[2025] NZTT 5262779

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Debra Jowsey, Michael Peto

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. Debra Jowsey and Michael Peto must pay [The tenant/s] $2,450.00 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Compensation: Electricity		$150.00
Exemplary damages: Failure to provide and maintain premises		$800.00
Exemplary damages: Retaliatory notice		$1,500.00
Total award		**$2,450.00**
Total payable by Landlord to Tenant		**$2,450.00**

Reasons:

1. Both parties attended the hearing on 15 August 2025. The landlord attended by audio visual link.
2. The tenancy commenced on 7 August 2024. It is a periodic tenancy. The landlord served a 90 day notice to terminate the tenancy on 14 May 2025. The tenancy was to have ended on 14 August 2025 under the terms of that notice. The tenant has remained at the premises.
3. The premises form a part of a larger lifestyle block owned by the landlord. The landlord lives elsewhere. The tenant lives in what was referred to by the parties as the “big house.” There is a smaller cottage on the lifestyle block as well as assorted sheds and farm buildings and two paddocks which do not form part of the tenanted premises. There is a shared driveway.
4. During the course of the tenancy, the tenant and landlord entered into an informal arrangement for the tenant to lease a paddock to run a small number of stock. That paddock is not part of the tenanted premises. It does not play a part in the decision making in this matter, as it does not fall within the definition of “residential premises” (see s.2(1) Residential Tenancies Act 1986 (“RTA”)) over which the Tribunal has jurisdiction.
5. From time to time during the course of the tenancy, other tenants resided in the small cottage and on part of the land outside the area tenanted by the tenant.
6. The tenant’s claims are;
    - Failing to provide premises in a reasonable state of cleanliness (s.45(1)(a) RTA).
    - Failure to maintain the premises in a reasonable state of repair (s.45(1)(b) RTA).
    - Failure to comply with all requirements in respect of buildings under any enactment (Housing Improvement Regulations 1947).
    - Failing to take all reasonable steps to ensure that the landlord’s other tenant do not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises (s.45(1)(e)RTA).
    - Retaliatory notice.(s.54 RTA)
    - Failure to separately meter the tenant’s outgoings (s.39 RTA)

- Exemplary damages where available.

The burden of proof

7. A party who brings a claim to the Tenancy Tribunal must prove on the balance of probabilities (more likely than not) that their version of events took place. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden of proof. The Tribunal is not required to make a finding on who is telling the truth, simply whether it is more likely than not that what is alleged to have occurred, did occur and that it is a breach of the RTA.

8. The issue of evidence at Tenancy Tribunal hearings was considered by the District Court in *Kaipo v Clarke & McCarthy (DC) TT233/02*. Judge Mather stated:

   "…[the applicant] needs to be reminded that like anyone who brings an application before a Tribunal or a 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."

Relevant legal principles – compensation and exemplary damages

9. The Tribunal may award compensation to a tenant for losses arising from a proven breach or breaches by the landlord of their statutory responsibilities. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.

10. In *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667 the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:

    - The nature of the breach.
    - The duration of the breach; and
    - The effect of the breach on the party.

11. Exemplary damages are different. They are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

    "Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish.

They are like a fine, though they go to the citizen who has been the victim of conduct."

12. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has, with intent, committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must consider the factors set out in section 109 (3) RTA. Those factors are:

    • The intention of the person
    • The effect of the unlawful act
    • The interests of the party against whom the unlawful act was committed; and
    • The public interest.

Tenant's claims

Reasonably Clean

13. Were the premises provided to the tenant in a reasonable state of cleanliness at the commencement of the tenancy?

14. The tenant's evidence was that the premise were not reasonably clean at the commencement of the tenancy; She referred in particular to;

    - The carpets were soiled and smelt of pet urine.
    - There was a dead mouse in the oven.
    - Both the lawns and gardens were overgrown

15. The tenancy agreement entered into by the parties makes reference to the carpets. The agreement records that the landlord would arrange for the carpets to be cleaned and that this would occur on 10 August 2024.

