's and landlord's names and identifying details.
2. The Bond Centre is to immediately pay the bond of $3,000.00 ([Bond number suppressed]) as follows:

    a. $2,426.96 to [The landlord/s].

    b. $573.04 to [The respondent/s]

Description	**Landlord**	**Tenant**
Rent arrears to 13 Dec 2024	$11,860.00	
Rent abatement 1 Feb 2024 – 13 Dec 2024		$14,550.00
Water rates to 27 Nov 2024	$3,509.46	
Rubbish removal 21 Feb 2025	$2,357.50	
Compensation: Cleaning at start of tenancy		$750.00
Total award	**$17,726.96**	**$15,300.00**
Net award	$2,426.96	
Bond	$2,426.96	$573.04

Reasons:

3. The matter's procedural background is set out below:
    a. 25 July 2024: Landlord applied for orders to terminate the tenancy, rent arrears and water rates.
    b. 29 October 2024: First video hearing. Only the landlord attended. An order was made to terminate the tenancy. Landlord's claims for rent arrears and water rates were adjourned for further evidence to be filed.
    c. 12 November 2024: Tenant applied for re-hearing.
    d. 14 November 2024: Application for re-hearing dismissed on the papers.
    e. 28 November 2024: Tenant filed cross-application seeking compensation and/or exemplary damages.
    f. 19 December 2024: Case conference hearing.
    g. 18 February 2025: Landlord filed new application seeking order for disposal of tenant's goods.
4. Both parties attended the face-to-face hearing on 20 March 2025 at Waitakere District Court.
5. The parties confirmed the tenancy ended on 13 December 2024. The landlord states the tenant's belongings were not fully removed from the premises until 21 February 2025.

Summary of claims

6. The landlord's remaining claims are:
    a. Rent arrears to 13 Dec 2024: $11,860.00.
    b. Water rates to 27 Nov 2024: $3,509.46.
    c. Compensation for costs of rubbish removal, lawn mowing, water and electricity from 30 Dec 2024 – 28 Feb 2025, and property management costs: $10,113.80.
7. The tenant's claims are:
    a. Compensation in the form of rent reduction from 1 Feb 2023 to 13 Dec 2024 for flood damage which was not repaired: Total of 97 weeks at $200.00 per week: $19,400.00
    b. Compensation for loss of income for same period when son was no longer occupying the downstairs bedroom and therefore was not paying rent: Total of 97 weeks at $220.00 per week: $21,340.00.

c. Compensation for cleaning at start of the tenancy: $1,500.00.

d. Exemplary damages for landlord requiring rent more than 2 weeks in advance or before rent already paid expires: amount sought not specified.

Burden and standard of proof

8. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA").

9. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards.

10. That includes a requirement that the party bringing the claim (the applicant), establish their claims "on the balance of probabilities". The balance of probabilities means more likely than unlikely, or in mathematical terms, has a fraction more than 50% likelihood. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely.

11. This obligation carried by the applicant is referred to as the "burden of proof". Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

12. As noted by the District Court in *Kaipo v Clarke & McCarthy* (DC) TT233/02, in practical terms this means that:

> [L]ike anyone who brings an application before a Tribunal or Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to provide the necessary evidence. It is not up to the other parties, and it is certainly not up to the Tribunal to extract evidence.

Exemplary damages

13. Exemplary damages are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

> Exemplary damages 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.

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

15. Section 109 of the RTA relates to exemplary damages and confirms that exemplary damages can be awarded if the unlawful act was committed intentionally, and having regard to:
    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.
16. The maximum levels of exemplary damages are set out in Schedule 1A of the RTA.

THE LANDLORD'S CLAIMS

How much is owed for rent?

17. The tenancy ended on 13 December 2024. The landlord provided rent records which prove the amount owing at the end of the tenancy based on a weekly rent of $750.00 was $11,860.00.
18. The tenant acknowledges they were in rent arrears but challenged the amount of arrears recorded by the landlord.
19. The tenant was unable to identify any error or missed payment in the schedule provided by the landlord.
20. I am satisfied there was no error identified in the landlord's record of rent arrears.
21. The rent arrears ordered is $11,860.00 must be set off against the rent abatement owed to the tenant for damage to the premises after the Auckland Anniversary floods on or about 30 January 2023.[1]

How much is owed for water rates?

22. The landlord says the tenant owes $3,509.46 in water rates to 27 November 2024 (invoice dated 6 December 2024 for consumption to 27 November 2024).
23. The summary of water invoices and payments provided by the landlord shows the tenant only made one payment towards water during the tenancy, being $150.00 paid on 2 March 2022.

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[1] See below from [45].

