

**Order of the Tenancy Tribunal***Residential Tenancies Act 1986**Office of the Tenancy Tribunal***Tenancy Tribunal at Palmerston North****Tenancy Address**

17 Andrew Street, Feilding 4702

**Applicant**

Full Name

Property Brokers Ltd - Feilding

Landlord

**Respondents**

Full Name

Nigel Claasen

Tenant

**Order of the Tribunal**

The Tribunal hereby orders:

1. Nigel Claasen to pay Property Brokers Ltd - Feilding the sum of \$1,053.88 immediately calculated as follows:

Filing fee reimbursement	\$20.44
Cleaning	\$189.75
Carpet cleaning	\$170.00
Rubbish removal	\$250.00
Repairs to walls	\$63.25
Previous order	\$360.44
<b>Amount payable by Tenant to Landlord</b>	<b>\$1,053.88</b>

(Sections 77(2)(k) and 78(1)(d) Residential Tenancies Act 1986)

2. Nigel Claasen to pay Property Brokers Ltd - Feilding the sum of \$20.44, being the filing fee paid on this application.

(Section 102(4)(a)(b) Residential Tenancies Act 1986)

3. This order incorporates the money order made on 10 May 2017 under application 4078194.

(Sections 77(2)(q) & 96(5) Residential Tenancies Act 1986)

**Reasons:**

1. The tenancy between Property Brokers Ltd and Nigel Claasen has ended.
2. Property Brokers Ltd has applied for the costs of cleaning, rubbish removal, repairs and exemplary damages for unlawful activity.

**Were the premises left reasonably clean and tidy?**

3. Prior to the tenancy commencing a presumptive methamphetamine was conducted and it showed no signs of contamination.
4. At the end of the tenancy a further presumptive test was undertaken. The summary noted:

*'The test confirms the methamphetamine was not present in the dwelling or was well below  $0.5_{\mu\text{g}}/100\text{m}^2$  and no further action is needed. Possible traces were detected in the lounge and master bedroom and a precautionary sugar soap wash is recommended...I am confident the readings in the rooms tested are sufficient to indicate the property is not contaminated'.*

5. Property Brokers Ltd is seeking the compensation of the cost of a sugar soap wash of the walls in the lounge and master bedroom only.
6. The interim standard that has been in place since late 2016 for testing and decontamination set out the 'acceptable' level of methamphetamine in an affected property was  $1.5_{\mu\text{g}}/100\text{m}^2$  in a carpeted property and  $2.0_{\mu\text{g}}/100\text{m}^2$  in a non-carpeted property. This is the standard that applied at the time this test was undertaken.
7. I find that the summary of the presumptive test taken at the end of the tenancy does not establish that decontamination was required and was far from conclusive of any contamination at all.
8. I therefore find there is no basis to award compensation for the sugar soap wash, but do find the amount of \$189.75 is established.
9. The cost of carpet cleaning of \$170.00 and rubbish removal of \$250.00 is also established.

**Is Mr Claasen liable for the costs of repair?**

10. There was a small hole in the sling door which the tenant had told Property Brokers Ltd had been caused moving furniture.

11. I find that given the nature of this damage it is more likely to have been caused carelessly rather than intentionally. The landlord does have insurance for such damage and as such the tenant is not liable for this cost.
12. There was also a large hole under the window which had been caused by the dog biting and scratching the wall. Dogs were not allowed in the tenancy at all.
13. The issue of the liability of a tenant for damage caused by animal urine was considered recently by the District Court in the case of Tekoa Trust v Stewart (2016) NZDC 25578.
14. That case concerned whether extensive animal urine damage could be regarded as intentional damage as opposed to careless.
15. The Judge drew the analogy with Section 41(2) Residential Tenancies Act 1986 which places a tenant responsible for the conduct of any person who comes onto the premises with the tenant's permission. Where such a person intentionally (or carelessly) damages the premises the tenant will be responsible for the person's actions unless he can prove he *'took all reasonable steps to prevent that person entering the premises or (as the case may require) to eject that person from the premises'*.
16. He also relied on the definition of 'intentional' in Brookers Summary Offence as appropriate:

*Conduct will be intentional when it is deliberate and not accidental, and the resulting damage...will be intentional if the defendant meant to cause it or (probably) knew that it was virtually certain to result.*

17. I find in this case that clearly the dog was shut inside and as such a likely outcome of this action was that damage to the premises was virtually certain to result. The tenant I therefore liable for the costs of this repair amounting to \$63.25.
18. It has not been established to a the required level that there was unlawful activity at the premises and the application for exemplary damages is dismissed.
19. On 10 May 2017 the Tribunal made an order under application 4078194 which provided that the other party was to pay to the applicant the sum of \$360.44.
20. The applicant has brought a further application to the Tribunal.
21. It is appropriate and sensible for the money order earlier made to be incorporated into the current order.