[2025] NZTT 5296498, 5276501

TENANCY TRIBUNAL AT CHRISTCHURCH | TE TARAIPIUNARA RETIHANGA KI ŌTAUTAHI

APPLICANT: Hayden Edwin Diehl

Landlord

RESPONDENT: Damian Miller, Christina Miller

Tenant

TENANCY ADDRESS: 10 Smugglers Cove, Scarborough, Christchurch 8081

ORDER

1. Damian Miller and Christina Miller to pay Hayden Edwin Diehl $1,745.75 from the bond, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Cleaning (consent)	$955.50	
Compensation for water damage to floor	$100.00	
Compensation for damage to door	$500.00	
Refill gas bottle	$40.25	
Carpet cleaning	$150.00	
Total award	**$1,745.75**	
Bond	$1,745.75	$2,654.25

2. The Bond Centre is to pay the bond of $4,400.00 (3501758-003) immediately apportioned as follows:

Hayden Edwin Diehl: $1,745.75

Damian Miller and Christina Miller: $2,654.25

3. The tenants' application is dismissed.
4. The landlord's application for the cost of sanding the floor to remove scratches, replacing door bolts, and further landlord cleaning is dismissed.

Reasons:

1. Both parties attended the hearing.
2. The landlord has applied for compensation for cleaning and repairs, the bond, and reimbursement of the filing fee following the end of the tenancy.
3. The tenants have applied for exemplary damages for the landlord's alleged failure to provide information in the tenancy agreement and for a breach of the Healthy Homes Standards (HHS) and compensation for mould at the premises.

Background

4. The tenancy started on 16 May 2024 and ended on 16 May 2025. The tenants vacated the tenancy on 15 May 2025. A new tenancy started about one week later.
5. During the tenancy the parties had an amicable relationship. That changed when the tenancy ended; the landlord considered that the tenants had not left the premises clean enough and had caused damage they did not repair.
6. The tenants filed their application first. The landlord then cross-applied.
7. Both parties provided documentary evidence. They both gave oral evidence. I had the registrar administer a promise to them because the evidence about pre-existing damage was in conflict.
8. I have considered everything placed before the Tribunal even if I do not specifically refer to it.

Issues

9. The Tribunal must determine these issues:
    - Have the tenants proved that the premises did not comply with the HHS?

- Have the tenants proved that the tenancy agreement did not comply with the requirements of section 13A of the Residential Tenancies Act 1986 (RTA)?
- Have the tenants proved a claim for compensation for mould?
- Has the landlord proved claims for cleaning, carpet cleaning, and repairs?

Relevant law

10. Section 40 RTA sets out a tenant's responsibilities. Included among them are the responsibility to pay rent when due; to keep the premises reasonably clean and tidy; to leave the premises in a reasonably clean and tidy condition; and to quit the premises when the tenancy ends.
11. 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. Section 45 RTA sets out a landlord's responsibilities. Included among them are the responsibility to provide the premises in a reasonably clean state; to provide and maintain the premises in a reasonable state of repair (having regard to the age and character of the premises); and to comply with the Healthy Homes Standards (HHS).
13. Section 13A RTA sets out what must be contained in a tenancy agreement.

Compensation and exemplary damages

14. The Tribunal may award compensation to a party for losses arising from a proven breach or breaches by the other party of their statutory responsibilities.
15. 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.
16. In *Birch v Otautahi Community Housing Trust*[1] 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.

[1] [2020] NZDC 17667

17. Exemplary damages are different. They are designed to punish and to deter. They are like a fine.

18. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 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.

Discussion

Have the tenants proved that the premises did not comply with the HHS?

19. The landlord completed the HHS compliance statement in the tenancy agreement. Mr Diehl said he was a qualified builder with 20 years' experience, and he knew what the HHS required and was able to complete the checklist.

20. The tenants did not produce any evidence to establish on the balance of probabilities that the premises did not comply with the HHS. That there might have been some mould present does not prove HHS non-compliance.

21. For the Tribunal to conclude that the premises did not comply it would require evidence specific to each of the standards that explained the particular breach.

22. I dismiss the tenants' application for exemplary damages for the landlord's failure to ensure compliance with the HHS.

Have the tenants proved that the tenancy agreement did not comply with the requirements of section 13A RTA?

23. Section 13A RTA sets out what a tenancy agreement must contain (in their written submissions the tenants incorrectly referred to section 23 (RTA). That section applies to rent in advance).

24. The tenants submitted that section 13A RTA requires the parties to complete a property inspection report at the start of the tenancy. It does not. While prudent for the parties to do so, it is not a statutory requirement. I am satisfied that the tenancy agreement contained the information that was required. I dismiss this part of the tenants' application.

