[2025] NZTT 5249171, 5255062

5299396

5324142

TENANCY TRIBUNAL AT HAWERA | TE TARAIPIUNARA RETIHANGA KI HĀWERA

APPLICANT/RESPONDENT: Ellie Renae Coombe

Tenant

APPLICANT/RESPONDENT: Stuart Martin Millar, Maria Millar

Landlord

TENANCY ADDRESS: 24 Grey Street, Normanby, Hawera 4614

ORDER

1. The hearing of application number 5324142 is adjourned.
2. A further 300 minutes should be allowed for the next hearing of this matter, scheduled before me at this court on the next available date.
3. The tenant's application is dismissed.
4. Ellie Renae Coombe must pay Stuart Martin Millar and Maria Millar $1,446.91 immediately, calculated as shown in table below.
5. The Bond Centre is to pay the bond of $1,360.00 (BN-00014588) to Stuart Martin Millar and Maria Millar immediately.
6. The landlord's claims for exemplary damages for failure to allow access on 9 April 2025, 9 June 2025 and 2 July 2025 is dismissed. The landlord's claims for compensation for a failure to allow access on 9 June 2025 and 2 July 2025 is dismissed.
7. The landlord's claim for compensation (travel and time expenses of the landlord and contractor) arising from the tenant's failure to quit is dismissed.

8. The landlord's claim relating to preventing insulation being installed is dismissed.

9. The landlord's claims for exemplary damages for missed rent, not informing of damage, making alterations and removing car wrecks and rubbish is dismissed.

Description	Landlord	Tenant
Rent arrears to 1 August 2025	$2,133.66	
Repairs: Door repair	$60.00	
Call out fee – Electrician - Compensation	$86.25	
Exemplary damages – Locks	$500.00	
Application 5255062 (landlord application 1) – Filing fee	$27.00	
Total award	**$2,806.91**	
Bond	$1,360.00	
Total payable by Tenant to Landlord	**$1,446.91**	

Reasons:

1. The Tribunal must consider applications filed by the landlord and tenant.

Case history

2. This hearing followed an earlier hearing on 25 June 2025. That earlier hearing was heard with the landlord attending by video conference and the tenant attending by telephone. On that date I heard the tenant's application that a notice to terminate her tenancy was retaliatory.

3. I advised the parties at that hearing that their other respective applications (both parties having one application each at this stage) would be heard on an adjourned date and that I would only deal with the retaliatory notice at this point and that I would only be considering the evidence on that particular point.

4. I concluded that the notice was not retaliatory, and that part of the tenant's application was dismissed.

5. Reason 43 of that order set out that:

> The hearing is adjourned to hear the remainder of the tenant's claims and the landlords' claims. This will be set down for a future date which Tenancy Services will advise the parties of.

6. During the hearing on 25 June I also explained that the next hearing would be set down for a face to face hearing which the tenant should attend in person (as she said she does not have facilities to attend by video and the nature and extent of the claims were not appropriate to hear by telephone) and that the landlord could attend by video conference given that they were overseas.

7. This was also set out to the tenant when the next notice of hearing was sent out.

8. Since that hearing date the landlord has filed two more applications.

Attendance at this hearing

9. The tenant did not attend the Tribunal for this hearing.

10. Due to difficulties with the video technology, the start time of this hearing was delayed but the tenant did not attend at any point or make any contact with the Tribunal during the hearing, which took most of the day.

11. I am satisfied that the tenant has been served and so the hearing proceeded without her.

Civil burden of proof

12. The Tribunal applies the usual civil law standards and expectations. That means that it is for the party bringing the application (in this case, the tenant for her application and the landlord for their application) to establish their claims "on the balance of probabilities".

13. That means that they must establish that what they are claiming is more likely than not. This is referred to as the "burden of proof". Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

14. Importantly, as noted 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.

Compensation and exemplary damages – General principles

15. Exemplary damages and compensation are sought so I have set out what these types of awards involve below.

Exemplary damages

16. Exemplary damages under the RTA are different from compensation. The provision of such damages is designed to punish and deter[1].

17. 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 Residential Tenancies Act 1986 (RTA).

