TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Richard Boyle

Landlord

TENANCY ADDRESS: 222 Gloucester Street, Christchurch Central, Christchurch 8011

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenants' names and identifying details.
2. Richard Boyle must pay [the tenants] $1,119.85 immediately, calculated as shown in the table below.
3. The tenants' claims are otherwise dismissed.
4. Enforcement of this order is stayed until the hearing of the landlord's application number 5082549.
5. No order is made on the landlord's application number 5028730.
6. The Bond Centre is to pay the bond of $1,950.00 (5160657-009) to [the tenants] immediately.

Description	**Landlord**	**Tenant**
Rent rebate		$92.85
Exemplary damages: Unlawful entry		$300.00
Compensation: Quiet enjoyment		$700.00
Filing fee reimbursement		$27.00
Total award		**$1,119.85**
Total payable by Landlord to Tenant		**$1,119.85**

Reasons:

1. Both tenants attended the hearing. The landlord was represented by Colleen Sullivan who was the property manager for the tenancy.
2. The tenants claim compensation and exemplary damages for breach of the landlord's obligations in relation to maintenance of the premises, Healthy Homes Standards (HHS), quiet enjoyment and unlawful entry and a termination notice.
3. The landlord's cross application sought termination of the tenancy but that is now redundant. The landlord indicated that he has some end of tenancy claims he wishes to make against the tenants, but they are not included in his application. Since the hearing on 21 November 2024 the landlord has made an application comprising end of tenancy claims for compensation and the bond.

Background

4. This tenancy began on 11 February 2024, and it was for a fixed term ending on 23 February 2025.
5. On 30 September the tenants and their family moved out of the premises following flooding from a disconnected water pipe feeding the hot water cylinder on the first floor of the premises.
6. The exact cause of the disconnection is unclear, but it occurred when an electrician employed by the landlord was working on the cylinder.
7. The premises are a town house, part of a unit title development, on three floors.
8. Immediately after the flooding occurred, an electrician and Ms Sullivan tried unsuccessfully to find the toby for the premises so that they could shut off the water. After about 15 minutes they had not found it and they had to shut off the water for the entire development to stop the flow of water in the premises. It was mains pressure water and so a considerable quantity of water entered the premises affecting the first and ground floors and an adjoining property.
9. On 8 October the landlord served a 7-day termination notice on the tenants under s59 of the Residential Tenancies Act 1986 (the Act) which deals with serious damage to the premises rendering them uninhabitable.
10. The tenants did not reoccupy the premises after that, and they do not seek to do so. But they dispute the validity of the notice.

The Tenants' Claims

Termination Notice

11. Section 59 of the Act states,

> 59 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).

12. The tenants argued that the premises were not rendered uninhabitable by the flooding. If they were, they argued that it should not have taken long for them to be made habitable after the flooding and therefore they could have reoccupied the premises after a short time. They argued that the provision of s59 of the Act did not therefore apply to their circumstances.

13. I agree that s59 does not apply where the damage to the premises can be remedied quickly and the premises rendered habitable after a short time. It cannot have been Parliament's intention to permit parties to terminate a tenancy

where the uninhabitability of the premises was for a short time. Whether the section applies in any case is a question of fact and degree.

14. In my view the tenants cannot seriously argue that the premises were uninhabitable after the flooding. They said so themselves in an email to the landlord on 2 October. The flooding was extensive, and it was unclear to what extent structural elements of the building were affected. The kitchen and main bathroom were unusable, and the remedial work was noisy and intrusive.

15. I accept that JAE's, who were employed to dry out the premises, indicated that it would take only a few days to do so, but that was not all that was required. Even now, the premises are not ready for occupation and remedial work is ongoing.

16. The landlord was in a difficult position. He could not be sure how long the remedial work would take, and he had tenants who were wanting him to pay for their alternative accommodation and other expenses as well as fully abating rent.

17. The tenants too were in a difficult situation. They wanted to return to the premises and in the meantime, they were paying for expensive short-term accommodation. Given that the premises are still not available for occupation, it would have been impossible for the tenants to continue doing that. Finding more permanent accommodation was the best option for them.

18. I am satisfied that the landlord was entitled to serve the termination notice and that it therefore ended the tenancy on 15 October. The landlord has rebated rent until then apart from 1 day that the landlord has agreed to pay. I have therefore ordered that to be paid.

19. I also reject the tenants' claim that the landlord's notice was retaliatory. It is not the type of notice that can be declared retaliatory in any case, but I have found that the landlord acted reasonably in serving the notice.

