

## **Order of the Tenancy Tribunal**

*Residential Tenancies Act 1986*

*Office of the Tenancy Tribunal*

### **Tenancy Tribunal at Auckland**

#### **Tenancy Address**

65 Kelmarna Avenue, Ponsonby, Auckland 1011

#### **Applicant**

Full Name

Housing New Zealand Corporation - Wellington

Landlord

#### **Respondents**

Full Name

Mark Shayne Mitchell

Tenant

#### **Order of the Tribunal**

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The Tribunal hereby orders:

1. The application is dismissed.

(Section 78(1)(i) Residential Tenancies Act 1986)

#### **Reasons:**

1. Tenants must not intentionally or carelessly damage the premises: s 40(2)(a) of the Residential Tenancies Act 1986. Housing New Zealand Corporation claim that the premises were damaged during the tenancy, specifically that they were contaminated with methamphetamine and required decontamination.
  2. In any claim for damages the landlord must prove that the damage occurred during the tenancy and that it was probably not caused by fair wear and tear. Once this has been established, in order not to be liable for the cost of repairs, the tenant must prove that the damage was not caused by their careless or intentional acts or the actions of others at the property with their consent.
  3. The issues are whether methamphetamine contamination is damage for the purposes of the Residential Tenancies Act 1986 and whether the contamination occurred during the tenancy, and accordingly Mr Mitchell's responsibility, unless he can show that it was not caused by his
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careless or intentional acts or the actions of others at the property with her consent.

**Is methamphetamine contamination damage?**

5. I find that methamphetamine contamination is damage for the purposes of s 59A of the Residential Tenancies Act 1986. While damage is not defined in the Act, case law has found that damage is "a physical alteration or change, not necessarily permanent or irreparable, which impairs the value or usefulness of the thing said to be damaged": *Ranicar v Frigmobile Limited* (1983) 2 ANZ Ins Cas 60-525, and that damage can be at a chemical level: *Bayer Australia Limited v Kemcon Pty Limited* (1991) 6 ANZ Ins Cas 61-026. I accept that methamphetamine contamination is damage at a chemical level that impairs the usefulness of the premises. This finding is consistent with the many decisions of this Tribunal on methamphetamine contamination such as the recent decision of Adjudicator Benson in *Housing New Zealand Corporation v Teepa* application no 15/04385/MK dated 7 August 2015.

**Did the contamination occur during the tenancy?**

6. This approximately 8-year tenancy commenced in 2007. The Act requires the landlord to show that the damage occurred during the tenancy. Housing New Zealand Corporation produced evidence from the Police to show that another resident had been convicted and sentenced for marijuana possession (at the premises) and that a visitor to the premises had been convicted and sentenced for possession of "illegal drugs" (while at the premises, the nature of the drugs is not disclosed in the Police evidence). Housing New Zealand Corporation argued that the convictions of an occupant and a visitor for drug possession made it more likely than not that the methamphetamine contamination found at the property was caused by the tenant or by other individuals at the property with the tenant's consent. Having regard to the arguments made and evidence produced at today's hearing I find that Housing New Zealand Corporation has not been able to show on the balance of probabilities that the contamination was caused during Mr Mitchell's tenancy. There is no evidence to show whether or not the premises were already contaminated at the start of the tenancy, no evidence to show how long such contamination may persist if not decontaminated and the Police report relates to marijuana and an "illegal drug", which could also be marijuana or it could be any other illegal drug that is not methamphetamine. While it would be entirely reasonable to suppose that the contamination arose during the tenancy given the drug convictions and other Police information disclosed by Housing New Zealand Corporation a supposition is not sufficient; the evidence is not sufficiently persuasive to show that the contamination more likely than not occurred during the tenancy. For this reason Housing New Zealand Corporation's claim cannot succeed and its application must be dismissed.
7. Mr Mitchell did not appear at today's hearing.