Application Number: 4081393
Cross Application Number: 4082511

Order of the Tenancy Tribunal

Residential Tenancies Act 1986 *Office of the Tenancy Tribunal*

Tenancy Tribunal at Whakatane

Tenancy Address

315 Station Road, RD 2, Whakatane 3192

Applicant

Full Name	
Twillabee Trustees Limited as trustee for Nirmal Rani Trust	Landlord

Respondents

Full Name	
Jodi Huntingdon	Tenant

Order of the Tribunal

The Tribunal hereby orders:

1. Twillabee Trustees Limited as trustee for Nirmal Rani Trust is to pay Jodi Huntingdon the sum of $420.44 immediately calculated as follows:

Exemplary damages - bond	$400.00
Reimbursement bond credit not lodged	$271.00
Reimbursement tenant expenses	$1,000.00
Compensation for failure to repair	$2,425.78
Filing fee reimbursement	$20.44
Minus:	----------
Rent arrears to 29/05/17	-$3,028.98
Cleaning	-$240.00
Rubbish removal	-$418.00
Replace bulbs	-$9.80
Amount payable by Landlord to Tenant	**$420.44**

2. All other claims are dismissed.

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

Dated at Whakatane on Wednesday 14-Feb-2018 J Smith, Adjudicator

3. The Bond Centre is to pay the bond of $150.00 (5075068-003) to Jodi Huntingdon immediately.

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

Reasons:

1. The landlord has claimed rent arrears and compensation following the end of the tenancy. The tenant filed a cross-application for exemplary damages for failure to lodge the bond. In addition, the tenant raised numerous issues about maintenance and expenditure as a defence to the landlord's claim. The claims were heard over several hearing days. Both parties attended: the landlord was represented by Dave Fermah.

Landlord's claim

Rent arrears and water charges

2. The tenancy started on 9 August 2013 and ended on 29 May 2017.
3. The landlord claims $3,143.68 for rent arrears and unpaid water charges. According to the rent summary the total due from 9 August 2013 to 29 May 2016 is $67,886.36. This is comprised of: rent $67,465.71, a $20.44 filing fee, and $420.41 for water charges, less a $20.00 credit for replacing the washing line.
4. The rent summary records payments of $64,742.68, which include $350.00 for filling the water tank, and credits for dumping rubbish ($85.00) and repairs ($680.00, $780.00 and $40.00).
5. There are a few minor adjustments to the rent arrears figure of $3,143.68. the landlord has included a late payment water penalty. There is a duty to mitigate loss and the landlord had a contractual obligation to pay the Council for the water invoice. Therefore, I have deducted the penalty of $15.67.
6. In addition, the District Court has held that there is an obligation on the landlord to pass on water invoices promptly (*Woollams v Simpson,* CIV-2005-004-1583, DC Auckland, 16 March 2006, Judge McElrea). The tenant says she did not receive any invoices past April 2016. The landlord has noted the June 2016 and June 2017 invoices as having been *"billed"*, but is not sure about the two invoices for September 2016 and March 2017. Due to the lack of evidence that they were sent to the tenant, and the delay in informing her of the amounts due, I have disallowed those two accounts ($37.57 and $16.46). Therefore, the total due is $3,073.98.
7. The landlord has included an additional credit of $466.00 at the end of the rent summary, comprised of a $150.00 payment of rent in advance and $316.00 for work done by the tenant at the start of the tenancy ($111.00 cleaning, $160.00 for gardens, and $45.00 for fixing curtains).
8. The status of the $150.00 payment and the credits of $111.00 and $160.00 are in dispute. The landlord says they should be treated as rent: the tenant says they should be treated as bond. This issue is also relevant to the tenant's claim for non-lodgement of the bond.
9. Tenancy agreement refers to weekly rent of $340.00. It does not specify a bond figure but says *"Bond amount $ …… being three weeks rent in total"*. The tenant's copy of the tenancy

agreement shows a payment of $150.00 on 29 July 2013 in the Rent and Bond Receipt (it is recorded in the rent summary as having been received on 25 July). The payment was originally recorded as *"Initial rent payment"*. However the dollar figure has been crossed out and written next to *"Bond"*. The landlord's copy of the tenancy agreement differs, as the word *"Bond"* has also been crossed out.