Tenants' Belongings and Other Claims Arising from the Flooding

20. The tenants claim compensation for loss and damage to some of they belongings from the flooding.

21. As I have said, the exact cause of the escape of water is unclear. An electrician was working on the cylinder at the time and so plainly they have an obligation to explain what they were doing and what part, if any, it played in the event. I cannot hold that it resulted from their carelessness based on the evidence before me.

22. If it did result from their carelessness, it does not follow that the landlord is responsible for it. The electrician is an independent contractor, and the general rule is that an employer is not responsible for the actions of an independent

contractor. The landlord was expecting the electrician to adjust the thermostat on the cylinder and there is no evidence that he was negligent.

23. It follows that the landlord is not liable to the tenants for the consequences for them of the flooding. That applies to damage to their belongings and expenses associated with their need to vacate the premises at short notice. Those claims must therefore be dismissed.

24. Unfortunately, the tenants did not have contents insurance. I would simply note that if it was the electrician's negligence that caused the flooding, the tenants may be able to claim against them and recover their losses that way. But that would not be an application that this Tribunal could determine.

Discrimination

25. The tenants claim that the landlord discriminated against them in some respects. For example, requesting their children not to play in common areas and being strict them regarding noise from the premises but not on neighbouring tenants.

26. This is not the type of discrimination that the Act confers jurisdiction on the Tribunal to determine. That is limited to the grant of a tenancy and the like. I would not have been satisfied that the landlord discriminated against the tenants. The claim must therefore be dismissed.

Unlawful Entry

27. A landlord may not enter the premises during the tenancy except with the tenant's consent, in an emergency, or after giving the required notice for inspections and repairs and maintenance.

28. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,500.00.

29. The landlord accepts that he entered the premises during the tenancy, using his own key, without the tenants' consent and without giving any notice. He had been asked to fix the front door that did not close properly, and he entered the premises to do so.

30. One of the tenants was at home alone at the time and she was alarmed to hear someone enter the house. She telephoned her husband who came home within about 10 minutes.

31. This should not have happened. The landlord should have known better than to enter the house without ensuring that he could lawfully do so. There was no notice and so the landlord should not have entered without first obtaining the tenants' consent to do so.

32. He was entering to carry out work on the front door and there was no bad intent. But the tenants are entitled to their privacy. The landlord could at least have knocked on the door and waited for the tenants to come to the door.

33. This was an unlawful act, and because it is a fundamental breach of the tenants' right to either receive a lawful notice or refuse entry, there should be an award of exemplary damages.

34. The incident was alarming but did no serious harm. An award in the sum of $300 is adequate.

35. The other entry that the tenants complain of occurred after the landlord served the termination notice. The tenants said they made it clear that JAE's could come and go from the premises but no one else. Ms Sullivan came to the premises with another contractor, and it was caught on a camera that the tenants had installed in the premises.

36. The notice period in these circumstances creates an unusual situation. The tenancy is ongoing but at the same time the premises are a worksite, and they are uninhabitable. The tenants can come and go from the premises, subject to any safety requirements, but they are not living there, and their rent is abated. The landlord was trying to remedy the damage as quickly as possible which the tenants wanted.

37. Whist the entry may be have technically been unlawful, practicality dictates that the landlord and his contractors required access to the premises. Ms Sullivan was present with the contractor during the visit. I find that no award of exemplary damages or compensation is warranted in these circumstances.

Maintenance and Healthy Homes

38. Under section 45 of the Act, a landlord must 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, comply with any relevant enactment in relation to buildings, health and safety and comply with Healthy Homes Regulations.

39. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00.

40. 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.

41. The tenants claim that the landlord did not always respond to their reports that the premises needed maintenance.

42. The landlord says that he was responsive and provided evidence of the maintenance that was carried out during this short tenancy. He says that many of the tenants' complaints were not brought to his attention until the tenants served him with a breach notice on 27 September, only days before the flooding and the end of the tenancy.

43. I find that some of the items in the breach notice were likely not notified to the landlord before the notice. There was a fair amount of communication from the tenants to the landlord during the tenancy and it is likely that the tenants would have reported maintenance issues to the landlord in writing.

44. The landlord accepts that they were asked to replace the clothesline early in the tenancy, but it was still usable, and it did not have to be replaced immediately. I accept that.

