[2024] NZTT 4969033

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: 183B Waihi Road, Judea, Tauranga 3110

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Landlord and Tenant's names and identifying details.
2. [The landlord/s] must pay [The tenant/s] $1,376.00 immediately, as calculated in the table below.

Description	**Landlord**	**Tenant**
Rent repayment - 6 days		$445.71
Rent repayment 14 June 2024		$74.29
Exemplary damages – failure to repair in a timely way		$700.00
Compensation for power used		$20.00
Exemplary damages- Failure to provide premises in a reasonable state of cleanliness		$100.00
Filing fee reimbursement		$27.00
Total award		**$1,367.00**

Reasons:

1. Both parties attended the hearing which was held at Tauranga District Court on 3 December 2024.
2. This order ought to be read together with the Tribunal's previous order dated 17 October 2024.

3. The tenant has made a claim seeking a rent reduction, compensation for the landlord's breach of s45 of the Residential Tenancies Act 1986 (RTA), compensation for power used and reimbursement of the filing fee. The tenant also seeks an order that the fixed term tenancy be converted to a periodic tenancy.

4. I shall take each of the tenant's claims in turn.

Rent reduction

5. The tenant states that she ought not to have to pay rent for the five and a half weeks she left the premises because of the first flood and the week that she left the premises at the time of the second flood.

6. She states that the premises were uninhabitable during this period because of the flooding, because repairs (other than the repairs needed because of the flood) needed to be completed, and because she could not get hold of the landlord to know when she could get back in to the premises.

7. I accept the landlord's reference to the definition of "uninhabitable". Section 59(1) of the Residential Tenancies Act 1986 (RTA) refers to "uninhabitable" as being where the premises are destroyed or are so seriously damaged as to be uninhabitable.

8. The tenant states that the flood affected the dining room wall and floor. It was accepted evidence that the first flood occurred on 14 June 2024 and that the Chem Dry blowers were at the premises from 15 – 18 June 2024.

9. It was also accepted evidence that the second flood occurred on 14 October 2024 and that the Chem Dry blowers arrived on that day and took 3 days to complete the drying of the premises.

10. I find that the only days that the premises were uninhabitable were the days that the Chem Dry blowers were in operation and the day (14 June 2024) when the flood occurred and before the Chem Dry blowers were in operation.

11. This means that the landlord is only liable to pay back rent for these seven days in total, and not the six and a half weeks total claimed.

12. I say this for reasons that include:

    (a) The premises were uninhabitable for six days because the noise of the blowers would make it intolerable to live there and because the kitchen sink was being used as the drain; and

    (b) The dining room could not be used on 14 June 2024 and I accept that the significant flood occurrence made the premises uninhabitable for the tenant; and

(c) The failure to remedy the remaining repairs that needed to be done (referenced later in this decision when considering the landlord's breach of s45 RTA), did not render the premises uninhabitable.

Breach of s45

13. [The tenant/s] claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986.

14. Under section 45, a landlord must

    provide the premises in a reasonable state of cleanliness

    provide and maintain the premises in a reasonable state of repair

    comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016

15. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.

Cleanliness

16. I accept the evidence showing that the landlord breached s45 by failing to provide premises that were reasonably clean. The skirting boards throughout the house were dirty and the window sills and frames needed wiping down.

17. The landlord states that the premises were reasonably clean because she signed the bond off to the last tenant after doing an inspection of the unit. However 'reasonably clean' for an out going tenant is a different standard to 'reasonably clean' for an ingoing tenant and landlords are often required to further clean premises in between tenancies, even though they have accepted the state of the premises at the end of the previous tenancy.

18. This breach is an unlawful act.

19. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.

20. In making an award of $100.00 for this breach I have taken into account that the landlord intentionally did not provide a unit that was reasonably clean because she considered that it was in fact clean. I have also taken into account the relatively minor nature of this breach.

21. I have also taken into account that there was no evidence of mould on the lounge window sill, as claimed by the tenant, and nor is there any evidence of dirty net curtains also claimed by the tenant.

Failing to repair in a timely way

22. I find that the landlord has again breached s45 by failing to repair in a timely way.

23. It was accepted evidence that the landlord was advised in June 2024 that security door lock did not work. The landlord has not remedied this issue.

