TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT AND RESPONDENT:	Ihome Property Management Limited As Agent For William Landlord
RESPONDENTS AND APPLICANTS:	Malin Rangana Kumarage Don, Kumarawadu Sanjeewani Apsara Mendis Tenant
TENANCY ADDRESS:	Unit/Flat Flat 10, 30 Ascot Avenue, Remuera, Auckland 1050

ORDER

1. Malin Rangana Kumarage Don and Kumarawadu Sanjeewani Apsara Mendis owes Ihome Property Management Limited As Agent For William $1,130.86 ("the debt"), calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rent arrears to 27 July 2025	$3,720.00	
Compensation: Failure to maintain- window latch		$137.14
Filing fee reimbursement	$28.00	
Total award	**$3,748.00**	**$137.14**
Net award	$3,610.86	
Bond	$2,480.00	
Total payable by Tenant to Landlord	**$1,130.86**	

2. The Bond Centre is to pay the bond of $2,480.00 (6525239-010) to Ihome Property Management Limited As Agent For William immediately.
3. Malin Rangana Kumarage Don and Kumarawadu Sanjeewani Apsara Mendis must repay the debt as follows:
    a. By 11 weekly payments of $94.24 each Monday, commencing on Monday 25 August 2025 and ending on 10 November 2025; and
    b. A final payment of $94.22, to fully repay the debt, to be paid on Monday 17 November 2025.

4. If Malin Rangana Kumarage Don and Kumarawadu Sanjeewani Apsara Mendis fail to pay debt repayments within 2 working days of the due dates, the full amount of the remaining debt will fall due immediately.

Reasons:

1. Both parties attended the hearing.
2. The tenants applied for a reduction of their fixed term tenancy, compensation, exemplary damages, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
3. The landlord made a cross application for rent arrears, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.

RELEVANT LEGAL CONSIDERATIONS

4. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA").

Evidential burden

5. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.
6. That includes a requirement that the party bringing the claim (the applicant), establish their claims "on the balance of probabilities". The balance of probabilities means more likely than unlikely, or in mathematical terms, has a fractionally more than 50% likelihood. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely.
7. This obligation carried by the applicant is referred to as the "burden of proof". Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.
8. As noted by the District Court in *Kaipo v Clarke & McCarthy* (DC) TT233/02, in practical terms this means that:

> … [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.

9. In summary, I do not need to be completely certain, but I need to be more certain than uncertain. In deciding any claim, I must consider all the evidence presented (including oral evidence during the hearing). I must weigh this

evidence to decide what is more likely. If any claim is not established to the balance of probability, it must be dismissed.

10. The Tribunal has reviewed and considered all evidence, though not all is specifically referenced in this decision.

General legal principles in relation to the award of compensation or exemplary damages

11. The Tribunal can award compensation where a party has been in breach of the Residential Tenancies Act 1986 (the RTA) or has been in breach of the tenancy agreement, and the other party has suffered a loss because of that breach. Awards of compensation in the Tribunal are generally modest. When awarding compensation, the accepted principle is that the injured party should be put in the same position as they would have been but for the breach, since there is liability for losses flowing from the breach. Factors such as the loss of amenity, stress and inconvenience suffered by the party that has proven the breach are considered when deciding the quantum of any compensation awarded.

12. Exemplary damages can also be awarded for breaches listed in Schedule 1A of the RTA, provided the Tribunal is satisfied that the breach was intentional. Exemplary damages are a penalty designed to deter parties from intentionally engaging in the kind of behavioural conduct provided for in Schedule 1A of the RTA.

LANDLORDS CLAIMS

How much is owed for rent ?

13. The tenants signed up to a fixed term tenancy for one year commencing on 12 February 2024 and ending on 16 February 2025. The tenants renewed that lease for a further 12 months, from 17 February 2025 to 16 February 2026.