10. The tenant, in her termination notice, referred to the bond not having been lodged for 4 years. The landlord lodged the $150.00 payment with the Bond Centre on 15 May 2017. On 6 June 2017 MBIE wrote to the landlord about the late lodgement of the bond. The landlord replied that the $150.00 payment was in fact rent in advance and was lodged as bond by mistake. It referred to its copy of the Rent and Bond Receipt to support this claim.
11. Although the amendment to the landlord's copy of the Rent and Bond Receipt has been initialled by someone, because the tenant's copy has not been altered or initialled, I accept her copy as the correct version of the agreement, and that the payment was for bond. This finding is consistent with other evidence.
12. On 28 August 2013 the landlord emailed the tenant about rent arrears and the bond. The accompanying rent summary showed *"$150.00 Bond paid"* and *"$200.00 bond due less $111 cleaning = $89.00 still due less $160.00 gardens = $71 credit Total bond held $421".* In more recent rent summaries the $150.00 payment has been described as a *"Deposit".*
13. In reply the tenant said she had paid $150.00 for the bond, plus $111 for cleaning, making a total of $261.00. The landlord's response was *"When we are crediting accounts and the bond paid is below the amount it should have been – I always credit any work towards the bond"* and that it had received *"a $350.00 cash bond paid with a total bond of $421"*.
14. On 14 February 2014, the landlord obtained a mediated order for rent arrears against the tenant for $1,185.44 (which includes the filing fee of $20.44). Comparing that figure to the current rent summary, it is clear that it did not take into account the $150.00 or the credits of $111.00 and $160.00.
15. In October 2016 the landlord said in an email to the tenant that it had paid $356.00 rent on behalf of tenant, comprised of $111.00 cleaning, $160.00 grounds, and $85.00 rubbish removal. However, of those amounts, only the $85.00 was recorded in the rent summary, and the landlord had previously referred to the other two amounts as being credited towards the bond.
16. Based on the landlord's earlier correspondence, I find that the initial $150.00 payment was for bond not rent. In addition, the work carried out by the tenant for cleaning and gardening was originally treated as a credit towards bond rather than rent. Although it is unusual for a landlord to credit work in this way, it obviously suited the landlord to do so at the time. Therefore the landlord cannot reasonably expect to change its mind and now claim those credits as rent. Therefore the $421.00 will not be deducted off the rent and water arrears, but will be dealt with in relation to the bond.
17. The credit of $45.00 was not allocated to bond and will therefore be deducted from the rent arrears, leaving a total due of $3,028.98.

