TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Samuel Moseti

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant's name and identifying details.
2. Samuel Moseti must pay [The tenant/s] $1,252.71 immediately, calculated as shown in the table below.

Description	**Landlord**	**Tenant**
Compensation: section 60AA		$1,500.00
Replace curtain	$18.00	
Curtain track	$229.29	
Total award	**$247.29**	**$1,500.00**
Net award		$1,252.71
Total payable by Landlord to Tenant		**$1,252.71**

3. The landlord's remaining claims are dismissed.

Reasons:

1. Both parties attended the hearing.
2. This matter concerns a residential tenancy which commenced on 15 July 2020 and ended on 13 June 2024. The tenant has applied to the Tribunal seeking compensation for an alleged unlawful termination of tenancy, and the landlord has filed a cross-application seeking compensation for damage to the premises.

The Tenant's Claim

3. On 3 April 2024, the landlord issued the tenant with 90 days' notice to terminate the tenancy, stating that the property would be placed on the market for sale. Subsequently, the tenant issued their own 28-day notice and vacated the property on 13 June 2024.

4. The tenant submits that the landlord acted unlawfully in purporting to terminate the tenancy under section 51(2) of the Residential Tenancies Act 1986 ("RTA"), citing that 180 days had passed since the termination notice and the property had neither been listed nor sold. The tenant relies on section 60AA of the Act and seeks compensation of $6,500 for moving costs, loss of bond, and additional rent incurred.

5. Section 51(2)(a) permits a landlord to terminate a periodic tenancy by giving at least 90 days' notice if the premises are to be put on the market for sale within 90 days after the termination date. At the time the notice was given, the law required an intention to publicly market the property, not merely private sale.

6. The tenant argues that the landlord's notice was issued under the pretence of a public sale, which never occurred. Evidence from property websites (including "One Roof") showed the property had not been listed. The tenant contends this caused undue hardship, including moving costs ($2,500), forfeiture of bond ($2,280), and additional rent paid for 25 weeks ($1,720).

7. The landlord accepts the tenancy ended by 90 days' notice but maintains he acted within his rights under section 51(2), as his intention was to sell the property—albeit privately, to a family member. He outlined several reasons for preferring private sale, including reduced expenses and flexibility. He has submitted a letter from his brother expressing interest in purchasing the property and states that private negotiations commenced on 4 July 2024.

8. The landlord contends that a private sale qualifies under section 51(2), and therefore the notice was lawfully given. He denies any discrimination or bad faith.

9. The Tribunal must determine whether the landlord acted unlawfully in terminating the tenancy on the grounds stated and whether compensation under section 60AA is justified.

10. Section 60AA prohibits landlords from giving notice to terminate if they know they are not entitled under the Act. At the time the notice was issued, the requirement under section 51(2)(a) was for the premises to be publicly marketed within 90 days of the termination date.

11. The evidence before the Tribunal indicates that no public listing occurred within 90 days of termination. The private negotiation with a family member commenced on 4 July 2024, after the tenancy had already ended. The Tribunal is satisfied that the property was not put "on the market" within the statutory timeframe.

12. The Tribunal finds that the landlord gave notice on grounds he was not entitled to rely upon under the law as it stood on 3 April 2024. This constitutes an unlawful act under section 60AA.
13. As to compensation, the tenant claims $6,500 made up of moving costs, lost bond, and additional rent. However, the tenant received her bond in full and therefore this component of the claim fails.
14. The Tribunal accepts the tenant incurred moving costs and some additional rent. While the full 25 weeks of rent are not compensable—given the tenant's own early termination on 16 April—the Tribunal considers a fair and reasonable award is $1,500.

The Landlord's Cross-Application

15. A landlord must 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. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.
16. The claimed items are:
    - Carpet and underlay replacement: $5,660.29 plus insurance excess
    - Curtain rods $229.96
    - Net curtain $35.99 and Drapes: $997.13
    - Window wood repair: $127.51
17. Although the landlord did not file his cross-application until 1 October 2024—several months after the tenancy ended on 13 June 2024—the Tribunal does not consider that delay sufficient to estop him from bringing his claim. The landlord explained that the extent of the damage (particularly odour in the carpet) became evident only after the tenant vacated the property. He took steps to investigate and obtain professional assessments before filing. The Tribunal accepts this as a reasonable explanation.

Carpet and Underlay

18. The landlord claims that pet urine caused irreparable damage to the carpet and underlay, supported by professional assessments from JAE and Carpet Repairs Ltd. The tenancy agreement prohibited pets.
19. The tenant denies keeping pets at the property. She argued that the landlord's reliance on a neighbour's account was hearsay and not directly substantiated.

