[2025] NZTT 5267599

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: Te Ahuru Mowai Limited Partnership

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Suppression orders are made in relation to the tenant's names and identifying details.
2. [The tenant/s] must pay Te Ahuru Mowai Limited Partnership $1,484.22 (the debt), calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rubbish removal	$932.68	
Garden work	$250.00	
Cleaning	$241.33	
Repairs: 5 holes	$170.15	
Repairs: door jamb	$86.06	
Total award	**$1,680.22**	
Bond	$196.00	
Total payable by Tenant to Landlord	**$1,484.22**	

3. The Bond Centre is to pay the bond of $196.00 ([Bond number suppressed]) to Te Ahuru Mowai Limited Partnership immediately.
4. [The tenant/s] is to pay the debt at a rate of $15 per week commencing the week following this order.
5. If [The tenant/s] fails to make any payment within 2 working days of the due date, the balance of the debt owing will be payable immediately and can be enforced through the District Court.
6. All other claims are dismissed.

Reasons:

1. This decision follows a hearing which both parties attended to determine the landlord's multiple claims against [the tenant/s]. Ms Trego and Ms Potai represented the landlord.
2. [The tenant/s] was a tenant of Te Ahuru Mowai Limited Partnership who took over managing the tenancy from Kainga Ora in 2020. [The tenant/s]'s tenancy at this property lasted almost nine years from April 2016 until January 2025. She lived in the home with her three children.
3. [The tenant/s] had to vacate in haste due to a situation of family violence and has now moved out of the district. [The tenant/s] disputes a number of the claims, as discussed below.
4. As applicant, Te Ahuru Mowai has the burden of proof which means they have to establish their claims in evidence to the standard of the balance of probabilities, or what is more likely than not. I consider each of the claims in this light.

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

5. Te Ahuru Mowai seeks reimbursement of the costs they incurred in cleaning the property, mowing the lawns and removing rubbish and green waste after the tenancy ended.
6. [The tenant/s] accepts the state of the property as depicted by the photos however explains that she had to vacate in a hurry given she and her children were in danger. She moved to a safe house due to a serious incident of violence and only returned once with the assistance of a support person and Ms Potai. This was a limited visit to enable her to collect what she could. She did not have a car or anywhere to store her belongings as she was in a safe house at that time.
7. The Residential Tenancies Act 1986 (RTA) is the relevant law. Section 40(1)(e)(ii)-(v) of the RTA states a tenant's obligations at the end of a tenancy. These are to leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit.
8. The photos clearly establish that the premise was not left reasonably clean and tidy, the gardens were not done and there were a lot of belongings and rubbish left. Whilst I accept [the tenant/s]'s reasoning for how the property was left, and certainly empathise with her for the situation she was in, the RTA is strict. There is no statutory ability for me to reduce a reasonable cost claimed by a landlord in such circumstances. The work had to be done, [the tenant/s] could not, therefore a cost was incurred in doing so.

9. The cost for cleaning is relatively minimal given the extent of the cleaning required; I therefore find it reasonable and uphold the claim.
10. I accept the need for a second skip bin ($430). Te Ahuru Mowai had provided the first at no cost to [the tenant/s], and there were a number of belongings left. I also accept as reasonable the time it took to gather up the rubbish ($502.68).
11. The amount claimed to cut the grass, trim around the fence line and remove the grass clippings is $1,392.80. This is a significant amount, primarily because the lawns are extremely large. The photos show they were overgrown but not extensively.
12. Having considered the evidence carefully I do not find the amount claimed justified in evidence. The cost of $1,022 for cutting the lawns is excessive. The invoice states 10 units (presumably hours) at $102.29 per unit. If this was the hourly rate it is extremely high for a garden worker, and I would not estimate the work required to take 10 hours.
13. I find that an award of $250 is reasonable in the circumstances[1] and on the basis of the evidence provided.

Is the tenant responsible for the damage to the premises?

14. Te Ahuru Mowai is claiming compensation for numerous damages to the property. I address each separately below, but firstly note the relevant law.
15. To be successful in such a claim, 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. See sections 40(2)(a), 41 and 49B RTA.
16. Tenants are liable for the actions of people at the premises with their permission. Where any person intentionally or carelessly damages the premises while the tenant is in the premises, it shall be presumed that the tenant permitted that person to be in the premises unless the tenant proves that he or she took all reasonable steps to prevent that person from entering the premises or (as the case may require) to eject that person from the premises. Section 41 RTA.
17. Fair wear and tear is the expected toll taken on a house that comes from usual living. It is manifest that when a landlord rents premises to a tenant, that the tenants will live in the dwelling, and in the process cause some wear and tear which is ‘compensated’ by way of the rent payments the landlord receives.