24. The tenant acknowledges they were in arrears for water consumption charges but challenged the amount recorded by the landlord. The tenant says on their calculation they owe $1,435.00 for water consumption. The tenant was unable to demonstrate how they had reached the alternative amount.

25. The tenant said Work and Income New Zealand (WINZ) had made a payment of $4,480.00 on 4 August 2022 and that that was to cover rent arrears and water rates arrears to that date.

26. A payment of $4,480.00 on 4 August 2022 is recorded in the landlord's rent summary, however that was the total amount owed in rent arrears at that time (as at 23 July 2022). As at 2 August 2022, the landlord's records indicate water rates arrears were $455.18. The payment of $4,480.00 by WINZ on 4 August 2022 could not have covered both rent arrears and water arrears at that time.

27. In any event, the arrears owing at the end of the tenancy began accruing from 30 December 2023. The tenant alleges she has been charged for "all of the water" rather than just consumption, however, the tenant did not identify any specific instances where she says the landlord over-charged her.

28. I am satisfied the landlord has proved the tenant owes $3,509.46 in water rates to 6 December 2024.

Did the tenant comply with their obligations at the end of the tenancy?

29. 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.

30. The landlord says the tenant did not remove all of their belongings when they moved out of the premises on 13 December 2024. On 19 December 2024, during the case conference, the parties came to an agreement that the tenant would be permitted access to the property on 20, 21 and 22 December 2024, between 8:00am and 6:00pm each day, to collect items left behind.

31. The landlord says the tenant still did not remove all her belongings and rubbish on those days, and on 18 February 2025, the landlord filed a new application seeking an order for destruction (application number 5168197).

32. On 21 February 2025, the landlord arranged for a contractor to come to the premises and dispose of the items left behind. The landlord seeks reimbursement of that cost, being $2,357.50, as per the invoice provided.

33. The landlord provided photographs taken on 14 February, 16 February and 19 February 2025 which show a large amount of belongings, rubbish and furniture were left at the premises. The various belongings were inside and outside the property.

34. The tenant acknowledges items were left behind but says that is because the landlord was not co-operative during the three days (20 – 22 December 2024) when she and her family members returned to collect her belongings. The tenant says the landlord accused the tenant of changing the locks and doorcode and says the landlord did not cooperate with opening the gate for moving vans or trucks to enter.

35. The tenant accepts she left belongings and rubbish in the premises after the three days but says she did her best to get out on time.

36. The tenant moved out of the premises on 13 December 2024, and was required to leave the property vacant from that time. The agreement made by the landlord to allow her to return on 20, 21 and 22 December 2024 was sufficient additional time to remove the items from the home. As the tenant failed to remove all belongings and rubbish, the tenant must reimburse the landlord for the costs of having those items disposed of.

37. I order the tenant pay the landlord $2,357.50 for the cost of removing items left at the premises.

38. In addition to reimbursement of the removal costs, the landlord also sought reimbursement for:

    a. Lawn mowing on 5 March 2025: $100.00.

    b. Water rates as per invoice dated 27 Dec 2024: $92.72.

    c. Electricity charges for months of December 2024, January 2025, and February 2025: $363.58.

    d. Property management costs from 13 Dec 2024 – 23 Feb 2025, being 72 days at a rate of $100.00 per day: $7,200.00

39. I dismiss the claim for lawn mowing. The tenancy ended on 13 December 2024. Given the lawns were mowed more than two months after the tenancy ended, it is not surprising that they were overgrown by that time. The tenant is not responsible for this cost incurred two months after the end of the tenancy.

40. I dismiss the claim for water rates as per invoice dated 27 Dec 2024. The invoice filed in support is based on an estimate of usage to 27 December 2024. Given the tenant moved out on 13 December 2024, I am not satisfied the tenant consumed that amount of electricity at the time the tenancy ended.

41. I dismiss the claim for electricity charges. The landlord's agent says the landlord transferred the power into an account in his own name from 13 December 2024 and the charges accrued were from keeping the power on at the property to keep the tenant's fridge running. The electricity charges accrued in that period after the tenancy had ended. The tenant is not liable for consumption of the electricity after the landlord took back possession of the property.

42. I dismiss the claim for property management costs. The costs alleged to have been incurred are significant. The landlord's agent stated she was required to work full-time, every day, on the matter between 13 December 2024 and 23 February 2025. That seems excessive, and without any acknowledgement that it spanned weekends and the Christmas and New Year holiday periods.

43. Notably, no invoice was filed to show the landlord's agent had invoiced her client for the costs claimed. I am not satisfied the landlord actually incurred these costs.