Cleaning and removal of rubbish

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18. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy and remove all rubbish (ss 40(1)(e)(ii) to (v) Residential Tenancies Act 1986). They are required to replace standard light bulbs.
19. The landlord claims a total of $2,005.00 for cleaning the house, tidying the grounds, and removing rubbish, comprised of $960.00 interior cleaning by the painter, $450.00 and $65.00 for clearing the grounds, and $530.00 for a skip bin. The landlord also claims $258.00 for carpet cleaning.
20. Photographs of the interior show mould on the bathroom ceiling, dirt on a skirting board and phone jack, curtains off their tracks, stickers on a door, some dirt on window sills, dirty marks on a door, a dirty window, some pots on a step, and some cobwebs in a door way. The inspection report refers to carpet smelling of cat urine, blown bulbs, nets and curtains torn and needing re-hanging, surfaces needing a wipe down, and dirty window sills.
21. Photographs of the outside show a large section overgrown in places, items such as tarpaulins and corrugated iron around the property, a small bag of rubbish in a shed, a grape vine growing over a fence, and a skip bin full of collected rubbish. A supporting letter from the contractor refers to rubbish (including nails, wire, household items, fencing, carpet, nappies, and broken glass) being either buried or in the undergrowth.
22. The tenant says the house was unclean and untidy at the start of the tenancy, two sheds were full of rubbish, the carpet had not been cleaned and smelled of cat urine, she had to take numerous stray cats to the SPCA, gardens were untidy, and the lawns were long. The landlord provided a skip bin after about 2 weeks and she was credited for rubbish removal and cleaning. The amounts credited were claimed against the previous tenant. She provided supporting statements to confirm the condition of the property at the start of the tenancy, that the house was cold and damp throughout the tenancy, and that someone did 4 hours cleaning for her when she vacated.
23. The standard 'reasonably clean and reasonably tidy' will depend on the age and condition of the premises, and tenants are not expected to leave the premises any cleaner and tidier at the end of the tenancy than they were at the start (*Westwood v Western,* TT 2539 & 2540/93, DC Otahuhu, 4 November 1994, Judge Moore). The landlord says that, because the tenant was given a credit for cleaning at the start, the premises should have been reasonably clean and tidy at the end.
24. The tenant accepts the photographs show that some areas of the house were not left reasonably clean at the end of the tenancy, but says the stickers were on the door at the start. Notwithstanding the tenant's admission, the amount claimed by the painter ($960.00) substantially exceeds a reasonable amount to bring the house up to the required standard. Based on the photographs, I find that 8 hours cleaning at $30.00 an hour would be a more reasonable amount ($240.00).
25. The tenant accepts responsibility for some of the rubbish left behind, but says some was there before the start of her tenancy: a kennel, blue and black pipes, the landlord's documents in a shed, the bag of rubbish in another shed, and other rubbish around the outside covered in blackberry. She says the carpet from the second lounge was dumped outside.
26. The invoice for $450.00 for clearing the grounds includes *"trailer WOF etc"*, pruning grape vines off a fence (the landlord's responsibility) and removing *"All paperwork"* from a shed (the

landlord's property). Those items are clearly not the tenant's responsibility and there is insufficient evidence to precisely calculate the proportion of the overall cost the tenant is responsible for. The burden of proof is on the landlord to prove all elements of the claim on the balance of probabilities and, in the absence of better evidence, I find that charging the tenant 40% of the total claimed ($418.00) is reasonable.

27. The carpet was not commercially cleaned at the start of the tenancy; the tenancy agreement only refers to it being vacuumed. Although the end of tenancy inspection report refers to a cat urine odour, the tenant's evidence is that the smell was present at the start of the tenancy. Therefore, although the tenant had a small dog, I find that she was not responsible for the smell in the carpet. The claim for carpet cleaning is not proved.

Compensation for loss of rent

28. The landlord claims compensation equivalent to 1 week's rent for the tenant withholding access for prospective tenants, and 1 week or failing to leave the premises reasonably clean and tidy and free of rubbish.

29. The landlord says the tenant refused to allow photographs to be taken. It tried several times to arrange times for prospective tenants to view the house, but the tenant was not co-operative. The new tenancy started about 4 weeks later, as the new tenants had to give 3 weeks' notice. Contractors were at the premises for about 2 or 3 weeks removing rubbish and carrying out repairs.

30. Section 48(2)(d) RTA provides that a landlord may enter on 24 Hours notice to carry out repairs. A landlord may also enter for the purpose of showing the premises to prospective tenants, and the tenant may not withhold consent unreasonably (s 48(3)(a) and 48(3A)(a) RTA). The tenant says there were always problems with access and people arriving without sufficient notice. Because she had previously been burgled, she was reluctant to have people at the property without her being there.

31. There is some email correspondence about the tenant agreeing to provide access for prospective tenants in the week of 22 May 2017. However, in an internal email on 23 May, the landlord said the tenant was being difficult and it would not force the issue. There is also evidence that one of the contractors had difficulty gaining access towards the end of the tenancy to carry out repairs.

32. The tenant was entitled to restrict photographs that might include her personal goods, but she could not insist that she be present when repairs were carried out or place unreasonable restrictions on access for prospective tenants. However there is limited evidence about whether the correct notice was given for repairs or whether the landlord suffered any loss. Renovations and repairs were necessary at the end of the tenancy and there is insufficient evidence to prove this would have been done any sooner. Therefore the claim is not established.

Repairs and miscellaneous items

33. The landlord claims: $172.96 for replacing bulbs, curtain clips and a door; $25.00 for a wall repair, and $268.00 for painting the bathroom ceiling. It provided receipts for bulbs $9.80, curtain hooks $4.56, and a door and handle $58.00. The painter's invoice includes $840.00 for

painting the bathroom ceiling and entrance, of which 32% is claimed.