[1] See section 85 RTA

18. Carelessness is not defined in the Act, but it has its normal meaning of lack of care, negligence or lack of forethought. The standard of care required is similar to the standard of care required by the general law of tort in negligence cases. Thus, the question can be expressed as whether the tenant, or some other person at the premises with the tenant's permission, was "*exercising that degree of care and attention that a reasonable and prudent tenant would exercise in the circumstances*", see *Mercier v Smith & Greenan* 14/12/98, Dunedin TT 228/93.

19. Where the damage is careless and is not covered by the landlord's insurance, as here, 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 conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

20. 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.

21. 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.

22. Finally, damages claimed, and awarded, must flow naturally from the breach and be reasonable. The Tribunal must also consider betterment and depreciation. The landlord is entitled to be returned to the position they would have been in had the tenant not breached their obligations and should not be better or worse off. In calculating betterment and depreciation, the Tribunal will consider the age and condition of the items at the start of the tenancy and their likely useful lifespan.

Decontamination

23. Te Ahuru Mowai claims reduced compensation for the decontamination of the premise following a positive test for methamphetamine testing. The cost to Te Ahuru Mowai of decontaminating the property was $26,276.59 and they are claiming less than $7,000 from [the tenant/s]. They are not insured for such damage.

24. The methamphetamine testing was undertaken in October 2024 and returned results varying from 4.1µg/100cm$_2$ to 80µg/100cm$_2$.

25. Methamphetamine contamination is considered to be intentional damage. Contamination is considered as levels above 15µg per 100sq cm.[2] The Gluckman report notes that levels greater than 30µg are considered indicative of manufacturing activities.[3] Accordingly, this property was damaged by methamphetamine contamination.

26. It is therefore for Te Ahuru Mowai to establish that the damage occurred during the tenancy. Ms Trego and Ms Potai accept that there was no indication to them during the tenancy that drugs were being utilised during the tenancy. The only known occupants to them were [the tenant/s] and her three children.

27. They also accept that Kainga Ora had not undertaken a methamphetamine test prior to the tenancy, nor had they commissioned one during the tenancy, but they do note it was a long tenancy. Whilst some carpets were new at the commencement, there is no evidence the home[4] had been freshly painted either.

28. A clear position has been taken by the District Court, and as such adopted by the Tribunal, that the lack of pre-tenancy methamphetamine testing is fatal to a claim for compensation for decontamination. See *Eren Limited v Martin and Kukuruzsnayak* [2021] NZDC 15210:

    [11]… *The lack of methamphetamine testing at the start of the tenancy significantly weakens the circumstantial case against the tenants to the point where it is not possible to conclude on the balance of probabilities that it was the tenants who were responsible for the methamphetamine residue located at the premises at the end of their tenancy.*

29. [The tenant/s] is clear that she has not and does not use methamphetamine. She has offered to undertake a drug test. She was extremely distressed she says when she was told of the results as this means her children had been exposed to methamphetamine residue.

30. She acknowledges that family had recently come to stay after the passing of a family member and that she has an abusive ex-partner. However, this is a small home, and she says she never saw nor smelt any indication of methamphetamine use by others whilst she was there.

31. Given there is no clear evidence that the property was clear of methamphetamine residue at the beginning of the tenancy, I do not find it

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[2] The report of Professor Sir Peter Gluckman, the then Prime Minister's Chief Science Advisor, entitled "Methamphetamine contamination in residential properties: Exposure, risk levels and interpretation of standards" 29/5/18, (The Gluckman Report) *Crichton v Bay City Rentals Tauranga Ltd* [2018] NZTT 4153013, 4154535, *Fast Rental Limited v Grimes & Nicholls* [2018] NZTT North Shore 4140391, *Full Circle Real Estate v Piper* [2019] NZDC 4947

[3] Page 27

[4] In particular the areas where the methamphetamine samples had been taken

substantiated in evidence that the damage occurred during the tenancy. Accordingly, this claim must be dismissed.

Holes in walls

32. Te Ahuru Mowai claims $238.21 for repairing seven significant holes in walls that were found at the end of the tenancy.

33. [The tenant/s] accepts two small holes which occurred by her children play fighting. These holes are therefore classified as careless damage.

34. She also accepted in oral evidence the presence of some large holes in the wall next to the cupboard in both bedrooms that were present in the methamphetamine testing report.