16. The tenant said that the carpets had been commercially cleaned before she moved in, but there remained a strong aroma of pet urine which she said had soaked into the underlay and was particularly noticeable once the temperatures became hotter.

17. The carpet contractor told the landlord that odour would remain until the carpets dried out.

18. The landlord said that she had visited the premises last week and that there was no noticeable odour.

19. The breach refers to the relevant time being at the "commencement of the tenancy."

20. The burden of proving the claim is on the tenant. I consider on the evidence that it is more likely than not that the premises were not provided in a reasonably clean condition at the commencement of the tenancy. The

commencement of the tenancy being the point in time when I must consider the condition.

Failure to maintain

[The tenant/s]laims that the landlord has breached their obligations under section 45 RTA.

22. Under section 45 RTA, a landlord must;

    - Provide and maintain the premises in a reasonable state of repair.
    - Comply with any relevant enactment in relation to buildings, health and safety (in this case the Housing Improvement Regulations 1947), which requires premises to be free from dampness.

23. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45(1A) and Schedule 1A RTA.

24. The tenant says that the landlord has failed to maintain the ranch slider, shower and taps in both the kitchen and the laundry.

25. The tenancy agreement refers to the landlord's intention to have the ranch slider repaired by a joiner.

26. In the circumstances where the tenant was aware of the problem and no time frame is referred to in the tenancy agreement, a reasonable time for the repairs to be completed should be allowed. What is a reasonable time will vary from case to case depending on the facts presented to the Tribunal. The tenant says that the repair to the ranch slider was completed within a month of moving in and was "not a major." I do not consider this to be a breach by the landlord.

27. The tenant said that the shower was not repaired until February 2025. The landlord had suggested using the bath in the interim. The hot and cold taps in the kitchen and laundry were not repaired until February (shower) and March 2025 (taps).

28. The landlord explained that she had experienced problems with her contractor. It appears that the landlord has acted to try and have the repairs carried out within a reasonable time, but has been let down by her contractor who took some time to locate the correct parts and overlooked repairing the taps on his first visit.

29. The landlord is responsible for delays and errors by her contractors even where the delays are for a genuine reason. I find they have committed an unlawful act.

Dampness

30. The evidence provided by the parties on this issue was vague.

31. The tenant said that a hole in a wall backing onto the shower had caused mould. The shower also lacked an extractor fan until recently, which no doubt exacerbated the problem.

32. The landlord said that her contractor informed her that there was no problem and that any mould present would dry out

33. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) RTA.

34. I am not satisfied that the evidence proffered by the tenant has been sufficient to show that it is more likely than not that the premises were damp, nor that the landlord has acted intentionally. The claim is dismissed.

Breach of landlord responsibility

35. A landlord must take all reasonable steps to ensure that none of the landlord's other tenants cause or permit any interference with the reasonable peace, comfort or privacy of the tenant in the use of the premises (see s.45(1)(e) RTA).

36. A tenant must notify the landlord of interference with their peace, comfort and privacy by the landlord's other tenants. After notice of a complaint from the tenant, a landlord must take all reasonable steps, which might include termination of the neighbours tenancy, moving the neighbour to other premises, giving a 14 day breach notice to remedy to the neighbour and prompt efforts to manage disputes.

37. In previous cases before the Tribunal, it has found that a tenant's reasonable peace was breached where neighbours shared a common wall and their grandson made excessive noise late into the night, verbally abused the tenant and damaged property, but was not breached by occasional parties by tenants upstairs. Exemplary damages cannot be awarded for the landlord's breach of this obligation, as it is not defined as an unlawful act under the RTA. The Tribunal is limited to the award of general damages if a claim is found to be proven.

38. In this case, the tenant referred to neighbouring tenant's children wandering onto her property, taking toys and removing fire wood. The adult neighbours drove vehicles loudly early in the morning.

