**[2025] NZTT 5245457**

**TENANCY TRIBUNAL AT** [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

## ORDER

1. [The respondent/s][The applicant/s], $3,417.14 immediately.
2. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenants' and Landlord's name and identifying details.

| **Description** | **Landlord** | **Tenant** |
|---|---|---|
| Compensation - 2 weeks rent | | $2,840.00 |
| Compensation – electricity | | $127.14 |
| Exemplary damages – insurance information | | $450.00 |
| **Total award** | | **$3,417.14** |

**Reasons:**

1. Both parties attended the hearing.

*Background*

2. [The tenant/s] share the tenancy, a relatively modern, two-story property built on a hillside.
3. On 28 March 2025, they discovered a flexi hose in the upstairs kitchen had burst causing extensive flooding. They dammed the top the of stairs using towels, however water seeped through flooring and entered the ceiling cavity below,

emerging with some volume out of light fittings below. Chemdry were contacted, the water was turned off, and the drying process began. At approximately 5 pm the tenants were advised by either Chemdry or the plumber that, due to the extent of the flood, the house was untenantable. Two of the tenants had contacts nearby and were able to stay with these contacts, however, four of them were forced to book AirBnB accommodation. Attempts were made during the afternoon to contact the landlord's 0800 number but these proved unfruitful.

4. On 31 March 2025, the tenants were contacted by the landlord's representative at approximately 4:30 pm.

5. On 1 April 2025, the tenants were advised by the landlord that the moisture levels were still too high for them to be able to move back in, and that a builder was attending the following day. Later this day [The tenant/s] emailed the landlord following a phone conversation with landlord's representative. The email confirmed that compensation for lost rent had been discussed, as was compensation for other future expenses. During this discussion a copy of the landlord's insurance policy was requested.

6. On 2 April 2025, [The tenant/s]emailed the landlord advising that she had tried to call the landlord a number of times with no response. She asked for the email address of the person leading the landlord's response to the issues. Shortly after the landlord's representative emailed back advising that:

    a. the builder had advised that the tenancy was now safe to move back in;

    b. the insurance policy had lapsed and was now void; and

    c. the landlord was going to reimburse one weeks rent.

7. Later, on the same day, the landlord's representative emailed advising that the the electrician had advised that further work was needed before the tenancy was safe to live in.

8. On 4 April 2025, the landlord provided an update advising that Gib linings had been removed from the bedroom below the kitchen to allow for framing to be dried and that following the reinstatement of the Gib, the light fittings would be re-installed. The tenants replied with a claim for costs including:

    a. $2601 for the AirBnB alternative accommodation;

    b. $66 for the additional electricity required for the Chemdry fans;

    c. $660 for the improper maintenance which the tenants allege led to the pipe bursting; and

    d. $360 compensation for the failure to advise that the insurance policy lapsed.

9. With this email the tenants issued a 14 day notice requiring the following remedies:

    a. the damages stated above;

b. completion of repairs; and

c. reimbursement of rent for the period during which the house was untenantable.

10. On 11 April 2025, the repairs were completed and, as I understand it, the tenants moved back in shortly after.

11. Following this there was a series of correspondence between the parties, about the claim for compensation. These did not result in agreement and therefore this application has been bought the Tribunal. Considering this correspondence, I note that the landlord had agreed to refund rent for the two weeks during which the house could not be tenanted, and to refund the electricity costs.

*Duty to maintain*

12. The tenants claim that the landlord has breached their obligation to provide and maintain the premises in a reasonable state of repair, under section 45 of the Residential Tenancies Act 1986.

13. 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 Residential Tenancies Act 1986.

14. The assertion is that the pipe burst because it had not been maintained or inspected. The pipe which burst is a flexi-pipe, a PVC, or similar, flexible pipe covered with and protected by a stainless-steel mesh covering. The landlord has provided an email from a plumber which suggests that there is no warning before this type of pipe bursts and advises that the pipe was installed in 2021 when the tap was replaced.

15. There is no evidence of any indication that the pipe would burst before it did so. At the time of the leak the pipe was four years old, such fittings are required to have a life of 15 years by the building code. I cannot conclude that the landlord has breached their obligations under section 45 RTA. This was not the type of fitting which requires regular inspection or maintenance, and the failure was sudden and unexpected. This ground is not made out.

*Electricity costs*

16. The tenants have claimed the costs of electricity used for the driers while the repairs were carried out. The landlord agreed to these costs. The tenants have provided electricity records which show that electricity costing $127.14 was used during the period.