35. She however says the exit photos show more holes than were present when she vacated two weeks prior to the end of the tenancy. He suspicion is that her ex-partner entered the house after she had left and in spite caused further damage.

36. The photos show that the majority of the holes are large and deep, accordingly I find they were either carelessly (by the children) or intentionally caused, by someone. They certainly exceed fair wear and tear. The evidence also substantiates that the damage occurred during the tenancy.

37. Tenants are not responsible for damage caused by someone they took active steps to prevent from accessing a property.[5] [The tenant] had trespassed her ex-partner, which he had breached, and obtained a without notice protection order on 20 January 2025.[6] He also did not have a key.

38. He did however know there was a hole in the floor of a wardrobe that could be used to access the locked house. [the tenant/s] had not told her landlord about this hole.

39. [The tenant/s] had not reported any of the holes that occurred during the tenancy to her property manager. It is a requirement pursuant to section 40(1)(d) of the RTA that a tenant must notify the landlord, as soon as possible after discovery, of any damage to the premises, or of the need for any repairs.

40. There was one occasion in early January, when [the tenant]'s ex-partner was violent in the house. It was this event that resulted in her leaving with her children for safety, calling the police and seeking a protection order. She considers that some of the damage could have been caused at this point, but it is hard to remember for her given the danger she was in.

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[5] *X v X* [2021] NZTT 4306077
[6] Although this was after the holes has been found

41. The Minute of the Family Court Judge who issued the without notice protection order references the respondent “smashing up the kitchen” breaching a Trespass Notice, receiving a warning from police and damaging property.

42. Having assessed the evidence, I find it reasonable for [the tenant/s] to be liable for the two holes she accepts that occurred by her children’s activities. But also for the large holes in picture 6 which were evident in photos in October.

43. I accept it as highly likely that at least two of the large holes were caused by [the tenant]’s ex partner’s violence. [The tenant/s] had issued him with a trespass notice and called the police, therefore I accept she took all reasonable steps to have him leave the premise. Accordingly, he is liable for the repair of these two holes.

44. In coming to this finding I have accepted that calling the police is a reasonable step to take to eject a person from a premise.[7]

45. As such I find [the tenant/s] liable for the cost of repair of five of the holes. This finding and the cost claimed is reasonable[8] in light of the damage.

Damaged door

46. The living room door jam has been split. Ms Trego submits it likely occurred due to force given its extent. [The tenant/s] says it slowly developed over time, however no force was applied.

47. [The tenant/s] accepts she did not notify of this damage, therefore she has not met her obligation under 40(1)(d) of the RTA. Further, the extent of the split being up most of the door frame is unlikely to have occurred through fair wear and tear. Accordingly, I find her liable for this cost which is reasonable.

Should suppression orders be made?

48. Section 95A of the RTA requires the Tribunal to supress a party’s name or identifying details if that party was “wholly or substantially” successful. This includes being successful in their application or in their defence to an application.

49. Both parties have sought suppression orders.

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[7] *Housing New Zealand v McKelvey* TT Palmerston North TT268/96, 11 April 1996 at 3 in which the Adjudicator found that “*in a situation where someone is violent and is damaging the premises, calling the Police is making a reasonable attempt to protect both the occupants and the premises*” and “*The liability for the repair and redecoration … lies with the person who did the damage*.”
[8] See section 85 RTA

50. Te Ahuru Mowai were not “wholly or substantially” successful in their claim, accordingly I can only grant their application for suppression if there are no public interest factors relevant.

51. The starting point is the usual premise that judicial proceedings are open and accessible, unless the circumstances are exceptional.[9] The Court of Appeal and the High Court, both of which the Tribunal is bound to follow, are clear that the starting point is the principal of open justice and it is only in very special circumstances that suppression orders should be made.[10] The High Court has stated that the question is whether the facts in the case are sufficient to displace that presumption of open reporting, so as to support name suppression.[11]

52. For the above reasons and also that I consider it in the public interest that Te Ahuru Mowai’s details be published, I dismiss their claim. They are providing community housing and receive some public monies.

53. [The tenant/s]’s situation is different. She vacated to escape family violence, from a man who knew how to enter the home when it was locked. Accordingly, I consider the whānau’s safety sufficient reason to suppress her details. Her claim is upheld.

K Lash
1 August 2025

[9] See *Read v Police HC* Tauranga CRI-2011-470-3, 29 September 2011 at [20].
[10] *Victim X v Television New Zealand Ltd* 73 NZLR 220
[11] *Lewis v Wilson & Horton* [2000] 3 NZLR 546, Paragraph 43

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.