24. Further to this, a report completed by the tenant on 29 May 2024 and given to the agent, indicates that the sills in the lounge, dining room and in both bedrooms need repair. This report was shown to the landlord.

25. A 14 day notice to remedy was then couriered to the landlord on 11 June 2024.

26. While the landlord denies receiving this 14 day notice until some time in August, and even if this were the case, I find that the landlord has failed to remedy these issues in a timely way because the sills were not repainted until 6 November 2024.

27. In assessing the elements contained in s109(3) RTA with regard to making an exemplary damages award against the landlord for these breaches, I find that the landlord intentionally breached s45.

28. I say this because the landlord was aware of the security door lock not working and intentionally did not repair it because she considered that it should be disposed of rather than repaired. She has done neither.

29. Further I accept the landlord intended not to have the sills repainted in a timely way because she was aware of the issue very early on in the tenancy and it was not remedied until November.

30. The effect on the tenant was that she could not open the ranch slider on a hot day and still feel secure.

31. In making an exemplary damages award of $700.00 against the landlord for these breaches I have also taken into account the public interest in the landlord abiding by their obligations under the Residential Tenancies Act 1986.

32. Applicants are required to prove their claim on the balance of probabilities – that is, they must show that their version is more likely than the respondent's version of events.

33. In a disputed issue where one party's evidence contradicts the other party's evidence, then the applicant needs to be able to point to some kind of objective evidence which will prove their case.

34. I find that the tenant has been unable to prove the claim under s45 regarding the power point because there was no objective evidence indicating that the landlord was made aware of this issue on 5 October 2024.

35. I am also not able to consider the claim regarding the downpipe because that issue was presented at today's hearing and the landlord had not received prior notice of it.

Smoke alarm

36. The tenant claims that the landlord has breached s45 by failing to provide a working smoke alarm. She points to the Healthy Homes Report dated 12 June 2024which indicates that the smoke alarm between the dining room is "expired should ideally be replaced". She also says that the batteries in the alarm do not last long and need frequent replacement.

37. I am dismissing this part of the tenant's claim. I do so because although the Healthy Homes Report does in fact say that the alarm is expired and ideally needs replacing, it also says that the smoke alarm meets Healthy Homes requirements.

Compensation for power used

38. It was accepted that the Chem Dry Blowers were used for six days in total because of the two floods.

39. The tenant seeks compensation for the power used but has provided no evidence as to how much power was used and therefore how much she ought to be compensated.

40. I have nevertheless awarded a modest nominal amount as compensation.

Fixed term to periodic

41. The tenant seeks an order from the Tribunal so that the fixed term tenancy becomes a periodic tenancy.

42. The Tribunal is unable to vary an agreement between a landlord and tenant in this way – that is for the parties themselves to agree on.

43. The only occasion when the Tribunal reduces a fixed term tenancy is pursuant to the provisions of s61 TRA. Section 61 provides that on an application by a party to a fixed term tenancy, the Tribunal may make an order reducing that tenancy by a period stated in the order, where it is satisfied that because of an unforeseen change in the applicant's circumstances, the severe hardship would

suffer if the term of the tenancy were not reduced would be greater than the hardship the other party would suffer if the term were reduced.

44. Section 61 does not apply to this tenant's situation because she wants the tenancy to be periodic so that she can give 28 days' notice of termination of the tenancy. The tenant does not want the fixed term to be reduced by a specific period.

Filing fee reimbursement

45. The tenant has substantially succeeded with this claim against the landlord and so the landlord is required to reimburse the filing fee to the tenant.

Suppression of names

46. Section 95A of the Residential Tenancies Act 1986 provides that:

    (1) The Tribunal may, on the application of any party to the proceedings or on its own initiative, having regard to the interests of the parties and to the public interest order that all or part of the evidence given or the name or any identifying particulars of any witness or party not be published.
    (2) An order may be subject to any conditions that the Tribunal considers appropriate.
    (3) If a party that has wholly or substantially succeeded in the proceedings applies for an order that their name or identifying particulars not be published, the Tribunal must make the order 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.

47. I am ordering suppression of the tenant's name pursuant to s95(A)(3) RTA.

48. I am also ordering the landlord's name to be suppressed because I see no particular public interest in the landlord's name being published, and also because the tenant supported the landlord's application for suppression.

C ter Haar
03 December 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 $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.