[2025] NZTT 5154792, 4969873

5103228

5183591

5282059

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: Bayleys Real Estate Limited As Agent For Wenbin Zhang & Qianwen Zhan

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: 1 Stitchbird Close, Murrays Bay, Auckland 0630

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenant name and identifying details.
2. Bayleys Real Estate Limited As Agent For Wenbin Zhang & Qianwen Zhan must pay [the tenants] $2,307.00 immediately as set out in the table below:

Description	**Landlord**	**Tenant**
Rent obligation to 31.1.25 (less 1 week rent at start of tenancy)	$9,600.00	
Compensation for rent payable 14.12.24 to 31.1.25		$8,400.00
Compensation (rent refund of 10% at 19 weeks)		$2,280.00
Return of bond money to tenant as received by landlord		$1,200.00
Filing fee		$27.00
Total award	**$9,600.00**	**$11,907.00**
Net award		$2,307.00

3. Tenant application 5282059 is dismissed.
4. Tenant application 5183591 is dismissed.

Reasons:

1. Both parties attended the rehearing. The parties were assisted by the court appointed Mandarin interpreter.
2. The premises are a two-level house with 5 bedrooms and 3 bathrooms along with a garage and a front door on the side of the property. On entering the house there is a glass ceiling and glass wall.. The landlord estimates the age of the property to be late 1960's.
3. The tenants and their 3 children resided there. One of the tenants also had their parents stay when visiting from overseas.
4. The tenants moved in on 21 July 2024. The tenants agree that the tenancy started on 13 July 2024 but did not move in until 21 July 2024 due to maintenance issues.
5. They moved out on 13 December 2024.

Relevant Legal Considerations

6. Before I address the specific claims, I will summarise some general legal principles that apply.
7. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA").
8. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.
9. 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 un-likely, 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.
10. 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.
11. 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.

12. The rehearing was scheduled for two full days. A lot of evidence was filed in advance and also handed up during the hearing. Whilst I may not refer to all of it in this decision, the parties can be assured that I have considered it as part of my reasoning.
13. The tenants were subject to a fixed term agreement and were legally required to pay rent up until 31 January 2025, being the time when new tenants could move into the property. They emailed the landlord on 30 November 2024 that they were giving 4 weeks' notice that they would move out. They were also frustrated that they had not received any update from the Tenancy Tribunal in respect of their application.
14. The tenants say they noticed many issues with the property on 13 July 2024. The tenants started paying rent on 13 July 2024. The tenants say they viewed the property towards the end of June 2024. This was for approximately 10 minutes during an open home.
15. They further stated that when they went to the open home on a Saturday afternoon the weather was fine. On the day they moved in it was raining. The first week they were there the rangehood and oven did not work. The landlord removed the rangehood and the oven in August but did not deliver replacement items until September.
16. The kitchen water filter had also expired April 2017. The tenants noticed that the water had a funny taste to it and noticed that the filter expired a long time ago.
17. The landlord's entry inspection report was dated 6 July 2024. The tenants suggest that the comments made in the report were recorded earlier than 6 July 2024.
18. The tenant's application number 4969873 filed on 13 August 2024 related to a work order.
19. The tenants sought various work orders from the Tribunal. In short, a work order is an order that the Tribunal makes that requires the landlord to undertake specific work, such as maintenance.

20. For completeness however, I will record the submissions of the parties on these work orders for the record, but I will not make any further orders in relation to this claim.

21. As explained to the parties during the hearing the tenancy has now ended which means the work order is a moot application.

22. The tenants say they trusted Bayleys Real Estate as trusted property managers. They requested an inspection before they signed the tenancy agreement. The request was made by telephone. The say that the property manager told them that the property is very popular and that they should sign the tenancy agreement. The tenants also had their children starting school.

Failure to provide premises in reasonable state of repair

23. [The tenant/s] claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986.

24. Under section 45, a landlord must

    - provide the premises in a reasonable state of cleanliness
    - provide and maintain the premises in a reasonable state of repair

25. 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.

The 3 main issues raised by the tenants:

26. Persistent leaking from the glass ceiling. The tenants say there were three leaks – the glass ceiling at the entrance, the glass ceiling above the stairs and the living room next to fireplace chimney.