34. In relation to damage, a landlord has to prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the damage.

35. In addition, in *Holler and Rouse v Osaki* [2016] NZCA 130 the Court of Appeal decided that provisions in the Property Law Act 2007 ("PLA") which relate to commercial tenancies also apply to residential tenancies. As a consequence, tenants are not required to pay for the cost of repairing damage in a number of circumstances, including where the damage is caused by fire or is of a kind covered by the landlord's insurance. There are exceptions to this general rule, for example if the damage is intentional tenants are required to pay the repair costs. The District Court has held that the principle in *Osaki* also applies to any insurance excess, and where the amount claimed is less than the excess and the landlord does not make an insurance claim (*Property Brokers Ltd v Dickison and Others* [2017] NZDC 5751)

36. The tenant says bulbs were always blowing. There is insufficient evidence of an inherent problem with the wiring, therefore the claim for bulbs is proved. She says the curtains were hanging off the rails at the start of the tenancy and the landlord failed to provide curtain clips. The tenant was credited for fixing at least some of the curtains back onto the rails at the start of the tenancy; however fair wear and tear has not been excluded and the claim is not proved. There is no mention of the door or wall damage in the end of tenancy inspection report. Because there is insufficient evidence of any damage, I do not need to consider whether the tenant's liability is excluded by *Osaki*.

37. The landlord believes the bathroom ceiling was mouldy because the tenant failed to ventilate the bathroom properly. This opinion is confirmed in a letter from the landlord's builder. The tenant says there was mould in bathroom from the start of the tenancy. In September 2016 the landlord emailed the tenant suggesting she clean the mould with *"vinegar and turps"*, and asked if she wanted window stays fitted. Tenant replied that stays would be a good option. In April 2017 the landlord emailed the tenant claiming the bathroom window was normally closed, trapping condensation inside. The landlord again suggested window stays.

38. It is likely the tenant was at least partially responsible for the mould on the ceiling by not ventilating properly. However, if the landlord had acted on its own suggestion that it install window stays, the tenant could have ventilated the room when she was absent.

39. The landlord says the room was last painted about 15 to 20 years ago. Depreciation has to be considered in deciding what, if any, compensation to award. The Housing New Zealand depreciation guideline for paint in common use rooms is 10 years based on normal usage. Because the age of the paint was well in excess of 10 years, I find that the ceiling was due to be repainted anyway, and no compensation is ordered.

Tenant's claim

40. The tenant's sole monetary claim in her application is for exemplary damages for late lodgement of the bond, and the filing fee. However at the first hearing on 30 May she sought to amend her claim to include other issues about the tenancy. At the hearing 4 July she confirmed that she was raising these issues as a defence to the landlord's claim; to offset any amount owing. She had a number of specific claims for reimbursement as well as other more

general claims about the house and the tenancy.

Failure to lodge bond:

41. The tenant claims the landlord did not lodge the bond with the Bond Centre within the required time. A landlord must send any bond payment to the Bond Centre within 23 working days after the payment is received (s 19(1) RTA).

42. Breaching this obligation is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of $1,000.00 (s 19(2) and Schedule 1A RTA). Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where 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 (s 109(3) RTA).

43. I have already made a finding that the initial payment of $150.00 was for bond, as were the amounts credited for cleaning and gardens. The landlord says there was no intentional failure to lodge the bond and the situation arose from tenant's rent arrears. While I accept that the tenant was in arrears from the start of the tenancy, this did not relieve the landlord of the obligation to lodge any bond money. Assuming the bond was paid on 29 July 2013 (rather than 25 July), it should have been lodged by 29 August. That is the day after the landlord emailed the tenant confirming the payment was for bond. There is no direct evidence when the $271.00 was formally credited, but as it was referred to in the email of 28 August 2013 this is the latest date the 23-working day period should run from. Therefore the $271.00 should have been deposited by 30 September.

