[2025] NZTT 4990108

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	Ann Patricia Shipman, Ian Charles Shipman Landlord
RESPONDENT:	[The respondent/s] Tenant
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenants names ([The tenant/s] and their identifying details.
2. The landlord's claim for rent is dismissed, other than the claim for $300 for cleaning. This sum is to be paid from the Bond.
3. The Bond Centre is to pay the bond of $1,600.00 ([Bond number suppressed]) immediately apportioned as follows:

Ann Patricia Shipman and Ian Charles Shipman:	$100.00
[The tenant/s]:	$1,500.00

Reasons:

1. Both parties attended the hearing.
2. The landlord is claiming rent arrears and compensation following the end of the tenancy. The tenant disputes the claims.

The claim for rent arrears

3. The claim for rent arrears turns on whether I accept the tenant's argument that they could bring the tenancy to end on 28 days notice or whether I accept the landlord's claim that this was not agreed and that the end of the tenancy was fixed at 2 July 2024.

4. The background is that the tenancy commenced on 13 November 2022 and was initially for a fixed term ending on 10 October 2023.

5. On 8 November 2023, the parties agreed to extend the termination date to 1 March 2024.

6. On 2 February 2024, the landlord claims the parties agreed on a further extension, to 2 July 2024.

7. Mrs Shipman said that in breach of this agreement she first found out the tenants had vacated the premises in the weekend of 31 March 2024 when the neighbour called to tell her.

8. She said it was then very hard to re-tenant the property. She took a prospective tenant in when the tenants were still there and she said there was stuff everywhere. She also complained about the Indian smell of food. She claims that after the tenants left she spent approximately 15 hours cleaning the walls and ceilings to get the oil off surfaces and the smell out. She washed the curtains.

9. She claimed initially that a smoke alarm was missing but in the second hearing, said it was broken. The amount claimed is $20.66.

10. She claims $300 for all the cleaning she did and all the time spent getting in a new tenant. She is claiming the cost of readvertising the premises through Homead, being $287.50.

11. The tenants claim that they agreed to the second extension (to 2 July), but only on the basis that they would still have the right to bring the notice to an end on four weeks' notice. They claim Mrs Shipman agreed to this but wanted to be able to bring prospective tenants through the property whilst the tenants were still there. The tenants agreed to that.

12. The tenants wanted to have the flexibility to bring the tenancy to an end sooner than 2 July because they knew they would be leaving [City] soon, for work and family reasons.

13. They say the landlord agreed to this but as well as wanting the right to show prospective tenants through, the landlord requested the rent be increased by $20 per week, to allow for the inconvenience. The tenants say they agreed to pay the extra $20 per week because they were getting the flexibility they wanted.

14. The tenants point out that they had no reason at all to agree to a further fixed term of 6 months unless there would be agreement to bring it to an end on a shorter notice period. The tenants already knew they wanted to leave. The

tenancy was due to end on 1 March 2024. They had no reason to sign up to a further fixed term when they were only giving notice to terminate anyway a few days after the first extension would come to an end.

15. The tenants also point out that pursuant to the verbal agreement, Mrs Shipman did indeed bring a prospective tenant through the property whilst they were still there.

16. The tenant says that on 6 March they emailed the landlord to say they would be moving out over Easter (the weekend of 31 March). Mrs Shipman replied to ask what date exactly and they gave her the 31st of March.

17. After this evidence was given Mrs Shipman (who had initially said she did not find out the tenants were moving until the neighbour called her) accepted she did get this email and replied to it. She explained that what she had meant was she did not know exactly when the tenants were moving out.

18. The landlord eventually did obtain a new tenant, who pays $380 per week. The landlord is asking the tenants to pay the weekly rent of $470 per week up until the date the new tenant moved in, on 10 June 2025.

What was the end date of the tenancy and what were the terms of the second extension?

19. It is the obligation of the landlord their obligation to prove their claim on the balance of probabilities, as previously discussed with the parties.

20. I find that when the tenants were asked to sign a second extension of the agreement, there was also verbal agreement reached (and not recorded on the written agreement) on the following additional terms:

    a) The tenants retained the right to bring the tenancy to an end on 28 days notice

    b) The landlord could bring prospective tenants through the property.

21. I accept the evidence of the tenant on this score. I find that it made no sense for the tenant to agree to a lengthy extension when they were looking to leave soon anyway and indeed did give notice to leave only a few days following the end of the first extension.

22. The rent summary provided by the landlord is consistent with the tenant's version of events in that it records the tenants were then to pay an extra $20 per week. In this regard, the landlord said in her evidence that if tenants want a shorter term then it "is dearer". The landlord mentioned having 6 units that are rented so is a well experienced landlord. I find that the landlord was getting this extra money in consideration for the tenant having that flexibility to bring the tenancy to an end on shorter notice.

23. The agreement itself recorded the first extension and second extension dates which are initialled, but there is no record of the verbal agreement that the tenants would still have the right to vacate earlier on a shorter notice period.

24. Further, both parties accepted that the landlord indeed did bring a prospective tenant through whilst the tenants were still there.

25. It follows from my finding that the extension included the verbal terms agreed to above that the tenancy came to an end on 31 March 2024 as alleged by the tenant. This was upon the expiry of their notice. The landlord's claim for rent following that date to the end of the second extension therefore fails and the landlord is entitled to no further rent.

26. To the extent I need to I find that the written agreement is varied by addition of the terms I have referred to above (s 78(1)(g) of the Residential Tenancies Act 1986).

Did the tenant comply with their obligations at the end of the tenancy?

27. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986.

28. The smoke alarm was not working at the end of the tenancy. It is the landlord's obligation to supply working smoke alarms. The tenant is not liable to pay to replace a smoke alarm that is not working. The tenant's obligation is only to replace worn out batteries, but that was not the landlord's claim.

29. I dismiss the claim for the cost of a new smoke alarm.

30. I accept that the tenant did not leave the premises reasonably clean and tidy and that some work was done to clean the premises. The landlord claims the surfaces were covered in oil and she had to get the "Indian smell" of cooking out of the property.

31. I find this claim to be upheld, but only by a narrow margin. The reason is there is a lack of the necessary corroborating evidence, such as the photographs the Tribunal usually expects to see depicting the condition of the premises at the end of the tenancy. The landlord has not supplied any of that information.

32. The question is how much to award in favour of the landlord.

33. The landlord estimates spending about 15 hours cleaning the property. The claim for $300 is modest in terms of that number of hours so despite the lack of proper corroborating evidence I allow the claim. As noted this claim is borderline in view

of the lack of evidence from the landlord. All I have to go on is her oral evidence that she spent this amount of time cleaning the property.

34. The claim however is allowed as to $300 as I accept some cleaning was required.

35. Ann Patricia Shipman and Ian Charles Shipman have not substantially succeeded with the claim so I have not reimbursed the filing fee. They did not seek name suppression.

36. The tenant has been largely successful and so name suppression is awarded in their favour.

D Watson
07 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.