39. The landlord said that the children may have caused some problems, but otherwise did not consider the issues raised anything more than the type of problem which occurs where ever people live in close proximity to each other.

Upon investigating the matter further, the landlord found that the evidence from the neighbouring tenants was that it was this tenant who was causing the disturbance.

40. The burden of proving this claim is on the tenant. I am not satisfied that the evidence provided has been such that I can be satisfied that it is more likely than not that the landlord has failed to take all reasonable steps to ensure that none of the landlord's other tenants cause interference with the reasonable peace, comfort and privacy of the tenant. The claim is dismissed.

Retaliatory Notice

41. On 14 May 2025, the landlord gave the tenant a notice terminating the tenancy on 14 August 2025. Recent amendments to the RTA allow a landlord to give a notice terminating the tenancy, without the requirement that any reasons be given. The Tribunal must be careful to ensure that Parliament's intention to allow landlords to terminate a tenancy without reason by giving 90 days' notice is implemented. An alleged retaliatory notice must meet the section 54 RTA criteria on the balance of probabilities before it can be set aside.

42. The tenant claims the notice is retaliatory.

43. For a notice to be declared retaliatory, the tenant must prove that in terminating the tenancy, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act, or by any complaint against the landlord. (See section 54(1) Residential Tenancies Act 1986).

44. Giving a termination notice which is declared to be retaliatory is an unlawful act for which exemplary damages may be awarded, up to a maximum of $6,500.00. (See section 54(2), (3) and Schedule 1A RTA)

45. The tenant sent an email to the landlord on 14 May 2025 at 9.33 am which in part states "*I'm ready to talk to the Tenancy Tribunal because this kind of behaviour is unacceptable*?

46. The landlord responded by txt message at 10.07 am on the same day "*Morning Holly, looking back over all your messages, it is obvious to me that you have not been happy here for some time. History appears to be repeating and you would far happier somewhere else. It obviously isn't working out and I therefore give you 90 days notice from today."* The text message was followed up by the provision of a formal written notice to the tenant later that day.

47. I raised the coincidence of the tenant suggesting that they would talk to the Tribunal, and the notice in the landlord's text response less than 40 minutes later with the landlord.

48. The landlord said that she had been considering the issue for a long time and that family issues were also a factor in coming to the decision to terminate the tenancy.

49. Section 54 RTA allows the Tribunal to make a retaliatory notice finding where the landlord is only party motivated by the proposed exercise by the tenant of any right (in this case the issuing proceedings in the Tribunal). It does not have to be the sole motivating factor.

50. Often in cases such as this, the Tribunal is required to look at the circumstantial evidence, as it is unlikely that there will be any direct evidence of a breach of this nature. Generally, the closer in time that a notice to terminate a tenancy is given to the tenant's proposed exercise of a right, the more likely it is that the Tribunal will consider that the landlord was at least in part motivated by the tenant's proposed exercise of a right. In light of the circumstantial evidence, I consider that it is more likely than not that the landlord was at least partly motivated by the tenants proposed action.

51. I am satisfied that the notice is retaliatory. I do not consider that the tenant's complaint to the landlord was vexatious or frivolous to the extent that the landlord would have been justified in giving the notice. I must declare it to be of no effect.(see s.54(2)RTA).

52. Where a party has issued a retaliatory notice, the Tribunal may award exemplary damages where it is satisfied it would be just to do so taking into account the effect of the unlawful act, the interests of the other party, and the public interest. For completeness, giving of a retaliatory notice does not have to be intentional to award exemplary damages for a breach. See section 109(3) and (3A) RTA).

Separate Meter

53. Section 39 RTA provides that a tenant is responsible for all outgoings for the premises that are exclusively attributable to the tenant's occupation of the premises or the use of facilities, including electricity, gas, telephone and Internet.

54. Power for the tenant's premises was provided from a shed which adjoined the area rented by the tenant. The landlord would provide the tenant with a copy of the invoice from Mercury Energy.