44. Even if an invoice had been filed in support of the amount sought I would have dismissed the claim on the basis I do not accept the tenant's failure to remove all belongings would have required 72 days of work for a property manager.

THE TENANT'S CLAIMS

Rent abatement for premises partially destroyed

45. The tenant seeks a rent abatement totalling $19,400.00, at a rate of $200 per week for the period 1 February 2023 to 13 December 2024, on the basis the premises were partially destroyed, or part of the premises were so seriously damaged as to be uninhabitable for that period. See section 59(4) of the RTA.

46. The tenant says the lower level of part of the premises was flooded during the Auckland Anniversary floods which commenced on 27 January 2023. The areas flooded were a second living room, the tenant's son's bedroom, the laundry and a toilet/shower room. The tenant says she reported the damage to the landlord who arranged for an insurance assessor and contractors to attend in the following week. The tenant says the floor coverings and bottom part of the wall coverings (gib) were removed in the week or two after the flood.

47. The tenant says the floor coverings and walls were never replaced during the tenancy. The tenant says the landlord verbally agreed to a rent reduction of $150 or $200 less per week while remedial work was undertaken, but that a rent reduction was never applied and the tenant continued to pay the full rent of $750 per week for the remainder of the tenancy.

48. The tenant produced photographs taken approximately 1 – 2 weeks after the flood which show approximately 1m of the lower wall coverings were removed in the downstairs living room, bedroom, laundry and shower/toilet room, exposing the wooden framing. The photographs also show the floor coverings had been removed. The tenant says the rooms remained that way for the rest of the tenancy. The tenant says the area had a strong odour and was uninhabitable for the rest of the tenancy.

49. The landlord acknowledges flood damage occurred during the Auckland Anniversary floods on 27 January 2023. The landlord confirmed the wall

coverings and floor coverings were removed from the lower-level rooms described and were not replaced during the tenancy.

50. The landlord says the damage was not remedied because the tenant failed to co-operate with contractors sent to the property to carry out the work.

51. The landlord also says the tenant accepted the non-remediated condition of the premises when she signed a renewed tenancy agreement dated 22 March 2023.

52. The landlord further says there was no verbal agreement made to reduce the rent while any flood damage was fixed.

53. It is not disputed that damage was caused to the lower-level bedroom, lounge, laundry and shower/toilet room during the 27 January 2023 flood. It is also not disputed that the wall coverings and floor coverings in those rooms were removed shortly after and were not replaced for the remainder of the tenancy.

54. I find the flood damage, and removal of the wall and floor coverings, rendered the bedroom and lower lounge uninhabitable. The tenant says her son had been living in the lower bedroom but was unable to after the flood damage occurred.

55. The landlord was unable to provide evidence to support the allegation that the tenant had obstructed contractors from attending the premises to remedy the damage. Even if evidence of obstruction had been provided, I note the landlord had not pursued available options to overcome that. The landlord could have applied to the Tribunal for an order granting the landlord access in order to complete any remedial work if the tenant was refusing access. No such application had been pursued by the landlord.

56. The terms of the tenancy agreement signed 22 March 2023 do not specify that the tenant accepts the flood damaged condition of the premises. While the first tenancy agreement signed 2 February 2022 states the tenant “accept existing house condition” that term appears to have been in reference to the property being intended for renovation and/or development. That condition was not included in the agreement signed 22 March 2023 and no reference was made to the flood related damage. Accordingly, I do not find the tenant agreed to accept the flood damaged condition of the premises.

57. I make no finding as to whether the parties reached a verbal agreement regarding a reduction in rent. The evidence on that issue was not supported by any corroborating evidence in the form of any written communications between the parties.

58. Given my finding that the lower level was rendered uninhabitable following the 27 January 2023 flood, and the undisputed evidence that it was not remedied for the remainder of the tenancy, I find an appropriate rent reduction for the period 1 February 2023 – 13 December 2024 is $150 per week.

59. I order a rent abatement at a rate of $150 per week for a period of 97 weeks, from 1 February 2023 – 13 December 2024, totalling $14,550.00.

Compensation for loss of income

60. The tenant seeks compensation totalling $21,340.00 for loss of income for the period 1 February 2023 – 13 December 2024 when the tenant's son was no longer occupying the downstairs bedroom and therefore was not paying rent.

61. The tenant says her son had agreed to pay her $220 per week towards rent, but that he stopped paying rent once the bedroom he was occupying was flooded and became uninhabitable. The tenant's son moved out of the premises following the flood but came back to live (sleeping in another bedroom) with the tenant at times during the tenancy.

62. The Tribunal's jurisdiction is limited to determining disputes between tenants and landlords. The tenant's son is not a tenant as listed in (any of the many) tenancy agreements. The tenant seeks compensation from the landlord for the loss she says she incurred due to her son breaking an agreement he had made with the tenant to contribute towards the rent.