44. The $150.00 was lodged 3 years 9 months late, and the $271.00 not at all. I do not accept the landlord's explanation for not lodging the bond. Attempting to change the status of the payment and the credit after the fact appears to be an attempt to avoid responsibility. There is a public interest in maintaining the integrity of the bond system, and the tenant does not have the security of the $271.00 being lodged with the Bond Centre. The tenant is not without fault by being in arrears so soon after the start of the tenancy, but that is of limited relevance in determining the landlord's culpability. There is no evidence of any previous breach and, taking all these factors into account, I have awarded exemplary damages of $400.00.

Claims for reimbursement

45. *Clothesline $150.00:* The tenant says the landlord failed to repair the clothesline and she had to have it welded. She provided a supporting letter that it was welded in June 2015 at a cost of $120.00 (not $150.00). The landlord is willing to pay for the repair if it was advised of the need to repair and failed to act. The tenant said she told the landlord about the clothesline, but the only documentary evidence is an email from the landlord in January 2016 asking about the type of clothesline. That is more than six months after the clothesline was apparently repaired. Because there is insufficient evidence to prove the tenant advised the landlord of the need to repair before the work was done, the claim is dismissed.

46. *Chimney cleaning $300.00:* Landlords are required to provide an approved form of heating in the living room (reg. 6 Housing Improvement Regulations 1947), and keep the premises in a reasonable state of repair (s 45(1)(b) RTA). The Tribunal has held that this obligation includes ensuring the chimney is regularly swept. The landlord was not aware of this obligation, and the

tenant had the chimney swept on 5 separate occasions at a cost of $60.00 each time. She provided evidence of 5 payments from September 2013 to March 2017; therefore the amount claimed is proved.

47. *Dishwasher and failure to provide hot water in kitchen $100.00:* The tenant says at the start of the tenancy the landlord agreed she could install a dishwasher. However she then discovered there was no hot water in the kitchen. She says she was without hot water for over a year and reminded the landlord in May and June 2015. The landlord agrees there was a delay in obtaining a replacement because of its unusual size.

48. There is no clear evidence of exactly how long the tenant was without hot water and when she first notified the landlord. The landlord says 2 to 3 months, she said 7 months in her termination notice. Even if the delay was only 2 to 3 months, the amount of compensation claimed is reasonable compensation for being without hot water in the kitchen for that period. Therefore the claim is proved.

49. *Heated towel rail $80.00:* The landlord accepted the tenant's claim for the cost of replacing the faulty towel rail.

50. *Kitchen drawer $70.00:* The landlord accepted the tenant's claim for replacing 2 drawer fronts.

51. *Water-blasting house $80.00:* The landlord asked the tenant to clean the outside of the house, and left a water-blaster for her and her partner to use. They were given 2 days to complete the work. Where the outside of a house becomes dirty because of normal environmental factors, the Tribunal treats this as the landlord's responsibility. The tenant is only liable if they have contributed to the state of uncleanliness. That was not the case here. The landlord accepts this, and agrees to the amount claimed.

52. *Failure to provide functioning oven and removal of oven $40.00:* The oven was not working at the start of the tenancy. Because it was an unusual size, it took the landlord some time to find a replacement. The landlord asked the tenant to collect the replacement, which she did in September 2013. She also had to remove the existing oven. The landlord accepts the claim for $40.00 for removing the existing stove, prior to installing the replacement.

53. Landlords are required to provide tenants with an adequate means of cooking food by both boiling and baking (reg. 7(2)(b) HIR 1947). It was a breach of the landlord's obligations for the tenant to be without any oven for that length of time.

54. *Reimbursement for water $380.00:* The water tank broke on 30 November 2014. The tenant says that there was a delay of about a week before the house was connected to mains supply. She says the landlord asked her to obtain water from a neighbour, but that she had to buy water. The landlord says it tried to sort the problem out as quickly as possible and was not aware of any particular delay, whether for a few days or a week. There is no supporting evidence of exactly how long the tenant was without water, or any receipts for buying water (she says she paid cash).

55. Landlords are required to provide an adequate means for the collection and storage of water if it is not reticulated (s 45(ca) RTA). Although the damage to the tank was outside the landlord's control, the supply of potable water is a fundamental requirement of both the RTA and the Housing Improvement Regulations 1947 (regs 7(2)(a) and 9(2)). Where the supply is interrupted the tenant is entitled to compensation. The tenant has not provided sufficient

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evidence to prove her claim for $380.00; and I have limited compensation to 50% of 1 week's rent ($170.00).