27. The tenants produced a video during the hearing of the impacted areas. The video was taken on 30 November 2024. The tenants also say the strips on the stairs were loose. The tenants state they showed the landlord a video of the issues in July 2024 but nothing was done.

28. The tenants say that they notified the landlord of the moisture issues during the tenancy. The tenants sent an email with attached photographs on 13 July 2024. The email was provided as part of their bundle of evidence. The email advised the landlord that there were urgent issues requiring immediate attention. These issues included

    - the kitchen light not working
    - the mirrored cabinet door in one of the bedrooms had come of the tracks posing a safety issue
    - an entrance step strip about to fall off

- a light fixture in the living room not working and another bulb needing replacement, and
- a broken light at the entrance.

29. On the same date the tenants also discovered that the front door lock, window lock and the living room door locks were not working properly. They called the landlord.

30. The tenants emailed the landlord on 14 July 2024 advising that they would be postponing their move in due to the discovery of further maintenance issues. These issues included a large crack in the lower right-hand corner of the cooktop. The crack had been covered with transparent tape. They also advised the landlord of the poor state of the curtains.

31. The landlord stated that it was not possible to resolve all these issues as she had checked the property. She told them that she had checked everything herself and would not take their phone calls anymore as she had more important things to deal with. They were advised that if there are issues then she can send someone but if they would be responsible for the cost. The landlord did send someone but the repair person did not turn up until the following week.

32. The tenants say that over the next few weeks different people turned up and fixed different things. The leak in the ceiling by the front door and stairs was not fixed. The leak by the chimney was not fixed.

33. The tenants were never given a code for the alarm until it was replaced in September 2024.They also claim that the alarm did not function properly raising security concerns and insurance issues.

34. The landlord responded by stating that the skylight glass is not easy to repair. She stated that they sent a roofer to look at the skylight window but was told by the tenant not to attend and that they would prefer to wait for the Tenancy Tribunal hearing.

35. The tenants say this happened on the day they were moving out of the premises. The landlord says that they tried to fix it. The tenants say that they had raised the issue since 13 July 2024. The landlord stated during the hearing that she was unaware of the leak above the chimney. The tenants say that the landlord was aware of the leak above the chimney.

36. The landlord says that the tenants were in a hurry to get into the property. She says that she received multiple applications for this property because of the school zoning.

37. The landlord says that they did undertake the maintenance as requested and has included evidence in the form of invoices in support of their response which I have sighted.

38. The landlord also stated that each time the tenant contacted her it would get emotional. The landlord says that she simply asked the tenants to email her rather than call.

39. The landlord says that they always provide an alarm code and that the tenants were provided with the code at the start of the tenancy.

40. The tenants claim that there was mould on every curtain in the house. The tenants say that the mouldy curtains were not recorded on the inspection report, only the entry photographs. The tenants say that there was no communication from the landlord after 22 July 2024. The entry photographs show mould/dirt on the curtains.

41. On 15 July 2024 the tenants visited the head office of Bayleys and spoke to Tony Bayley who accepted their complaint. They also emailed him after their visit. They raised all issues, including a leak in the laundry washing machine hose. Tony Bayley then escalated their complaint to the director of property management, Will Alexander.

42. Mr Alexander first replied on 19 July 2024 and then on 21 July 2024 stating that repairs are underway. The tenants say that nothing happened after that. His email confirmed that the following items were addressed:

    - Building wash
    - Gutter cleaning
    - Interior clean
    - Repair top wardrobe and internal doors
    - Replace lights

43. The tenants confirmed again during the hearing that no repairs were undertaken in respect of the ceiling leaks or the leak near the chimney. The curtains, ceiling leaks and water filter were never repaired or replaced during the tenancy. The handyman came twice to fix the doors and the strips on the stairs towards the end of August 2024.

44. On 24 August 2024 the tenants emailed the landlord advising that the toilet, laundry, kitchen pipe, skylight leak had still not been fixed. They also complained that the alarm was faulty. The alarm was eventually replaced.

