

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

396 Sunnyside Road, RD 2, Albany 0792

Applicant

Full Name

Wicjhita Holdings Limited

Landlord

Respondents

Full Name

Helena Ross

Tenant

Order of the Tribunal

The Tribunal orders -

1. Helena Ross to pay Wicjhita Holdings Limited the sum of \$1,490.71 immediately, calculated as follows:

Rent arrears to 11 June 2017	\$4,135.71
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plus costs to be paid to landlord:

Cleaning	\$100.00
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Carpet cleaning	\$150.00
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minus bond	\$2,895.00
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Amount payable by tenant to landlord	\$1,490.71
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(Sections 77(2)(k) and 78(1)(d) Residential Tenancies Act 1986)

2. The Bond Centre to pay the bond of \$2,895.00 (6091913-018) to the applicant immediately.

(Sections 22 and 127(4)(a) Residential Tenancies Act 1986)

Reasons

1. The tenancy ran from 1 October 2016 to 11 June 2017, according to the landlord's application. The tenancy was of a rural property in Coatesville. It was the subject of an earlier decision of the Tribunal, following an earlier application by the tenant and cross-application by the landlord.
2. In the earlier decision, the Tribunal ordered compensation of \$2895.00 in favour of the tenant, Ms Helena Ross. The award was cumulative, for the landlord's director's failure to instruct an agent while absent from New Zealand for more than 21 days, and for not providing and maintaining the property in a reasonable state of repair.
3. The parties had indicated to the Adjudicator that they both wished to bring the tenancy to an end. The Tribunal ordered that the tenancy would terminate on 11 June 2017, or earlier on 3 days' notice from the tenant.
4. In the hearing before me, the landlord claimed -

- (a) Rent arrears of \$1378.57;
- (b) Pool cleaning costs of \$530.00;
- (c) For paddock hire for the tenant's cows for 18 days after the end of the tenancy, \$154.00;
- (d) For 18 lightbulbs, \$108.00;
- (e) For mowing, weeding and clearing grounds, \$400.00;
- (f) For repairs to a rimu tallboy \$250.00;
- (g) For carpet cleaning, \$150.00; and
- (h) For commercial cleaning on exit, \$150.00

5. The landlord also claimed exemplary damages, alleging that -

Without landlord permission, tenant tampered with electrics; attached electricity to external motor home; rewired water & electrics to set up a washing machine and drier in carport; removed cover off hot water cylinder tampered with water heat; turned off pool pump, had unknown persons walking through ceiling damaging it; and made threats to landlord, including calling new property letting manager attempting to intimidate him with information about property. Threats by tenant's husband (not named on lease) been made in writing to landlord - attempting to claim further money than awarded by Tenancy Tribunal, refused to pay rent & ignored legislation around purpose of the bond.

6. For completeness I record that the landlord also sought orders -

... that the tenant and her husband be refrained [sic] from making any contact with anyone related to the property and they are prevented from ever attending the property

or being within 200 metres of it.

7. The Tribunal has no jurisdiction to make such an order.

The claim for rent

8. The tenancy ran for 36 weeks and 2 days, at \$965.00 per week. The total rent payable was \$35,015.71. The landlord acknowledges 29 rent payments of \$965.00, amounting to \$27,985.00. Subtracting the 29 payments and the 3 weeks' rent remission ordered by the Tribunal, the shortfall is \$4,135.71. If the bond of 3 weeks' rent is credited against the shortfall, there remains \$1,240.71 to pay.
9. The landlord initially had an agent, Hollie Joss Property Management Ltd ("Hollie Joss"). Shortly after the tenancy commenced, the landlord ceased to use the agent. The landlord's rent record acknowledged having received two payments of \$965.00 from Hollie Joss, one on 3 October 2016 and one on 1 October 2016. The tenancy agreement signed by Ms Ross and dated 15 September 2016 stipulates that the 3 weeks' bond and the first week's rent were payable on signing the agreement but the document does not state clearly whether Ms Ross in fact made those payments on 15 September 2016.
10. In issue at one point was whether Ms Ross had made more than two payments of rent through Hollie Joss. Records and emails sourced from Hollie Joss establish that the answer to that question is no. The net rent shortfall, after crediting the bond to it, is therefore \$1,240.71.

