[2025] NZTT 5039748

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Name suppression in favour of [The tenant/s] and [The landlord/s] is awarded.
2. [The tenant/s] to pay [The landlord/s] $1,697.79 from the bond, calculated as shown in the table below.
3. The Bond Centre is to pay the bond of $2,160.00 ([Bond number suppressed]) immediately apportioned as follows:

[The landlord/s]: $1870.29

[The tenant/s]: $289.71

Description	**Landlord**	**Tenant**
Rent arrears owing at end of tenancy	$231.43	
Water rates	$1,239.36	
Filing fee reimbursement	$27.00	
Compensation to landlord for damage	$200.00	
Locks	$172.50	
Total award	$1870.29	$289.71
Bond		

Reasons:

1. Both parties attended the hearing.
2. This was a long-term tenancy. The tenancy with this landlord commenced on 1 November 2019, but the tenants had had a one year tenancy of the property prior to that with a different landlord. The tenancy ended on 19 May 2024.
3. The landlord has applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
4. The tenant accepts the claim for rent and water arrears but disputes everything else. The tenant raised her own issues of concern but I note there has been no claim filed by the tenant and so I therefore cannot consider any such claim, to the extent she wishes to pursue a counterclaim, but I can take those matters into account in assessing the strength of her defence.
5. The claim for rent is for $231.43 and for water is $1239.36. I accept those claims have been proven and I find the tenant must pay them, as ordered above. The tenant agrees fully with those claims.

   The landlord's claim for further compensation

6. The landlord provided a table with the application setting out a breakdown of the compensation sum as follows:

Description of damage or required cleaning	**Cost ($)**
Wall Had damage in various place, been repaired by replacing the jib and applied plaster.	$477.05
Replaced the door lock	$172.50
4 doors been repaired from the bottom by uninstalling the door, cut and sand from the bottom and installed it back for easy open and close	$103.50
Repaired 3 doors as it had hole in it	$195.50
New Oven damaged	$885.50
Glass replacement	$690.00
Carpet Installation (carpet was totally damaged)	$4140.00
Painting of the walls	$2875.00

Exit cleaning	$300.00
Total 13A	$9839.05

The burden of proof.

7. Before I go on to consider this claim, I begin by noting that in regard to the burden of proof, the Tribunal applies the usual civil law standards and expectations. That means that it is for the party bringing the application to establish their claims "on the balance of probabilities". They must establish that what they are claiming is more probable than not.

8. Independent witnesses, corroborating documents and reports and photographs can be an important part of discharging this burden.

9. Ultimately however, it is for the party making the application to decide what evidence to put before the Tribunal. As noted in *Kaipo v Clarke & McCarthy*, in practical terms this means that:[1]

> …[L]ike anyone who brings an application before a Tribunal or Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to provide the necessary evidence. It is not up to the other parties, and it is certainly not up to the Tribunal to extract evidence.

Is the tenant responsible for any damage to the premises?

10. 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.

11. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

12. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's

[1] *Kaipo v Clarke & McCarthy* DC Waitakere 233/02, 12 April 2002, at [7].

conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

13. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

14. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

15. This house was built in the 1970's. The landlord claims that the carpets were brand new before the tenants moved in and that there may have been other renovations to the property as well. The oven was replaced in 2023. The photographs that were provided of the entry report depict a relatively older looking property with a somewhat tired and dated interior, bordering on shabby. They certainly do not depict a freshly renovated property.

16. I note that the tenant's defence to these claims is that all of the damage that is here was there at the outset of the tenancy. She claims that she complained about some of this damage, including the holes around the hot water cylinder which allowed mice to come into the property, the cracked and broken tiles, the small crack in the ranch window, difficulty closing the windows, the oven that never worked until it was replaced in 2023, and other issues. Essentially the tenant says these issues were all pre-existing.

17. I now turn to consider each of the claims.

    1. The claim for $195.50 for repairing holes in doors. I am not prepared to allow this claim. The entry report photos show there is existing damage to all of the doors which appear to be the original doors in the property. I note above the existing interior of the property shows it to be in a tired state at the outset, generally. I do not accept this damage was caused by the tenants and to the extent it has emerged during the tenancy I consider it to be general wear and tear. I dismissed this claim.

    2. The claim for $477.05 for repairing damage to the walls. In viewing and comparing the entry and exit photos, once again, I am not satisfied that this damage was not already there. Damage to walls can be seen in the entry photos. I do not accept this damage was caused by the tenants and to the extent it has emerged during the tenancy I consider it to be general wear and tear. I dismiss this claim.

    3. The claim for the broken back door lock of $172.50. The landlord claims the locks were broken at the end of the tenancy. I will allow this claim which I find to be proven.

4. The claim for damage to the bottom of the doors of $103.50. I do not allow this claim because as noted above, I am not satisfied that this damage was not already there. Damage to walls can be seen in the entry photos. I do not accept this damage was caused by the tenants and to the extent it has emerged during the tenancy I consider it to be general wear and tear. I dismiss this claim.

5. Replacement of the oven of $885.50. The landlord claims the oven was replaced in 2023 and did not respond to the tenant's submission that it had never worked. The landlord says the oven did not work at the end of the tenancy at all. The tenant did not challenge that submission. I find the oven to be broken and unusable at the end of the tenancy. I will allow a sum in favour of the landlord but I need to take into account betterment and the fact that had the oven been replaced at the outset of the tenancy, as it should have, the depreciation of the oven across the lifespan of the tenancy would be significant, I therefore allow the landlord $200 for the broken oven.

6. The claim for $690 to replace the cracked ranch glass. I am satisfied there is damage to the glass in the form of a large crack at the end of the tenancy. Large cracks can star as small cracks. I cannot however rule out the possibility that this crack was pre-existing, albeit small. The tenant claims there was a very small crack there at the outset of the tenancy, which then grew. She also said she complained to her property manager about it. I find the landlord has not proven that the crack was caused by the tenant. This claim is dismissed.

7. Replacement of the carpet of $4,140. The landlord claims the carpet was heavily marked and had wrinkled up, due to the tenants moving heavy furniture across it. This was a long-term tenancy. The life span of cheaper carpet, like this carpet, is not extensive. I consider there to be a lack of evidence that the damage was anything other than general wear and tear. Even if I had, I would have needed to allow a significant deduction for betterment and depreciation. This claim is dismissed.

8. Repainting of all the walls at $2875. The landlord claims this was a necessary cost, due to marks and damage caused by the tenants. I mention here that the landlord had initially intended to sell the property. Replacing the carpets and a full repaint was of real advantage to her for that reason. She then changed her mind and has re-tenanted the property. I find it hard to accept all this repainting of what was initially a tired and dated premises was necessary because the tenants caused damage to the property. I simply do not accept this damage was caused by the tenants and to the extent it has emerged during the tenancy I consider it to be general wear and tear.

9. Cleaning of $300. I am not prepared to allow this. I accept the tenants unchallenged evidence that at the end of the tenancy the landlord's property

manager told her that she had done a good job on the cleaning. Further, the clean was a clean up done after the tradespeople had all been through and done there work and no doubt also had the benefit of getting the property into a suitable condition for the incoming tenant.

18. The owner has not made any claim against their insurance policy. The landlord says she is unaware even if the policy covers this damage. That is likely because much of the damage is simply wear and tear.

19. Because [The landlord/s] has substantially succeeded with the claim I have reimbursed the filing fee.

20. I also award name suppression in favour of both parties, as each has been successful.

D Watson
18 June 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.