Have the tenants proved a claim for compensation for mould?

25. The tenants said that there was mould at the premises especially around some windows. They submitted that the presence of mould supported a breach of the HHS.

26. The presence of mould does not of itself establish any landlord breach. Mould is common in New Zealand houses. It can be caused in some cases by defects with the premises (the ingress of moisture) and sometimes by the way in which the premises are used, such as a failure to ventilate.

27. The tenants have not proved a breach of the HHS that resulted in mould at the premises.

28. The tenants have not proved any breach by the landlord of his statutory responsibility to repair and maintain the premises. Compensation usually follows from a breach of a statutory responsibility. Without a proven breach, the Tribunal cannot award compensation. I dismiss this part of the tenants' application.

Has the landlord proved claims for cleaning, carpet cleaning, and repairs?

29. The landlord provided an invoice for cleaning ($955.50) from a professional cleaning company, as well as an invoice for his time for additional cleaning ($724.50). He has described that as a 'deep clean'.

30. A tenant's statutory responsibility is to leave the premises reasonably clean, not clean to a 'motel' standard or clean to a condition so a new tenancy can immediately start.

31. The tenants accepted the landlord's claim for professional cleaning. They explained how the cleaners they had arranged did not do an adequate job.

32. I allow the claim for cleaning by consent in the amount of $955.50. I do not allow the claim for Mr Diehl's additional cleaning. Landlords must expect to have to do some cleaning between tenancies.

33. Mr Diehl has claimed an hourly rate of $70.00. When the Tribunal compensates landlord labour it does so at around $30.00 per hour. Cleaning claims by a landlord should not be based on their profession otherwise unfairness ensues.

34. Even if the Tribunal had allowed the claim, it would have awarded compensation of $270.00 – 9 hours at $30.00 per hour.

35. I allow the landlord's claim for refilling the gas bottle which was provided full at the start of the tenancy. Tenants are liable for the gas they use, in the same way as they are liable for electricity use.

36. The tenants had the carpets professionally cleaned. The landlord has claimed 2 additional carpet cleaning charges. I allow the second of those only – the

cleaning of a bedroom carpet which the new tenants complained about as it smelt of dog.

37. The tenants had 2 dogs at the premises. While they did not live inside, they had access inside. Often tenants with animals do not notice pet odour. It was reasonable for the landlord to have the bedroom carpet cleaned again because of the new tenant's complaint.

38. The other carpet cleaning charge is one that the landlord should bear, given that the tenants had the carpets professionally cleaned. As noted, they only had to leave the premises reasonably clean.

39. I dismiss the landlord's claim for the cost of repairing 2 bolts. The landlord has not proved that the tenants caused any careless or intentional damage to the bolts. It is more likely that they failed with age (the tenants notified the landlord that the bolt had snapped off). This is a landlord repair and maintenance issue. The premises are about 30 years old and while renovated in about 2012, it is unlikely that new locks were fitted.

40. The landlord has claimed for the cost of repairing scratches on the floor and scratches on a timber door.

41. The Tribunal had to press both parties to get reliable evidence about these repair claims.

42. The tenants accepted that their dog probably caused the damage to the door as shown in the landlord's photos produced in evidence.

43. The repair has not been done. The landlord obtained a quote from a builder for this work for $1,090.20. Given that the landlord is a builder himself, I am prepared to award him compensation of $500.00 for this damage. It is work that he is ably qualified to do and does not require a building firm to be retained.

44. The tenants said there was pre-existing damage to the wooden floor. Mr Diehl accepted that there probably was damage to the floor when the tenancy started.

45. I award no compensation for this. Even if there were some additional damage to the floor, the Tribunal cannot properly assess what the tenants' liability would be (if any).

46. The quoted price for the floor damage includes repairing a small area where water leaked from taps disconnected by the tenants' contractor. Mr Diehl withdrew a separate claim for this damage since it is included in the quote he has obtained for the repairs to the floor.

47. This damage is relatively minor. Mr Diehl said he had been informed that the area just needs sanding and re-staining.

48. The tenants are liable for this damage because they accept that the furniture movers caused it. Their contractors were at the premises with the tenants'

consent, so the tenants are liable for their actions. While the tenants might have a cause of action against the firm they contracted, that is not an issue for determination by the Tenancy Tribunal.

49. For this (quite minor) damage I award the landlord compensation of $100.00.

Result

50. The tenants' application is dismissed.
51. The tenants will pay the landlord $1745.75.
52. The bond will be split between the parties - $1,745.75 to the landlord and $2,654.25 to the tenants.

Name suppression

53. On my enquiry, neither party sought an order for name suppression.

J Greene
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 836 262.2,604.25 to the tnants.

Name suppression

On my enquiry, neither party sought an order for name suppression.