

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

53 Rimu Street, Gonville, Whanganui 4501

Applicant

Full Name

Timothy Joel Chamberlain

Tenant

Respondents

Full Name

Simon Alatett (NZ) Ltd

Landlord

Jaiayamma Vitta

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Jaiayamma Vitta shall complete the following work by 5pm on 10 November 2017:
 - (a) The window frame and glass in the dining room shall be repaired or replaced.
 2. If Jaiayamma Vitta fails to comply with order 1 above the rent shall be offset by \$120. For the avoidance of doubt this means that if the window and window frame are not repaired or replaced by 10 November 2017 the rent for the week following that date shall be reduced by \$120.
 3. Jaiayamma Vitta shall complete the following work within 21 days of the date of this order:
 - (a) Window frames in the small bedroom need to be repaired or replaced.
 - (b) All damaged window hinges and latches need to be repaired or replaced.
 - (c) The front door step needs to be repaired in order that there is no gap between the floor boards and door surround.
 4. If Jaiayamma Vitta fails to comply with order 3 above Timothy Chamberlain has leave to request that the matter be listed for a further hearing to provide evidence of the likely cost for the remainder of the work.
 5. Jaiayamma Vitta shall pay Timothy Chamberlain the sum of \$1,420.57 immediately, calculated:

Costs to be paid to Tenant:
-

Exemplary damages	\$1,000.00
Compensation	\$420.57
Amount payable by Landlord to Tenant	\$1,420.57

6. Jaiayamma Vitta shall pay Timothy Chamberlain \$32 a week in compensation, by way of a rent reduction, from 27 October 2017 until orders 1 and 3 have been fully complied with. This is in addition to the money owed under all the above orders.

(Sections 78(1)(e) and 78(1)(d) Residential Tenancies Act 1986)

Reasons:

1. Timothy Chamberlain rented a property from Alatett (NZ) Limited. During the tenancy the property was sold to Jaiayamma Vitta. Property Brokers Limited has managed the tenancy for both landlords. Mr Chamberlain brought an application against Alatett (NZ) Limited claiming that the property had not been adequately maintained. The matter came before the Tribunal and orders were made on 19 September 2017. The Tribunal ordered Alatett (NZ) Limited to pay Mr Chamberlain \$2,935.86 in compensation and exemplary damages. The Tribunal joined Jaiayamma Vitta as a party and allowed Mr Chamberlain to amend his application to include an application for work orders and adjourned the matter to 26 October 2017.
2. Mr Chamberlain attended the hearing but neither the landlord nor the landlord's agent appeared.
3. Mr Chamberlain says that Property Brokers continue to act as the landlord's agent and that no repairs have been done at the property since the previous hearing. The small bedroom window surrounds are still rotten and the dining room window frame has deteriorated. He has provided photographs showing that the dining room window frame has broken apart at the corner and the glass has cracked. He says that the glass cracked because of the poor state of the frame and because of the state of the frame I find that that is more likely than not the cause of the damage.
4. Mr Chamberlain has proven that the landlord's agent was advised of the damage to the glass on 16 October, the day the damage occurred.
5. Mr Chamberlain seeks:
 - The dining room window frame to be repaired.
 - The dining room window to be repaired.
 - The window frames in the small bedroom to be repaired.
 - The hinges on windows in the kitchen and dining room, that are rusty and bent and prevent the windows from being opened and closed properly, to be repaired or replaced.
 - Repair the lounge window latch.
 - Repair the front door surround which currently has a gap between the frame and the floor.

- Exemplary damages of \$1,000.
 - A 25% rent reduction for the time the landlord has owned the property.
6. Mr Chamberlain says that he has worked in the building industry and that he could source a window for the dining room for \$50 and could install it himself for a total of \$120.

Has the property been adequately maintained by Jaiyamma Vitta?

7. Mr Chamberlain has established that all the repairs he seeks are required.
8. The faults are obvious. Ms Vitta's agent advised at the last hearing that she was aware of the situation and wanted to get quotes to have the work done. On the evidence I find that Ms Vitta would have been aware of the need for repairs from the time that she purchased the property on 25 July 2017.
9. No repairs have been done since Ms Vitta purchased the property and the state of the property has deteriorated.
10. Taking into account the extent of the problem and the impact that the disrepair has on the quality of Mr Chamberlain's tenancy compensation of \$420.57, calculated at the rate of 20% of the weekly rent is awarded for the period 25 July 2017 to 26 October 2017. In addition I find that Ms Vitta should compensate Mr Chamberlain a further \$32 a week, by way of a rent reduction, from 27 October 2017 until all the repairs have been completed.
11. Mr Chamberlain also seeks exemplary damages. Exemplary damages up to \$4,000 may be awarded where a landlord intentionally fails to maintain a property in a reasonable state of repair. In determining what, if any, exemplary damages should be awarded regard must be had to Ms Vitta's intention, the effect, the interests of Mr Chamberlain and the public interest (s.109(3)).
12. Ms Vitta was aware of the need to repair the property so has, by failing to undertake repairs, has intentionally committed an unlawful act.
13. Mr Chamberlain has been deprived the use of a bedroom and his not been able to secure the property since 26 October 2017.
14. It is tenant's and the public interest more generally for landlords to maintain their properties to a reasonable level.
15. Exemplary damages in the sum of \$1,000 are awarded.

What, if any, work orders should be made?

16. Mr Chamberlain seeks to have the window frames and the window repaired.
17. The window frame and window in the dining room is urgent. I order that the landlord repair the window and window frame in that room by 5pm on 10 November 2017.
18. I find that the following repairs should be completed within 21 days of the date of this order:
 - Window frames in the small bedroom need to be repaired or replaced.
 - All damaged window hinges and latches need to be repaired or replaced.

- The front door step needs to be repaired in order that there is no gap between the floor boards and door surround.
19. The disrepair at the property is a health and safety issue so the Tribunal cannot make a money order as an alternative to a work order (s.78 (2AA)(d) RTA).
 20. The Tribunal may include a provision authorising the party in whose favour the work order is made to undertake any work covered by the order if the other party does not comply with the work order and to charge the cost of undertaking the work up to an amount specified by the Tribunal (s. 78 (2AAB) RTA). The cost incurred in undertaking the work may be offset against rent payable, up to the amount set by the Tribunal (s. 78 (2AAC) RTA). Section 78(2AAD) provides that the rent could be paid to the chief executive by way of rent until there is sufficient to undertake the work. Given that Mr Chamberlain can repair the dining room window for \$120 and this is less than one weeks rent I do not consider it necessary for it to be paid to the chief executive. Mr Chamberlain can deduct this amount from the rent owing if Ms Vitta fails to comply with the order to repair that window within 7 days.
 21. There is insufficient evidence to specify the amount that it will likely cost for the remainder of the work to be done. Mr Chamberlain is granted leave to set the matter down for a further hearing should Ms Vitta not comply with the work orders made to provide evidence of the cost of the repairs in order for the Tribunal to specify an amount by which the rent is to be offset by.