20. The Tribunal must assess whether, on the balance of probabilities, the tenant breached the tenancy agreement and caused damage. While there is evidence of pet-related damage, there is no clear and persuasive evidence that a pet lived at the property in breach of the tenancy agreement.

21. As the burden of proof lies with the landlord, and the standard is “balance of probabilities,” the Tribunal finds the evidence is insufficient to establish that the tenant caused the carpet damage. The claim for carpet replacement costs and insurance excess is dismissed.

Curtains and Drapes

22. The landlord claims $997.13 for damaged thermal drapes.

23. The tenant denies causing damage, stating she folded and stored the drapes. She contends she replaced some with darker curtains to aid her children’s sleep. The original ones were returned to the landlord, but the landlord had no recollection of this.

24. The Tribunal notes conflicting views on the condition of the drapes. The landlord claims the thermal lining was damaged due to improper storage. The tenant says she stored them safely and disputes any misuse. Given the conflicting views and lack of corroborating evidence, I decline the landlord’s claim for compensation for the drapes.

25. The landlord claimed $35.99 for the curtain in the lounge.

26. The Tribunal accepts the landlord’s claim for the net curtain as it was found torn and the tenant did not disprove liability for the damage. The curtain was likely halfway through its useful lifespan when the tenancy ended. Applying depreciation, the Tribunal finds it reasonable to award $18.00 for the reduced value of the curtain.

Curtain Rail Tracks

27. The curtain tracks were found damaged. The tenant cannot account for the damage. On balance, the Tribunal accepts the landlord’s claim of $229.96.

Window Wood Damage

28. The landlord claims $127.51 for damage to woodwork at the window edge in bedroom 3. The tenant does not recall any damage. The condition report did not note any issue at the start of the tenancy. Given the conflicting evidence and lack of clear attribution, the Tribunal finds the landlord has not proved this claim to the required standard. This claim is dismissed.

Filing Fee and Suppression Order

29. Both parties have filed a claim and each has had some success. The Tribunal makes no order for either party to reimburse the filing fee. See section 102 RTA.

30. As the tenant was substantially successful in her claim and partially successful in defending the landlord's cross-application, the Tribunal grants name suppression to the tenant under section 95A RTA.

31. The landlord was not successful in defending the tenant's claim and only partially successful in his cross-application. There are no other grounds to justify suppression. Name suppression is not granted to the landlord.

J Setefano
11 April 2025

Please read carefully:

Visit justice.govt.nz/tribunals/tenancy/rehearings-appeals for more information on rehearings and appeals.

Rehearings

You can apply for a rehearing if you believe that a substantial wrong or miscarriage of justice has happened. For example:

- you did not get the letter telling you the date of the hearing, **or**
- the adjudicator improperly admitted or rejected evidence, **or**
- new evidence, relating to the original application, has become available.

You must give reasons and evidence to support your application for a rehearing.
A rehearing will not be granted just because you disagree with the decision.
You must apply within five working days of the decision using the Application for Rehearing form: justice.govt.nz/assets/Documents/Forms/TT-Application-for-rehearing.pdf

Right of Appeal

Both the landlord and the tenant can file an appeal. You should file your appeal at the District Court where the original hearing took place. The cost for an appeal is $260. You must apply within 10 working days after the decision is issued using this Appeal to the District Court form: justice.govt.nz/tribunals/tenancy/rehearings-appeals

Grounds for an appeal

You can appeal if you think the decision was wrong, but not because you don't like the decision. For some cases, there'll be no right to appeal. For example, you can't appeal:

- against an interim order
- a final order for the payment of less than $1000
- a final order to undertake work worth less than $1000.

Enforcement

Where the Tribunal made an order about money or property this is called a **civil debt**. The Ministry of Justice Collections Team can assist with enforcing civil debt. You can contact the collections team on **0800 233 222** or go to justice.govt.nz/fines/civil-debt for forms and information.

Notice to a party ordered to pay money or vacate premises, etc.

Failure to comply with any order may result in substantial additional costs for enforcement. It may also involve being ordered to appear in the District Court for an examination of your means or seizure of your property.

If you require further help or information regarding this matter, visit tenancy.govt.nz/disputes/enforcing-decisions or phone Tenancy Services on 0800 836 262.

Mēna ka hiahia koe ki ētahi atu awhina, kōrero ranei mo tēnei take, haere ki tenei ipurangi tenancy.govt.nz/disputes/enforcing-decisions, waea atu ki Ratonga Takirua ma runga 0800 836 262 ranei.

A manaomia nisi faamatalaga poo se fesoasoani, e uiga i lau mataupu, asiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesootai mai le Tenancy Services i le numera 0800 836 262.