[2025] NZTT 5241411

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: Tanzin Paige Mcclelland, Nicholas Stanley Coomey

Tenant

RESPONDENT: [The respondent/s]

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 landlord's name and identifying details.
2. The application against [the owner/s] is withdrawn.
3. The tenants' application for a work order to install appropriate water tank and install appropriate water filtration system and to add fixtures to windows so they can stay open is withdrawn.
4. The tenant's claim for a work order in respect of the garage window is dismissed.
5. **BY CONSENT:** In full and final settlement of the tenants claims for compensation and exemplary damages as set out in the order of the Tribunal dated 9 July 2025, [The property management company] must pay Tanzin Paige Mcclelland and Nicholas Stanley Coomey $13,000.00 in two instalments: (i) $6,500 is to be paid on or before 20 August 2025 and (ii) $6,500 is to be paid on or before 20 September 2025.
6. **BY CONSENT:** The landlord must carry out the following work to the premises, which must be completed by the dates that are set out below:
    a. Repair broken and rotten decking by 20 August 2025.
    b. Have a qualified electrician assess the wiring in the house by 13 August 2025 and fix any issues identified by 30 August 2025.

c. Secure power points back to the wall by 13 August 2025.

d. Fix the hole in laundry floor by 30 August 2025.

e. Fix gaps causing draughts around window framing, sliding front door (top and sides), backdoor and other front door by 30 August 2025.

f. Fix gaps on bedroom ceiling by 30 August 2025.

g. A qualified tradesperson to service the heat transfer system by 13 August 2025.

h. Undertake remedial work to comply with the Healthy Homes Standards concerning guttering, downpipes and drainage by 30 August 2025.

i. Service fireplace and have fireplace chimney swept by 13 August 2025.

j. Install new cupboard door handles (4 or 5) by 30 August 2025

k. Install gates at front and back suitable to fit the space (or reach an alternative solution together in writing) by 30 August 2025

l. Reinstate the back fence and repair missing fence panels by 30 August 2025

m. A qualified builder is to inspect the exterior of the home by 30 August 2025 to assess necessary repairs so that the property complies with healthy homes standards and is maintained so it is weathertight and to a reasonable standard. Any necessary repairs identified to be done by 14 September 2025 (roof is considered separately below).

n. Make serviceable the tiled area on the kitchen bench by 30 August 2025.

o. Inspect the lino in the kitchen and bathroom by 30 August 2025.

p. Inspect the roof and make it weathertight by 30 August 2025.

q. Clean the mould to remove it by 13 August 2025.

r. Install a replacement oven by 30 August 2025.

Reasons:

1. Both parties attended the hearing. The landlord had a representative and one of the directors of the landlord also had requested an interpreter. She confirmed that she would only need the interpreter if she did not understand something and at times the interpreter did clarify points.

2. The tenants' claims are fully set out in my earlier case management order dated 9 July 2025.

3. At the case management hearing, as recorded in my order, [the owner/s] suggested this was not a tenancy and that an exclusion may apply (meaning that this was not a tenancy falling within the Residential Tenancies Act 1986

(RTA)). However, by the time of the hearing the parties were in agreement that there was a service tenancy in place.

4. There was some discussion as to whether the landlord was [The property management company] or if it included [the owner/s] individually. The tenants were willing to limit their claim to [The property management company] in any event and therefore the order is made against this legal entity only ([the owner/s] being the directors of that company in any event).

Orders made by consent

5. By consent the parties were able to settle the work orders bought by the tenant as set out in paragraph 6 (a-r) of the above order. These work orders are made by consent.

6. Further, by consent and in full and final settlement of the tenant's claims for compensation and exemplary damages, as set out in the tribunal order dated 9 July 2025 it was agreed that the tenants would be paid by the landlord the sum of $13,000 in two instalments as set out in the above order.

Repair of garage window

7. The only part of the application that the parties were unable to resolve themselves was whether the tenants could obtain a work order so the landlord had to repair a garage window that was broken.

8. Under section 45(1)(a) - (ca) Residential Tenancies Act 1986, the landlord has an obligation to provide and maintain certain standards and to comply with applicable requirements. Where the Tribunal finds the landlord has failed to comply with any of these obligations, it may make an order for the landlord to carry out the work. See section 78(1)(e) Residential Tenancies Act 1986.

9. If the work order is not being made by consent of both parties, the Tribunal must also make a monetary order as an alternative to compliance with the work order. This provision does not apply to any work order, or part of a work order, in relation to smoke alarms, insulation, a failure to comply with a standard of fitness under section 120C Health Act 1956, or a failure to comply with any health or safety legislative requirement. See sections 78(2) and 78(2AA) Residential Tenancies Act 1986.

10. A work order may also authorise the tenant to undertake the work and charge the landlord the costs of doing the work, if the landlord should fail to comply with the work order and alternative monetary order. A monetary limit must be imposed by the Tribunal on the amount of costs that can be charged. These costs can be set off by the tenant against rent payable. See sections 78(2AAB) and 78(2AAC)(b) Residential Tenancies Act 1986.

11. When assessing tenant liability for damage 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.

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. See section 49B(3)(b) RTA.

13. The tenants say that the window broke due to the condition of the window - because it is loose in its seals and that they told the landlord about the window in 2024.

14. The landlord took the position that it was probably was the tenant's children who broke the window. [The owner/s] questions whether glass even needs to be in a garage window (and wonders if it can just be boarded up). He says that he is not responsible for its replacement because the tenant broke it.

15. I am not satisfied that the tenants have sufficiently proven that there was a maintenance problem which caused the window to break or that they have proven that they alerted the landlord to any such problem (see section 40(1)(d) RTA). I find that a broken window is more than fair wear and tear. The tenants have not sufficiently proven that the damage was not caused by them or someone they are responsible for carelessly or intentionally.

16. In any event, I am not satisfied that the tenants gave the landlord notice of this defect prior to making the application for a work order.

17. I therefore decline to make a work order in respect of the window and this part of the application is dismissed.

Suppression

18. The landlord seeks suppression. The tenant does not.

19. The Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case (s95A(1) RTA).

20. The Tribunal may grant a suppression order having regard to the interests of the parties and public interest under section 95A(4) RTA.

21. I award the landlord name suppression. This is because although it has conceded to a number of work orders and agreed to pay the tenant a sum, with assistance from their representative, the landlord took a conciliatory and

expedient approach to resolving the issues raised. A volume of matters were resolved today by consent and it is in the public interest that parties can resolve their disputes between them. The tenant was not successful on the one issue left for me to resolve.

M Kemp
29 July 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, or the failure to make an order, where the amount in dispute on appeal is less than $1000
- a final order to undertake work, or the failure to make an order, where the value of the work in dispute on appeal is 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.