18. Section 109 of the RTA relates to exemplary damages, and confirms that exemplary damages can be awarded if the unlawful act was committed intentionally, and having regard to:

    a. The intent of the person committing the unlawful act.

    b. The effect of the unlawful act.

    c. The interests of the landlord or tenant against whom the unlawful act was committed.

    d. The public interest; and

    e. Whether it is just to make the award.

19. In *Birch v Otautahi Community Housing Trust Trust* [2020] NZDC 17667 the District Court said:

> In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in *Chief Executive, ex parte Edmondson v Walls* TT548/92 said: Before an award of exemplary damages can be made the threshold question for the tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.

Compensation

20. The Tribunal can award compensation where a party has been in breach of the RTA or has been in breach of the tenancy agreement, and the other party has suffered a loss because of that breach. In general, when awarding damages, 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.

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[1] *Attorney-General (Commissioner of Crown Lands) v Little Bo Peep Sheep Company Ltd* (HC CIV 2010-412-134)

The tenant's claims

21. The tenant did not attend this hearing which was set down to hear the balance of her claims.

22. While the hearing on 25 June 2025 touched on some of the issues that appear to be raised in her application that was in the context of the retaliatory notice only and, as set out above, I made that clear at that prior hearing. If the tenant wanted to continue with the balance of her claims, she needed to attend this hearing.

23. Given her absence, there is a lack of submission and evidence on the remaining claims and I am not satisfied she has met the necessary civil burden of proof in relation to any of her remaining claims and they are therefore dismissed.

The landlord's claims

24. By the time of this hearing the landlord had filed three applications.

25. I propose to deal with the first and second applications in this decision. The landlord's evidence and submissions in relation to their third application will be dealt with at a separate hearing before me. If the tenant wishes to attend the next hearing to address the issues raised in the landlord's third application (application 5324142) she should do so.

26. The landlord's claims in their first and second applications are as follows:

    a. Rent arrears

    b. Damage to bedroom door – Compensation

    c. Access to contractors on 9 June 2025 and 9 April 2025 – Compensation

    d. Failure to quit and failure to allow access to contractor and landlord on 2 July 2025 - Compensation

    e. The tenant not allowing insulation to be fitted – Compensation

    f. Exemplary damages for:

        i) Missing rent
        ii) Not allowing access as above
        iii) Locks on the garage and bedroom
        iv) Damage, alterations and rubbish

27. The claims the landlord makes in their third application are set out below under the case management heading.

28. I will now address the above claims individually.

Rent arrears

29. The landlord's claim $2,133.66 in rent arrears. The landlord says that they allowed the tenant reduced rent of $185 from the start of the tenancy on 4 February 2023 to 15 February 2023 when renovations began. I heard how the tenant then had a short period where she remained at the property rent free while renovations were undertaken and then the weekly rent, as per the tenancy agreement, resumed on 26 February 2023. I heard how another week of free rent was given in August 2023 and this is also reflected in the landlord's rent summary.

30. I note that the tenant's position appears to be that the rent was supposed to be ongoing at $185 per week. However, the tenancy agreement sets out that the rent is $340 per week, and I do not find the tenant's assertion is supported by the evidence. I find that subject to the specific reductions, as set out above, the weekly rent was $340 from the start of the tenancy until the rent increase referred to below took effect.

31. The rent was later increased to $430 per week by way of notice with the increased rent payable from 2 April 2025. The landlord has only claimed increased rent from 13 April 2025.

32. The landlord produced a rent summary to reflect the above position at the hearing.

33. The landlord seeks rent arrears to 1 August 2025 because this is the date upon which the landlord says that the tenant told them she had moved out.

34. The landlord says that they had a tradesperson attend the property to do repairs on 22 July 2025 and I heard how the tradesperson had found that the heat pump was left on and the door open indicating that the tenant was still living at the property at that point. I heard that notice was given for this work. I also heard how there were holes in the wall on 22 July but repairs were done by someone other than the landlord after that date and therefore the tenant must have been accessing the premises after that date.

35. The landlord applied for a possession order but ultimately this did not need to be heard because on 1 August 2025 the landlord asked the tenant about her vacating the premises and she responded saying she had left about a week and a half prior. She asserted she had sent a message to the landlord's agent about her leaving but she did not produce this when asked by the landlord in that

communication chain, and the landlord says that they checked and their agent did not get such a message.