63. The tenant was not able to identify any statutory (or otherwise) basis for her claim against the landlord.

64. I find the Tribunal does not have jurisdiction to determine a dispute that is ultimately between the tenant and her son. I dismiss the tenant's claim for compensation for loss of income.

Compensation for cleaning at start of tenancy

65. At the start of the tenancy the landlord must provide the premises in a reasonable state of cleanliness. See section 45(1)(a) of the RTA.

66. The tenant says the premises were not clean at the start of the tenancy. The tenant says the landlord initially said they would arrange for the premises to be cleaned. That did not occur, and the tenant says the landlord then asked the tenant to clean the premises themselves and the landlord agreed to pay her $1,500 cash, or give her a credit of two weeks rent (being the same amount).

67. The tenant says she completed the cleaning but was never paid nor given a rent credit. The tenant therefore seeks compensation of $1,500.00 for cleaning the premises at the start of the tenancy.

68. The tenant did not produce photographs to show the condition of the premises when she moved in.

69. The landlord acknowledged the premises were not "a high standard of cleanliness" prior to the start of the tenancy. The landlord says the tenant agreed to clean the premises themselves, and the landlord agreed to reimburse the tenant for the cleaning products used. The landlord says she paid the tenant $150.00 for cleaning products.

70. The landlord accepts the premises were not “a high standard of cleanliness” when the tenancy began. While the landlord could not say if they were “reasonably clean,” I am satisfied that the landlord’s offer to pay for cleaning products was recognition that the premises were not reasonably clean at the start of the tenancy. Given that, I find the tenant is entitled to compensation for carrying out the cleaning themselves. Payment for the cleaning products only does not compensate the tenants for carrying out the work themselves.

71. Without photographs to show how unclean the premises were at the start of the tenancy, I am unable to accurately assess whether the claim for $1,500.00 in compensation is reasonable.

72. Taking into account that the premises were a large multi-level family home, and given the parties agreed it had not been sufficiently cleaned prior to the tenants moving in, I am satisfied it would have taken the tenant several hours to bring it up to a standard of “reasonably clean.” I make an order for $750.00 compensation to the tenant for the landlord’s failure to provide the premises in a reasonable state of cleanliness.

Exemplary damages for landlord unlawfully requiring rent

73. A landlord may not require the payment of any rent more than two weeks in advance or before the expiry of the period for which rent has been paid already. See section 23(1) of the RTA.

74. A landlord who contravenes section 23(1) commits an unlawful act, the maximum penalty for which is $1,500. See section 23(4) and Schedule 1A of the RTA.

75. As it transpired at the hearing, the tenant’s complaint was essentially that the landlord required payment of rent from 5 February 2022 when the tenant says she did not move in until 10 February 2022. Because of this, the tenant says by paying rent from 5 February 2022 she was required to pay rent more than two weeks in advance, or before rent paid had expired.

76. The first tenancy agreement was signed by the landlord on 2 February 2022. It was signed by the tenant on 5 February 2022. The agreement states the tenancy started on 2 February 2022. Both parties confirmed the bond and first week’s rent was paid on 4 February 2022.

77. The landlord says she gave the tenant the keys and code to the gate on 4 or 5 February 2022. The landlord’s rent summary records that rent was charged from 5 February 2022.

78. The tenant says the landlord refused to allow the tenant to move into the premises until 10 February 2022. The tenant was unable to produce any evidence to support her position. During the hearing, the tenant spent some

time analysing the dates rent was paid but was unable to demonstrate a time when rent was paid more than two weeks in advance, or before the expiry of the period for which rent had already been paid.

79. During the hearing, the tenant stated she did not believe she had over-paid rent over the tenancy but says the landlord's demands for her to pay more rent were unlawful. The tenant was unable to identify a specific period when such a demand had been made.

80. I find the landlord did not commit an unlawful act in the manner alleged. I dismiss the tenant's claim for exemplary damages.

ADDITONAL MATTERS

Should the tenant reimburse the landlord's application fee?

81. The landlord sought reimbursement of the application fee if their claim was successful.

82. As both the landlord's application and the tenant's cross-application succeeded in part each party must pay their own application fees.

Should the parties' identifying details be suppressed?

83. The Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name and/or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case. See section 95A of the RTA.

84. Both parties applied for suppression of their names. As both parties' applications succeeded in part, both parties are entitled to name suppression and I make the order accordingly.

Bond

85. Both parties sought refund of the bond. The bond is to be paid to the parties as set out above at [2].

N Small
21 March 2025

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 $260. 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.