14. The tenancy ended on 27 July 2025 after the tenants ended the fixed term tenancy early. The landlord provided rent records which prove the amount owing at the end of the tenancy. These records prove the new tenant did not move into the property until 30 July 2025.

TENANTS CLAIMS

Should the fixed term tenancy be ended early?

15. The tenants have applied for reduction of their fixed-term tenancy, due to end on 16 February 2026. The basis for their application for the Tribunal to end their tenancy early is:

    a. The house is too small for their family of 4. It consists of 1 bedroom, one study, a lounge, bathroom and kitchen/dining room;

b. Their eldest son is 18 years old and is studying at High School and needs his own bedroom and more study space and cannot share a room with the tenants 12 year old son;

c. The elder son has asked his parents to move as the overcrowding is effecting is ability to study and be successful in his exams. This led to the tenants seeking alternative accommodation to accommodate his needs;

d. The family moved to new accommodation on 15 June 2025 and cannot afford to pay rent on both premises until the date the landlord found new tenants to take over the remainder of the fixed term lease.

16. The tenants consider they have done everything within their power to re-let the property by 15 June 2025 and say the landlord took a long time to find new tenants. Therefore, they say the fixed term tenancy should be ended on 15 June 2025.

    The landlord has confirmed that it took time for the property manager to advertise the premise and find suitable tenants that it could guarantee would be able to pay the rent in full and on time and to carry out credit and police checks on.

    The law

17. Parties enter into a fixed term tenancy for security. For tenants this is security of tenure; they can be sure they have a home for at least the agreed term. For landlords it is security of income; they can rely on a set amount of income from their investment.

18. If a tenant wishes to default on that contract, and the landlord accepts the repudiation, then the tenancy ends on the terms agreed. In such a situation of surrender the landlord does not have to agree and can stipulate terms provided they are reasonable. Such reasonable terms can be to ensure the aggrieved party (here the landlord) be placed in the same position as they would have been in, but for the breach of the tenancy agreement.

19. If the parties cannot agree to end the tenancy, it is open to the tenants to apply to the Tribunal to reduce the term pursuant to section 66(1) RTA.

20. The Tribunal reduce a fixed term tenancy where:

    a. there has been an unforeseen change in the applicant's circumstances; and

    b. there would be severe hardship to the applicant if the term is not reduced; and

    c. the applicant's hardship would be greater than the hardship to the other party if the term is reduced.

21. Section 66 sets a high threshold for reducing fixed term tenancies. The jurisdiction in this section is an extension to the doctrine of frustration found in the general law of contract. In most cases, s66 is used to seek a balance between the competing interests of applicant tenants, for whom significant obligations under fixed term agreements can create severe hardship when circumstances unexpectedly turn against them, and landlords, who have financial obligations and expectations of their own arising from the same bargain.

22. The term “unforeseen” is a legal term defined by reference to the reverse (“foreseeability”) in cases relating to negligence (in determining whether a duty of care is owed and what damages are reasonably foreseeable) and in cases assessing damages for breach of contract (also in assessing the remoteness of damage). In both contexts, there is a body of case law which has established that:

    a. Foreseeability must be assessed objectively through the eyes of a reasonable person who has taken all reasonable steps to inform himself of the circumstances;

    b. an outcome is foreseeable in legal terms if it is “liable to result”, “not unlikely”, “quite likely”, a “real danger”, a “serious possibility” or a “real risk”;

    c. The term “unforeseen” has few if any direct dictionary definitions, but by thesaurus is aligned with such concepts as “unexpected” and “without warning”. In a legal context, it must also be taken as the reverse of what is “foreseen”, thus being “not liable to result”, “unlikely”, “not a real danger”, “not a serious possibility” or “not a real risk”.

Analysis & findings

23. The parties came to an agreement to end the tenancy in May 2025. The tenants paid the break lease fee and the landlord advertised the property promptly. .