45. The landlord accepted that the curtains were not in great condition.

46. The landlord says that the handy man had tried to repair the skylight by applying a water sealant to the area. The landlord produced an email during the hearing of an email exchange between the handman and the landlord in respect of the skylight window.

47. The landlord says that they sent someone straight away in respect of the toilet, laundry, and the leak in the kitchen pipe. The landlord says that they sent a plumber and produced a list of issues.

48. The landlord says that she was not aware of a leak behind the fireplace.

49. The tenants confirmed that the cooktop is no longer an issue.

Laundry and kitchen sink leaks:

50. The tenants say that the kitchen pipe leaked, and the bedroom toilet kept running. There was also mould in the laundry.

51. A video dated 20 July 2024 showed water running down a washing machine hose. A further video dated 9 August 2024 showed water dripping from a pipe under the kitchen sink. The tenants notified the landlord by email with photos and videos of these two further issues. They say the landlord did not reply.

52. The landlord responded during the hearing confirming that these issues relating to laundry and kitchen sink leaks were addressed.

53. The tenant produced a series of photographs dated 13 December 2024 showing ‘damp rid’ type bags hanging on the walls of the bedrooms. The bags had been hanging on the walls for approximately 2 weeks. The tribunal was also shown a video dated 23 July 2024 showing water which had leaked on to the steps. The walls were wet, and the photographs clearly showed a crack in the glass panel and a repair to one of the other glass panels. The tenants thought that this was only because of winter but the same issues continued in summer.

54. The tenants also claim that there were ongoing issues with leaks and mould. The tenants also say that the landlord’s entry inspection report contained false information. The tenants say that the curtains were not of an acceptable standard at the start of the tenancy. The landlord confirmed that they were not seeking any compensation against the tenants for the curtains.

55. The alarm was also faulty, but the tenants say that it was recorded on the checklist as good.

56. The landlord says that they can check most things but other things such as the oven not heating up to the required temperature is not something they would know about.

57. The landlord also responded by saying that while the curtains were not in great condition they were still reasonable.

58. The tenants stated during the hearing that the previous tenant came to collect a parcel from the property. These tenants asked the former tenant about the

leaking to which the former tenant replied that there were always leaks and that the landlord never wanted to repair it.

59. The landlord says that she called the previous tenant to discuss this. She says that the only reason the previous tenant moved out was because they were moving out of Auckland.

Analysis:

60. Based on the evidence provided I am entirely satisfied that the landlord has failed to provide the premises in a reasonable state repair prior to the tenants moving in.

61. The most serious are the persistent leaks. This was likely to have caused or exacerbated health problems for the tenants.

62. By the time the tenants vacated it was too late to alleviate the problems the various issues had caused the tenants. The breaches resulted in discomfort and inconvenience to all the tenants. A concern for one tenant brings about frustration to all when a failure to properly maintain is apparent.

63. There are other areas where maintenance was not carried out prior to the start of the tenancy. An example of this is the kitchen water filter. I hold the view that this is a fixture and as such the landlord should have inspected the below bench filter as part of their pre tenancy checks. The fact that the filter had not been changed since 2017 speaks volumes.

64. I am satisfied that the failure to provide the premises in a satisfactory condition at the start of the tenancy was intentional. The evidence confirming that the property was not ready to rent is abundantly clear. Most of these issues should have been addressed prior to these tenants moving into the property. And because of this the landlord was constantly on the back foot reacting to requests for repairs and maintenance rather than being proactive prior to the start of the tenancy.

65. Where problems are known but there is a failure to remedy, the unlawful act is intentional. There has been significant publicity about standards which a landlord could be expected to know about. The effect of the failure to maintain significantly affected the tenants' enjoyment and possibly the health of the tenants. It is in the public interest that landlords comply with the law relating to tenancies so that living conditions for tenants are healthy and safe.

Compensation awarded:

66. The tenants were subject to a fixed term agreement which can only be terminated by mutual agreement between the parties or by Order of the Tribunal. The tenants must understand that they were subject to a fixed term tenancy agreement regardless of the issues with the property.

