TENANCY TRIBUNAL AT PAPAKURA | TE TARAIPIUNARA RETIHANGA KI PAPAKURA

APPLICANT: Mi Kwon

Landlord

RESPONDENT: Megan Jeffries

Tenant

TENANCY ADDRESS: 25 Sutton Crescent, Papakura, Papakura 2110

ORDER

1. Megan Jeffries must pay Mi Kwon $2,203.43 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of $2,300.00 (5774248-003) to Mi Kwon immediately.

Description	Landlord	Tenant
Rent arrears from 12 June to 30 June 2024	$1,886.43	
Rubbish removal	$500.00	
Lock/key replacement: one lost key	$150.00	
Repairs: insurance excess (2 lots) for fire and malicious damage	$1,500.00	
Repairs: replacement of exterior fibre cement sheet	$350.00	
Filing fee reimbursement	$27.00	
Previous rent arrears accrued as at 11 June 2024	$90.00	
Total award	**$4,503.43**	
Bond	$2,300.00	
Total payable by Tenant to Landlord	**$2,203.43**	

Reasons:

1. Both parties attended today's rehearing ordered by the Tribunal on 31 January 2025.

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 after the tenant caused a fire to the premises on 23 April 2024.
3. The tenant applied for 4 weeks' rent rebate because the premises were uninhabitable after the fire but the landlord had charged full rent.

How much is owed for rent?

4. The tenancy ended on 28 June 2024 after order of the Tribunal under application 4910993.
5. Following the fire on the premises, the landlord gave notice to the tenant to vacate the premises. The tenant did not vacate the premises immediately after the fire, despite the premises being uninhabitable. The landlord had to apply to the Tribunal for an order to terminate the tenancy.
6. Because the tenant herself had asked to stay at the premises and had not vacated the premises until a termination order is issued by the Tribunal, I consider that the landlord is entitled to charge rent until the date that actual possession is returned to the landlord. The tenant only returned the keys to the landlord on 30 June 2024.
7. The tenant herself emailed the landlord on 7 June 2024 pleading for an extension to 24 June to find a suitable house to relocate to.
8. Under the circumstances, it would be inequitable to deny the landlord's claim for rent until 30 June 2024. I dismiss the tenant's claim for rent rebate accordingly.
9. The landlord provided rent records which prove the amount owing at the end of the tenancy.

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

10. 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.
11. The tenant did not leave the premises reasonably clean and tidy, and did not remove all rubbish.
12. The tenant did not return one of the keys. I consider replacement cost of $150.00 fair and reasonable.
13. I dismiss the landlord's claim for cost to replace the curtains. I prefer the tenant's evidence that she never removed any curtains from the premises.

14. The landlord still has not removed any rubbish from the premises despite the tenancy having ended in June 2024, which is over 10 months ago now.
15. While the tenant left behind some rubbish, question remains as to the actual extent of the tenant's rubbish left behind. There were rubbish left behind by previous tenants 4 years ago which has not been removed at the start of this tenancy.
16. Given the uncertainties surrounding the claim as sought by the landlord, I only award $500.00 for rubbish removal costs.
17. Only the amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

18. 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.
19. 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.
20. 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.
21. 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.
22. 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.
23. The premises were damaged by a fire that broke out on 23 April 2024. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
24. The tenant's explanation that the fire had been caused by a displaced candle or glass jar had been disproved by the fire investigation report issued by the

landlord’s insurer. I do not find the tenant’s explanation credible. I consider it just that the tenant reimburses the landlord’s two lots of insurance excess totalling $1,500.00 (uninsured loss) pursuant to s49B Residential Tenancies Act 1986. The tenant's liability has accordingly been limited to the lesser of the insurance excess under section 49B(3)(a) RTA.

25. The exterior wall was damaged by the tenant’s pet cat. The replacement cost of the exterior fibre cement sheet is proved at $350.00.

26. 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.

27. Only the amounts ordered are proved. Because the landlord is partly successful on the claim, I also order the tenant to reimburse the filing fee.



J Tam
14 April 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.