24. The tenants tried unsuccessfully to find suitable tenants to take over the lease.

25. The tenants moved out of the premise on 15 June 2025. New tenants did not move into the premise until 30 July 2025, but the tenants are seeking to have the tenancy term reduced to 15 June 2025, as they say they needed a bigger home, were not aware they were bound by the renewed fixed term tenancy to pay the rent until new tenants moved in. They say they cannot afford to pay the rent arrears from 16 June to 30 July 2025 because they are paying rent for the new place they live in.

26. The tenants have sought relief from the Tribunal in the form of an application pursuant to s66 for their tenancy to be ended on 15 June 2025, even though there were no unforeseen changes that led to them breaking the lease early.

27. I then turn to an application of s66 of the RTA to this situation. Having considered the facts, I find:

    a. There has not been an unforeseen change in the tenants' circumstances. They had lived in the house for a year when they chose to renew the lease for a further 12 months. Their elder son was already needing his own space to study at that time and his own bedroom; and.

    b. It was reasonably foreseeable that the tenants' elder son would need more space to study at the time the tenants renewed the lease for a second term, and they could have asked for a periodic tenancy while they found a new place to live but they did not do so.

28. The tenants say the landlord should have told them that they were locked into the tenancy for a further 12 months at the time they signed up to the extended fixed term lease. The landlord has no obligation to do this. It is up to the tenants to learn about their obligations and rights and there are plenty of resources available to them. Ignorance of the law does not negate the tenants responsibilities under the fixed term lease.

29. Section 66 of the RTA is clear that it must the *applicants'* circumstances that have changed in an unforeseeable way, not external factors such as the rental market not being conducive to the tenants being able to sublet the premise for the remainer of the fixed term lease. The tenants have not proven, on the balance of probabilities that they have suffered any unforeseen changes in their circumstances that would justify the Tribunal reducing the term of their fixed term tenancy. Therefore, I dismiss the tenants claim to reduce their fixed term tenancy for all the reasons set out above.

Has the landlord breached its section 45(1)(b) of the RTA obligations to the tenants?

30. Malin Rangana Kumarage Don and Kumarawadu Sanjeewani Apsara Mendis claims that the landlord has breached their obligations under section 45(1)(b) of the RTA.

31. Under section 45(1)(b) of the RTA, the landlord has an obligation to investigate and repair a defect brought to its attention, within a timeframe that is reasonable in the circumstances. In *Collins v Professionals Hutt City Ltd*, the Wellington District Court held "what that time is depends not only on the gravity of the problem but also on the objective evidence of the attempts made by the landlord to investigate, and put right, whatever the problem might be".[1]

[1] *Collins v Professionals Hutt City Ltd* DC Wellington CIV-2009-085-1431, 24 February 2019 at [15].

32. There is an obligation to repair, even if the tenant has notice of the state of repair of the premises when entering a tenancy agreement.

33. A tenant may give a landlord 14 days' notice to remedy a breach of the RTA and/or any relevant enactment in relation to buildings, health and safety, but should do so in good faith and to remedy a real and significant breach[2]. However, notice from the tenant is not required if the landlord knew of the need to repair [3] or the need for repair was apparent from observation[4].

34. There is also failure to repair if the repair is ineffective, non-complaint or unsafe[5].

35. The extent of the landlord's obligation to repair was considered in the decision of *Barfoot & Thompson v Casey*.[6] The Court noted that there was no absolute liability/responsibility obligation, so the landlord does not have to foresee a latent and unobservable defect before it causes damage. The tenant has to notify the landlord as soon as possible after discovery of any damage to the premises, or of the need for repair.5[7] Once notified, the landlord is obliged to repair within a reasonable time. The Court stated:

> "… *the obligation of the landlord, under s.45, is to investigate and repair a defect brought to its attention within a timeframe which is reasonable in the circumstances; and as to what that time is, I think, depends not only on the gravity of the problem but also on the objective evidence of the attempts made by the landlord to investigate, and put right, whatever the problem may be*".