55. During the course of the tenancy new tenants moved in and they were also provided with power from the shed.

56. The tenant said that once this extra party began using power her electricity bills went up. The landlord said that she would provide compensation to the tenant, based on the change in the accounts received prior to the adjoining tenant using power. The tenant received $75.00 from the landlord after her first power account and a further $150.00 after the second account. The tenant said she had not received any further compensation from the landlord since July.

57. The landlord said that when this compensation arrangement was suggested the tenant responded by text message with a thumbs up emoji.

58. The Tribunal was required to consider a similar dispute in *Parangi and Parangi* v *Zanetich* [2021] NZTT 4287072.The Tribunal held;

> *"Section 39(3) of the Residential Tenancies Act 1986 ("RTA") states that tenants are responsible "for all outgoings that in respect of the premises that are exclusively attributable to the tenant's occupation of the premises".*
>
> *The difficulty for Mr Zanetich is that there is no meter on the tenanted premises and therefore no means to calculate the power use that is exclusively attributable to the tenant's occupation of the premises.*
>
> *In Geraghty v Raui [2019] NZDC 3813, the District Court held that in considering whether to require the tenant to pay for outgoings when there is no means for calculating the tenant's actual consumption the Tenancy Tribunal must have regard to section 85 RTA.*
>
> *Section 85(2) RTA states:*
> *The Tribunal shall determine each dispute according to the general principles of law relating to the matter and the substantial merits and justice of the case, but shall not be bound to give strict effect to legal rights or obligations or legal forms or technicalities*
>
> *Mr & Mrs Parangi accepted the common sense proposition that they used power when they lived at the property, and they should pay for their reasonable use."*

59. I take the emoji response by the tenant to the landlord's proposal, to amount to an acceptance of the compensation provided. I have no evidence of further electricity accounts since July 2025. In those circumstances, I consider that the compensation provided by the landlord to date has been sufficient compensation. As best as I am able to ascertain from the evidence, the landlord is to pay further compensation of $150.00 for the period from 16 July 2025 to the date of this hearing.

Should exemplary damages be awarded for the breaches?

60. I have found that the landlord failed to provide the premises in a reasonably clean condition and failed to maintain the taps and shower. Breaches under s. 45(1A) RTA to which exemplary damages of up to $7200.00 may be awarded.

61. The District Court has held that when there are multiple breaches under this section (section 45(1A) RTA) that the maximum award is to be $7,200.00.

62. I award the tenant exemplary damages of $800.00 for the landlord's failure to provide the premises in a reasonably clean state and for the failures to maintain. In coming to this award, I have taken into account the following factors:

- The landlord acted quickly when the tenant raised the issue, but was let down by her contractors.
- I am not aware of other claims against this landlord before the Tribunal.
- That there is public interest in ensuring that landlords comply with the standards that when they don't that there is a sufficient amount awarded so as to act as a deterrent to other landlords.

63. The award of exemplary damages for the retaliatory notice is not a breach under s.45 RTA and must be addressed separately. The RTA provides that an award for a breach of this nature carries a maximum award of exemplary damages of $6,500.00. In setting the level of exemplary damages, I consider the following to be relevant;

- The landlord was not solely motivated by the tenant's complaint and threat to pursue matters with the Tribunal.
- The notice has had a substantial effect on the tenant. She has to the date of the hearing, been trying unsuccessfully to find alternative accommodation. That has resulted in stress and anxiety for her.
- It is in the interests of this tenant and the public generally to not have landlords issue retaliatory notices of termination.
- I am not aware of any other cases of a similar nature involving this landlord

64. Taking all of the relevant factors into consideration, the landlord is ordered to pay exemplary damages of $1,500.00.

65. The tenant applied for name suppression. The tenant has been substantially successful in this hearing. Suppression of the tenant's name and details is ordered.

S Young
18 August 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.