56. *Removal of carpet from bathroom $20.00 and failure to repair bathroom floor:* The tenant says the carpet in the bathroom and toilet was wet and smelly at the start of the tenancy. The landlord agreed she could remove the carpet, and accepts the claim for $20.00.

57. The tenant contacted the landlord in May 2014 to say she had removed the carpet and that floorboards needed replacing. In January 2016 the landlord acknowledged the bathroom and toilet floors needed vinyl. In February 2016 the tenant told the landlord the bathroom needed a shower door, the ceiling painted, and an electrician for the towel rail. In October 2016 the tenant reminded the landlord the bathroom floor was rotten and there was no shower door. The landlord said it would replace the floor and put a curtain across the shower box. In April 2017 the landlord confirmed its builder had been hired to replace the shower and fix the floor and ceiling.

58. A letter from the landlord's builder suggests that the floor rotted due to the tenant allowing water to pool. However she says for most of the tenancy there was no door or curtain on the shower. Therefore I find that the landlord failed in its duty to maintain the shower and the bathroom floor.

59. *Replace window latches $60.00:* The landlord accepted the tenant's claim for replacing broken window latches.

60. *Removal of previous tenant's rubbish $80.00:* The tenant says the previous tenant's rubbish was left at the premises at the start of the tenancy. The landlord accepted the claim, which is additional to the $85.00 credit previously given.

61. *Smoke alarms:* A landlord must comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. This obligation came into effect on 1 July 2016.

62. Tenant says landlord never supplied smoke alarms. On 29 June 2016, the landlord contacted her regarding alarms, and she confirmed she had already provided them. There is no evidence whether the alarms in place at 1 July 2016 were qualifying alarms or correctly located. However there is no actual evidence of breach and the tenant took all but three of the alarms with her at the end of the tenancy.

63. *Leaks in second lounge:* Landlords are required to provide premises that are free of dampness (reg 15 HIR 1947).

64. The tenant says the second lounge leaked throughout the tenancy, and she had to collect water in buckets every time it rained. There was also a hole in the floor. She notified the landlord about these issues in September 2013, May 2014, December 2015, February 2016, and April 2017. The final leak coincided with the deluge that caused the Edgecumbe flood: the damage to the lounge was substantial and it was unusable.

65. The landlord was aware of the leaks in the lounge. In September and October 2016 it emailed the tenant to say the flooding was caused by the gutter sloping the wrong way and moss lifting the roof tiles. The roof tiles were sprayed to kill the moss. In April 2017 the landlord sent its builder an extensive list of repairs and told the tenant the builder would make the roof temporarily weathertight.

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66. At the hearing the landlord said there were three sources of leaking (1) moss and lichen on the roof lifting the tiles, (2) dead moss washing off the roof and blocking the gutter, causing water to flow back into the lounge, and (3) a gap in a mitre join at the bottom of the ranch-slider. The landlord says several attempts were made to fix the leaks during the tenancy, and the problem was not finally solved until repairs were completed after the tenant left. The landlord also says the tenant made access for contractors difficult at the end of the tenancy.

67. I accept that the landlord made several attempts to fix the problem during the tenancy, including crediting the tenant for repairs carried out by her partner. However, the fact remains that the second lounge leaked for most of the four year tenancy, and was unusable after April 2017. The various causes were eventually identified and there is no reason why this could not have happened sooner. Therefore I find that the landlord breached its obligation to maintain and repair the premises and ensure the lounge was free from dampness.

68. *Uneven piles:* There is no dispute that the house needed re-piling. On 29 May 2017, a building consents officer at Whakatane District Council provided a report following an inspection on 29 May. The report listed a number of defects with the property: settlement cracks to the exterior brick veneer and sub-base cladding, settlement cracks throughout the interior of the house, the floor out of level (by 40-50mm within the kitchen/lounge), severe mould in the bathroom, mould and broken linings adjacent to roof leaks, substandard construction of the second lounge extension, insufficient flashing around the extension allowing moisture ingress, sagging beams, and deficient binding of window joinery and internal doorways. He recommended an assessment for structural performance and weathertightness, and that the dwelling not be used until the assessment was completed as it could be deemed *"dangerous and insanitary"*. The Council subsequently retracted the letter on 27 June 2017, stating that the officer was acting outside his authority.