17. I award $127.14 to the tenants.

*Rent and accommodation costs*

18. The tenants have claimed two weeks rent for the period during which the house was not tenantable; $2840, and also for the costs of the AirBnB accommodation

required by the four tenants; $2202.48. These are claimed on the basis that the AirBnB accommodation was necessary as the landlord's failures to communicate, placed the tenants under pressure to find short-term accommodation and they did the best they could. The landlord argues that there was sufficient medication, and had they been advised of the issues they could have organised accommodation at a cheaper cost.

19. I find that there were delays in communication from the landlord. There were issues in that the delays in response at the outset lead to the tenants communicating directly with the owner, with the owner's builder, and with various representatives of the landlord. I accept that the AirBnB was necessary and reasonable.

20. A lease is a contract for the payment of rent in return for the provision of accommodation. Due to the burst pipe the landlord was unable to uphold their side of the bargain. While there was no fault as the event was unforeseen, it was caused by a failure of a fitting for which the landlord is responsible. This being so the tenants paid for two weeks rent for which they have not received accommodation. During the hearing I pointed out to the tenants that the law of damages does not allow for double recovery. This means they cannot fully recover both the rental payments and the full AirBnB costs. The tenants pointed out that two of them were not staying in the AirBnB as they had alternative accommodation available. However, an award of both the rent and the full AirBnB costs would lead to a windfall.

21. Tenants' obligations, including the payment of rent under the RTA are joint and several. This means the obligation to pay the full rent is shared across all tenants. Due to this I cannot conclude that, from a legal perspective, the fact that four tenants had to stay in the AirBnB, while two did not alters the landlord's obligation. Therefore, I award the lost two weeks rent, and decline toward the AirBnB costs.

*Insurance information*

22. The tenants claim the landlord has not provided a copy of the insurance policy for the premises.

23. A tenant can request the landlord to provide a copy of any insurance policy which relates to the tenant's liability for destruction of, or damage to, the premises. The landlord must provide a copy of the policy within a reasonable time. The landlord must notify the tenant of any changes to the information provided, or if the premises are no longer insured. See s 45(2B) and (2C) Residential Tenancies Act 1986.

24. Breaching any of these obligations is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of $900.00. See section 45(2D) and Schedule 1A RTA.

25. The landlord had indicated in the lease that the property was insured. However, when the tenants requested a copy of the policy to see if their accommodation was covered by that policy, they were advised that the policy had lapsed. This is problematic for two reasons; under S269 Property Law Act 2007, a tenant is protected by the landlord's insurance, secondly the lease indicates that the property was insured, and either was incorrect from the outset, or was not updated when the insurance lapsed.

26. I find [The landlord/s] has committed an unlawful act.

27. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages if it is satisfied that 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.

28. Considering these issues, I conclude that:

    a. the landlord's agent could not provide information about why or when the insurance lapsed, I have no evidence of the landlord's attention;

    b. the effect of the insurance lapsing is that the tenants' alternative accommodation costs may well have been covered by the policy, in my experience this is a common cover offered by the majority of homeowners policies in New Zealand;

    c. the interest of the tenants is to be made aware whether they have the protection of the landlord's insurance so they may consider whether to seek their own cover; and

    d. the public interest is that there is transparency about the arrangements landlords have made to allow tenants to make infornmed decisions about their risks and liabilities.

29. Considering the above I conclude that the landlord is liable to pay $450 for the breach. While this appears to be the first time the landlord has been involved with such a breach, the breach is ongoing, in that the policy lapsing occurred at some stage, but either the information provided in the lease was incorrect or there was a failure to update.

*Service issues and contamination*

30. The tenants have also sought exemplary damages for the landlord's failures to communicate and for possible future contamination occurring due to the flooding.

31. While I note that there were some delays in response which led to confusion, the RTA does not establish any grounds under which these would act as a breach of the Act, the lease, or as an unlawful act from which exemplary damages may be awarded.

32. The RTA would respond if the flood had led to contamination of the property, as such contamination would make the property untenantable. However, there is no

evidence that this is the case, and the Act does not respond to a risk of contamination. I also note that the builder tested the moisture levels in framing before gib linings were replaced, and the drying continued until these were satisfactory. These appear to be prudent steps to avoid contamination.

33. These grounds are not made out.

C Boys
20 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.

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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.