The claim for pool cleaning

11. The parties were at odds on the state of the pool at the end of the tenancy. The landlord produced an emailed report from a pool cleaning contractor, stating that the pool was "in a terrible state" and "totally neglected". Photographs annexed to it purported to show the pool clear at the start of the tenancy and opaque at the end of it. The contractor opined that the pool had not been chemically treated or filtered for at least 6 months, maybe longer.
12. In sharp contrast, a detailed inspection report from Hollie Joss, commissioned by the tenant, showed exactly the opposite. They did not include a wide shot of the pool but photographs 021, 035 and 037 showed enough of it to establish that the water was completely clear. The landlord's agent, Ms Parsons, agreed that the pool had been clear in April.
13. The landlord's contractor's report did not record the date of his visit to the property. It said his company was approached "in July". The email reporting his opinion was dated 7 August 2017. Ms Ross had moved out on 11 June. Thus the contractor's visit may have occurred as long as 7 weeks after the property became vacant. There was nothing to suggest that the contractor had any prior knowledge of the property and nothing to support his opinion that the pool "had been neglected by the tenants of the property." If he had not previously worked there, he could not have been the source of a photograph purporting to show the pool as at the beginning of the tenancy. The tenant said that the pool was dirty when they moved in, they

cleaned it and put chemicals in, and that there was no issue about it at the time when the moved out. They suggested that the photographs were shown in the wrong order.

14. The Hollie Joss inspection report noted in a footer to each page that the inspection took place on 4 May 2017, 5½ weeks before Ms Ross moved out. The clear state of the pool in the pictures persuasively rebuts the opinion of the pool cleaning contractor that pool maintenance had been neglected for at least 6 months. Additionally, the Hollie Joss property inspector who made the report, Ms Tracy-Lee Kellett, noted in an email to Ms Ross's husband that she remembered the property clearly, as she had "walked it many times to get quotes to get work completed" before Ms Ross's tenancy began. One of the points she had noted before the start of Ms Ross's tenancy was "pool green and pump wasn't on."
15. I also note the contrast between the polemical tone of the pool cleaning contractor's report and the matter-of-fact language of Ms Kellett's report for Hollie Joss. I accept the Hollie Joss report as reliable and conclude that the pool cleaning contractor's report does not prove the state of the pool as at the end of Ms Ross's tenancy. The landlord's claim for pool cleaning costs therefore fails.

The claim for paddock hire

16. The landlord's claim for grazing for the two cows also fails. On the last day of Ms Ross's tenancy, the landlord company, purporting to be the occupier, issued a trespass notice against Ms Ross's husband. It also issued one against Ms Kellett, effective on 10 June 2017. Wicjhita Holdings Ltd was not the occupier of the property at that time. Ms Ross had the right of exclusive possession until the end of 11 June 2017, when her tenancy ended. Further, the service of the trespass notice on Mr Ross made it impossible for him to remove the cattle. As if that were not enough, the gates were chained and padlocked. The landlord's director, Ms Jennifer Haydock, then had a report made to the SPCA that the cows were abandoned. It took Mr and Mrs Ross some time to sort out the tangle, with the assistance of the police and of an SPCA inspector. The problem was largely of Ms Haydock's making. Her claim to be compensated for the additional time the cows were on the property lacks merit and is dismissed.

Lightbulbs, grounds work and rimu tallboy

17. Landlords' claims for lightbulbs are always problematical, as lightbulbs tend to fail randomly, rather than after a precisely predictable number of hours of service. Bulb failure is generally in the nature of wear and tear, and not the responsibility of the tenant. A provision in a tenancy agreement purporting to require the tenant to replace lightbulbs as they fail cannot lawfully impose on the tenant a legal duty to remedy wear and tear. In this particular property, the landlord's claim for lightbulbs was even more tenuous than usual, as a detailed report prepared for the tenant by a registered electrical inspector as at 30 March 2017 recorded several defects, some of serious concern, in the switchboard, electrical circuitry and electrical fittings at the property. The claim for lightbulbs fails.

18. The landlord offered no persuasive evidence that the lawns and grounds were not left reasonably tidy. The claim fails.
19. The tenants said that the rimu tallboy was left in the sleepout and initially they thought it was abandoned, as the property was let unfurnished. They put it in the carport. They said the landlord's agent, Ms Parson, subsequently asked them to put it inside. The landlord's evidence showed two legs of the item broken.
20. The landlord's claim was based on an estimate. No repair had been done. The evidence did not suggest an intention to repair it. Given the context of the landlord's hostility towards the tenants, the claim had the look more of a makeweight than a meritorious claim to repair a valued item of furniture. Nothing suggests that the damage was wilful or even, in the circumstances, the result of negligence. The tenant's liability is not proved.

Cleaning

21. The Residential Tenancies Act requires a tenant to leave the premises "reasonably clean". The photographs produced for the landlord satisfy me that the interior was not in that state. The claim for \$100.00 is modest and is supported by the photographs. It succeeds.

Carpet cleaning

22. Normally, it is on the landlord to establish that the carpet was not left "reasonably clean" in order to prove a claim for carpet cleaning. The situation is different if the tenant has agreed clean the carpets at the end of the tenancy, in consideration for being allowed to keep pets indoors. In this case, the tenancy agreement recorded that the tenant had two cats. The inclusion of a term requiring cleaning of the carpets at the tenant's expense was permissible, without needing proof that the carpets were not reasonably clean. The claim succeeds.