67. It therefore follows that the tenants must be held liable for the rent obligation until 31 January 2025 as sought by the landlord. That said, I too hold the view that they should be entitled to compensation for the breach of landlord obligations in respect of failing to provide the premises in a reasonable state of repair.

68. The claim for failing to provide the premises in a reasonable state of repair is proven.

Rent reduction

69. Given the findings I have made after hearing and seeing the evidence I am also awarding the tenants a partial rent refund. I have calculated that as 19 weeks in total.

70. I am reducing the rent by 10%. The tenants have still had benefit from residing at the property and so should pay the bulk of the rent. However, the landlord has deliberately turned a blind eye ensuring the premises are provided to the tenants in a reasonable state of repair at the start of the tenancy.

71. The tenants are awarded $2,280.00 as a rent refund.

Unlawful entry

72. The tenants say that the landlord turned up at the property on 28 September 2024 without notice. The tenants say that their parents were home and opened the door. Their parents let the property manager inside. They say that she was ‘quite aggressive’ and wanted to come inside the house.

73. The landlord says that it was her personal assistant who turned up to the property. The landlord says that they should have received a text and email alert advising them of a visit. Apparently this did not happen, and the landlord stressed that this was unusual and most likely a system notification omission on their part. She says that the tenant’s parents could have turned her away.

74. Section 48 of the RTA sets out the requirements around a landlord’s right to enter the premises. This requires the landlord to give 24 hours’ notice to enter the premises when undertaking maintenance. But that provision also confirms that the landlord can lawfully enter the premises at any time, with the consent of the tenant given freely at or immediately before the entry (in that case notice is not necessary).

75. The landlord does not need to obtain consent or give notice to enter the land comprising the tenancy. Section 48 of the RTA relates to the landlord’s right of entry, with subsection 1 confirming that the landlord “shall not enter the premises” other than that with the consent of the tenant given at the time, or if the Act would otherwise allow it, such as following notice.

76. If the landlord fails to comply with the entry requirements, then they commit an unlawful act, and therefore exemplary damages could be ordered. But the

problem for the tenants is subsection 7 which holds that “In this section premises does not include land or facilities.

77. The effect of that subsection 7 provision is to exclude any requirement for the landlord to obtain consent, or give notice, to enter land or facilities that otherwise comprise the premises.

78. I am not persuaded and this case that there is sufficient evidence to establish that the landlords have unlawfully entered the premises. Knocking on the door of the property does not constitute a breach of section 48 RTA, because there is no entry into the premises by the landlord. Had the landlord knocked on the door 30 to 40 times during the tenancy that might more appropriately be framed as a breach of the tenant’s quiet enjoyment however, the claim was not phrased in this way by the tenants.

79. I find that the landlord had the consent of the tenants to enter the premises on this occasion. Although the parents might have felt a sense of deference to the landlord, I do not consider this means that their consent was not freely given.

80. I have not heard any evidence from the tenants’ parents, nor has any evidence been filed by the tenants such as evidence by way of affidavits.

81. I conclude there is insufficient evidence to establish an unlawful entry claim.

Retaliatory notice

82. The tenants say that after they complained to Tony Bayley the landlord stopped all communication. The tenants claim that the landlord lodging an application 15 days after the date of the last Tribunal order is retaliatory.

83. The requirement for a retaliatory notice was explained to the tenants during the hearing. It was also established during the hearing that this is not a retaliatory notice.

84. Accordingly, the tenants’ application in respect of a retaliatory notice is dismissed.

Healthy Home assessment report

85. The tenants say they received the report after they signed the tenancy agreement. The assessment report is dated 20 October 2022. The report confirmed that the premises complied with the Healthy Homes Standards.

86. The landlord says that the report was attached to the Tenancy Agreement. She says that their system is set up so that assessment reports are automatically included with the Tenancy Agreements at the start of the tenancy. The landlord also confirmed that the premises was fully compliant.

87. Based on the assessment report provided I am satisfied that the premises complied with the HHS requirements at the time the report was prepared.

Tenant application 5282059

88. The tenants filed a further application (TT 5282059) in respect of the delay having their applications determined. As discussed with the tenants during the hearing this is not the purpose of an application. There is no basis for this application and therefore the matter is dismissed.