69. Because the Council letter was retracted, it does not provide any evidence that the house was dangerous or insanitary. However, some of the factual observations in the letter are consistent with the photographic and other evidence. For example, in April 2017 the landlord told the tenant subsidence had contributed to the leaking, and that its builder would advise on levelling house. The photographs taken by the Council officer confirm the poor condition of the second lounge.

70. *Bathroom mould:* This issue has already been dealt with in the context of the landlord's claim. It is likely that both parties contributed to the problem: the tenant by failing to sufficiently ventilate, and the landlord by failing to provide an adequate means to ventilate when the tenant was not at home.

71. *Failure to repair Ajax valve:* The tenant notified the landlord of problems with the Ajax valve in September 2016. The landlord confirmed it needed adjustment in September and October 2016. The tenant says it was not fixed until shortly before she moved out and that, as a result, she had higher than normal power accounts. The landlord's builder, in a written statement, said because the house was in a rural area with varying water pressure, adjusting an Ajax valve could take several attempts. Although the tenant did not provide any evidence to substantiate the amount of any increased power costs, the delay in dealing with the situation was unacceptable, and the landlord breached its obligation to maintain.

72. *Failure to give 48 hours' notice of inspections:* The tenant says the landlord did not give 48

hours' notice of inspections, and sometimes gave none at all. For example, in an email on 28 January 2015 she said she only received 24 hours' notice of an inspection on 27 January. Both parties have alleged that each other breached their obligations under s 48 RTA, and it is likely that both parties were at fault at times during the tenancy. Therefore this allegation will not be taken into account in assessing any compensation.

What monetary orders should be made?

73. The landlord is owed a total of $3,696.78, comprised of $3,028.98 rent arrears, $240.00 cleaning, $418.00 rubbish removal, and $9.80 bulb replacement.

74. Because of the way the tenant has framed her cross-application and defence, the only net monetary order I can make in her favour is for exemplary damages for not lodging the bond ($400.00), and the filing fee (if awarded).

75. All other aspects of the tenant's claim are at most an offset against the amount owed to the landlord. I have found, or the landlord has accepted, monetary claims totalling $1,000.00 for the chimney, hot water, towel rail, drawers, water-blasting, oven, water, carpet, latches, and rubbish. In addition, the tenant is owed $271.00 for the bond credit not lodged. That is a total of $1,271.00, leaving a balance of $2,425.78.

76. The issue is whether the tenant is entitled to compensation for the landlord's failure to repair at least equivalent to the balance owing. The total rent payable for the full term of the tenancy was $67,514.29. For much of the tenancy the tenant had to deal with leaks in the second lounge and a poorly maintained bathroom. There were other problems that were not addressed in a timely way, such as the hot water in the kitchen, the oven, and the Ajax valve. Although the landlord had major expenses replacing the water supply and repairing the septic tank, this does not excuse its failure to carry out other necessary maintenance.

77. Even if I were to take a conservative approach and award compensation equal to a rent reduction of 5%, the compensation of $3,375.00 would well exceed the balance due. In fact, based on the facts presented, compensation in excess of 5% is justified. The landlord says the rent was not increased, and was well below market rent by the end of the tenancy. It produced a market appraisal of $390.00 to $400.00. It also says the tenant was only up to date with her rent for about a quarter of the time. Even if those factors were relevant, they would not reduce the compensation below the balance due of $2,425.78.

78. The result is that the amount owed to the landlord will be offset against the compensation due to the tenant. The tenant will be awarded a net $400.00 in exemplary damages for the bond. Also, because she has largely succeeded in her claim, her filing fee is reimbursed.

79. Even though the tenant did not include refund of bond in her application, because the landlord does not have a proven claim against the bond, it will be refunded to her.

Dated at Whakatane on Wednesday 14-Feb-2018 J Smith, Adjudicator