45. The landlord was aware that the locks for the main bathroom and toilet had been removed. The circumstances were unusual. A friend of the tenants was using the bathroom and then found that he could not unlock the door. The tenants said that the landlord knew that the locks were faulty. After efforts to unlock the door, the tenants called the fire service who attended, entered the bathroom through the window, and removed the locks from the bathroom and the toilet doors.

46. There is no written evidence that the tenants reported a problem with the locks previously. I can also understand the landlords' reluctance to replace the locks in the circumstances although I make no finding about whether it was their responsibility to do so.

47. I find that the landlord responded reasonably to the report about the hot water being excessively hot. That ended in disaster but as I have found, that was not the landlord's fault.

48. Overall, I do not find that the tenants' claims about a failure by the landlord to maintain the premises have been proved, and so they must be dismissed.

Insulation

49. From 1 July 2019, all residential rented premises must be insulated to a minimum standard. Where the premises were insulated before 1 July 2016, the ceiling insulation must have an R-value of at least 1.9 (or 1.5 for houses of a brick or concrete block construction). The underfloor insulation must have an R-value of at least 0.9. The insulation must be in reasonable condition.

50. Where insulation is installed after 1 July 2016, the minimum R-value for ceiling insulation is 2.9 in Zones 1 and 2, and 3.3 for Zone 3 (Zone 3 covers the South Island and central North Island). The minimum R-value for underfloor insulation is 1.3.

51. The landlord’s evidence shows that at the start of the tenancy the insulation in the roof space did comply with the minimum requirements. It was brought up to the current standard in May.

52. I expressed the view at the hearing that the insulation at the start of the tenancy was not up to standard. After checking the regulations, it appears that it was, just. There was no evidence from the tenants to contradict that and so no breach of the insulation regulations has not been proved.

Quiet Enjoyment

53. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises.

54. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00.

55. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person".

56. The tenants complain that the landlord interfered with their quiet enjoyment of the premises. I agree that, in some respects, he did.

57. At one time the landlord required the tenants to return certain chattels to where they had been at the start of the tenancy. The premises were let fully furnished. Ordinarily, a tenant is entitled to rearrange the furniture in the premises provided it does not damage the premises.

58. The landlord was concerned about the bedroom on the top floor of the premises that was occupied by a boarder. The tenants had moved a small fridge and a microwave up there. The landlord was concerned the boarder was cooking food in the bedroom and about strong smells from the food.

59. I can understand, to some extent, the landlord’s concern about odours in the room but that would only justify the landlord’s objections if there was damage to the premises, and there is no evidence of that.

60. The landlord was also concerned about a washing machine being stored in the garage. I cannot see any justification for that objection.

61. The landlord also took the tenants to task about the boarder claiming that the tenants had unlawfully sublet part of the premises. The landlord was wrong to call the boarder a subtenant and there is nothing in the Act or the tenancy agreement that prevents or restricts the tenants from having a boarder. Ms Sullivan should know the difference between a boarder and a subtenant.

62. The landlord tried to justify his objection to the boarder on the ground that the tenancy agreement restricted the number of occupants to six. But the tenants and their two children made only four occupants. They were entitled to have up to two additional occupants in the premises.

63. The tenants were rightly robust in their rejection of the landlord's demands, even when the landlord served breach notices. But they should not have had to deal with this interference in the first place.

64. I don't find that it meets the threshold of harassment. I take the view that it stems from a misunderstanding of tenancy law. But the tenants are entitled to compensation for the stress and upset they suffered which I assess at $700.

Bond

65. The landlord has a claim on the bond for some repairs that he claims are the tenants' responsibility. I was told that the claim will be for approximately $800. The claims could not be presented because the landlord does not yet have the necessary evidence.

66. Section 22B of the Act provides that if the landlord has a claim on the bond, they must make an application setting out the details of the claim. The landlord's application does not include a claim on the bond let alone set out any details of the claim. The bond must therefore be paid to the tenants.

67. I am informed that the landlord has now made an application for compensation and a claim on the bond. The bond will be paid to the tenants, but I have decided that the award I have made to the tenants should not be enforceable until the hearing of the landlord's recent application.

68. Given the landlord's indication of the value of his claim, the parties should consider coming to an agreement over the award to the tenants and the landlord's claims to avoid another hearing.

Filing Fee

69. The tenants have had some success and so I have awarded them the filing fee.

Suppression

70. Given that the tenants have had some success and the circumstances of this case generally, I have granted the tenants name suppression.

R Armstrong
3 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.