Landlord applications

89. The landlord claims as follows:

Rent arrears

90. The landlord claims the amount of $10,800.00 for unpaid rent up to 31 January 2025. The landlord provided a rent ledger in respect of the rent arrears.

91. The landlord confirmed that new tenants moved in on 1 February 2025.

92. The tenants responded by stating that the leaking and mould issues were never taken seriously. On 30 November 2024 it was raining heavily and could see the leaking and decided they could not tolerate any longer and wanted early termination.

93. On 3 December 2024 the tenants did not have a response from this Tribunal so they applied for early termination. The tenants sent their notice for early termination to the landlord. They say that the landlord did not agree to early termination and also ignored the outstanding issues.

94. On 30 November the tenants took a video showing how bad the leaking was. They applied for repairs (work order) but it had been going on for some time and could not tolerate any longer.

95. On 5 or 6 December the tenants heard from the Tribunal notifying a hearing date. The hearing was then adjourned due to the landlord being away. The tenants confirmed that they should only be paying rent up until 13 December 2024 when they moved out of the premises.

96. The landlord says that she did reply to the tenants' request for early termination. They were under a fixed term agreement until July 2025. The landlord did not agree to release them from the fixed term.

97. Because of the fixed term agreement I allow the landlord's claim for rent arrears to 31 January 2025, less one weeks rent from the delay moving into the property at the start of the tenancy.

98. The landlord's claim for rent arrears is proven.

Cleaning:

99. The landlord says that the premises were not left in a reasonably clean and tidy condition. The landlord undertook an exit inspection on 21 December 2024. The exit inspection photos were taken by the landlord on 21 December 2024. The claim for cleaning is $1300.00.

100. The landlord confirms that the amount has been paid. The landlord provided a quote from Starry Cleaning Service Ltd dated 7 January 2025. There was no break down on the invoice as to how the cleaner arrived at such a significant amount of $1300.00.

101. The tenants say that their evidence of the condition of the premises on the day they moved in was not reasonably clean and tidy. The tenant took photos at the start of their tenancy regarding this. They also complained to the Director of Baileys regarding the state of the property.

102. The landlord says that the premises were professionally cleaned prior to these tenants moving in.

103. The amount claimed for cleaning is not supported by the evidence provided by the landlord. I am not persuaded that the tenants breached their obligations in this regard.

Rubbish removal

104. The landlord claims $250.00 for rubbish removal. The landlord says that the amount claimed is for the emptying of one recycle bin and one rubbish bin left behind at the property.

105. The tenants say that they did not receive any messages from the landlord bringing this to the attention.

106. The claim for rubbish removal is simply not supported by the evidence provided. I also find that the amount claimed is unreasonable based on the evidence filed.

Garden tidy up

107. The landlord claims the amount of $632.50 for garden tidy up. The landlord has provided an invoice from Yong Garden Limited dated 25 January 2025. The invoice notes that the work was undertaken on 11 January 2025.

108. The photographs of the garden were not taken until 21 December 2024.

109. The tenants say they mowed the lawns during the week leading up to when they moved out. The tenants say it is a small garden.

110. I have carefully considered the landlord's evidence in respect of the claims for cleaning, rubbish removal and garden work. I am not satisfied that the tenants have breached their obligations in this regard. The evidence filed does not support these claims. I also find that the amount claimed for cleaning is unjustified.

111. A tenant is not required to leave a property in an immaculate standard of cleanliness. The standard is what an average, reasonable bystander would consider "reasonably clean and tidy".

112. It must also be noted that a tenant's understanding of what the landlord considered reasonably clean and tidy is influenced by the way that they received the premises from the landlord at the start of the tenancy. In other words, the landlord set the bar and the tenant met it.

113. The claims for cleaning, rubbish removal and garden work are dismissed.

114. The tenant has been substantially successful in one of their applications and I therefore reimburse the filing fee for that application.

115. The tenants have applied for non-publication of their names and identifying details. They have partially succeeded in the proceedings and therefore I grant their request for name suppression.

116. The bond centre confirms that the bond has now been released in full to the parties.

M Manhire
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.

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.