36. Breaching this s45(1) of the RTA obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00, if the breach(es) were intentional. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.

37. General damages may also be awarded in the form or rent reductions, water rates reductions or compensation for the stress, inconvenience and loss of amenity suffered by the tenants.

Window latches

38. The tenants claim they first raised the issue of two broken window latches in the lounge and their son's bedroom, with the landlord on 24 March 2025 and that the landlord did not respond. The landlord says it has no correspondence from the tenants on that day. The tenants have changed phones and were

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[2] *Brough v Housing NZ Ltd* NZTT1848/1, 27 May 202 at [13].
[3] *Berghan v Ponsonby Property Management Ltd trading as L J Hooker* [2015] NZTT Manukau 2845 at [9]- [11].
[4] *Barfoot & Thompson Ltd v Casey* DC Auckland CIV-2005-004-1762, 7 November 2007 at [4].
[5] *Staife v Aegis Trust* [2016] NZTT Auckland 3314 at [31].
[6] CIV-2005-004-001762, 7 November 2007.
[7] RTA, section 40(1)(d).

unable to locate a copy of the WhatsApp message they say they sent to the property manager.

39. The landlord confirms that the tenants sent a WhatsApp message to it on 23 April 2025 and that message says “can you arrange someone to fix this” and had one picture attached of a broken window latch. It is hard to tell which room this latch is in.

40. The parties agree the landlord sent the handyman to the premise on 28 April 2025 to look at the window latch. The tenants confirm the handyman removed both latches but could not install new ones at that time as he needed to purchase the correct replacements.

41. The tenants say they were unable to close the windows properly from 24 March 2025 and that there was considerable draughts coming through these windows.

42. The parties agreed that the handyman installed new window latches in these two rooms on 10 June 2025, 5 days before the tenants moved out.

43. I am satisfied that the tenants suffered a loss of amenity, stress and inconvenience for the 6 week and 6-day period, from 23 April 2025 to 10 July 2025, that they could not close the windows due to the broken window latches. I award the tenants $20.00 per week for these 6 weeks and 6 days loss of amenity, stress and inconvenience at a total rent rebate of $137.14.

44. While I consider 6 weeks and 6 days a long period of time to purchase and install two new window handles, I am not satisfied that this is an intentional breach by the landlord. It took steps to get the handyman there in 5 days to assess the issue raised and to remedy it. The handyman has informed the landlord that he was delayed in being able to purchase the correct handles for the window frames and then had to schedule time to come back and install them. As I do not find the landlord intentionally protracted the period it took to complete this remedial work, I do not consider that an award of exemplary damages is warranted for this breach.

Ranch slider

45. The tenants claim they first raised the issue of the ranch slider not closing properly, and letting in cold air and moisture, on 24 March 2025. They say they raised this with the handyman as the landlord never replies to them. The tenants says they sent a WhatsApp message to the handyman and that he sent this on to the landlord.

46. The landlord says it never received any communications from anyone about the ranch slider issue.

47. The tenants have changed phones and were unable to locate a copy of the WhatsApp message they say they sent to the handyman.

48. Tenants are statutorily required to raise repair and maintenance issues with a landlord at the earliest opportunity and the landlord is statutorily required to investigate and remediate any issues raised in a reasonable time frame in all the circumstances. A landlord cannot address issues that have not been raised with it.

49. The tenants have failed to prove that they raised the issue of the ranch slider with the landlord. Therefore, I dismiss this claim as I am not said that the tenants have met the required burden of proof to substantiate their claim.

Reimbursement of filing fee

50. Section 102(4) of the RTA confirms that applicants that are wholly or substantially successful in proving their claims will have their filing fee reimbursed.

51. Because Ihome Property Management Limited As Agent For William has wholly succeeded with the claim I must reimburse the filing fee.

52. Because the tenants have not wholly or substantially succeeded with their claims, their application for reimbursement of the filing fee is dismissed.

M Pollak
19 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.