36. Section 63(1) RTA provides that no person shall enter into possession of any residential premises in the occupation of a tenant except with the consent of the tenant or pursuant to an order for possession made by the Tribunal and duly enforced in accordance with section 106.

37. Therefore, without an order granting possession, the only way the landlord could lawfully gain possession of the premises would be with the consent of the tenant. The application for the possession order was lodged swiftly after the termination date and so the landlord did not delay taking action to take possession of the premises.

38. I accept that the tenant did not tell the landlord they could take possession (so there was no consent provided) until 1 August 2025. On the particular circumstances of this case, taking into account all of the above, I award arrears to this date which I find is the date upon which the landlord could take possession of the premises.

39. The landlord's final rent summary sets out a rental arrears sum that is greater than the sum claimed. In my order I limit the landlord's recovery to the sum of $2,133.66 because this is the sum claimed and is the figure that the tenant had sufficient notice of (by way of documents filed in advance of the hearing).

40. The sum ordered is proven.

Fixing bedroom door

41. 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.

42. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

43. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

44. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

45. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

46. The Tribunal should consider betterment and depreciation. The landlord should be returned to the position they would have been in had the tenant not breached their obligations, and should not be better or worse off. In calculating depreciation, the age and condition of the items at the start of the tenancy and their likely useful lifespan is considered.

47. I heard that the tenant damaged the bedroom door. The tenant says this was due to domestic violence. The landlord says this door was replaced at the start of the tenancy because the door installed previously was also similarly damaged.

48. I heard how the tenant purchased a replacement door but because that door did not fit the bedroom door frame she removed the bathroom door and hung the bathroom door on the bedroom door frame and put the new door on the bathroom door frame.

49. The landlords say this was an inadequate fix. The bathroom door was not suited for the bedroom area as it was old and grubby. They therefore said to the tenant that they would buy a new door for the bedroom if she agreed to install it. The tenant was to provide the measurements.

50. The landlord says that the tenant provided the measurements, and they then provided a door to this size but that the measurements were wrong and so the door would not close because the door was too small. The tenant set out in a text message that the required door size is 1980 x 760. Such a measurement is reflective of a standard sized door.

51. The landlord has since incurred the costs of the new bedroom door being repaired so to fit the size of the door space. The sum sought is $180. The invoice provided is for $184 but the tenant was not given advance notice of that increased amount and it was only provided at the hearing, so the claim is limited to $180.

52. I accept that damage was done to the bedroom door during the course of the tenancy, and I accept that the damage was more than fair wear and tear and is most likely intentional damage. I find that further intentional damage was then done by the tenant changing the doors over in the way described above.

53. The position becomes less clear because the landlord then took the unusual step of buying a new door based on the tenant's measurements and then requiring her to install it to make good the damage.

54. The landlord's position is that a new bedroom door was fitted at the start of this tenancy and I have no reason to doubt that.

55. I am satisfied that the tenant should be liable for some of the repair costs to make the door suitably fit the frame because the tenant did not adequately remedy the damage that I have found to have been intentionally caused.

56. Had the landlord not purchased any replacement door for the bedroom at all and demanded the bathroom door be returned to its location the tenant would have needed to contribute to the cost of both a door *and* the cost of fitting it to make good the damaged she has caused to the bedroom door.

57. However, following the repair, the landlord now has two doors which are both brand new - so the landlord is now in a better position than they would have been in but for the breach. If the landlords replaced the old bathroom door themselves they would have needed to purchase the bathroom door and then would have needed to fit it to be in the position they are now in (e.g. with two new doors).

58. When making an award of this nature I must take into account depreciation. Items, including doors, do not last forever. The landlord says that the bathroom door was very old and grubby and not in keeping with the part of the house where the bedroom was.

59. Had the tenant damaged the bathroom door instead of the bedroom door (and it was the bathroom door that required replacing with a new door) given its age and reported condition, a claim for the replacement of that would likely have had nominal success once depreciation and betterment are applied.

60. Therefore, taking into account all of the circumstances including the fact that the landlord now has two brand new doors (rather than one old grubby one and one relatively new one), I find it fair and reasonable that the tenant pay $60 towards the repair invoice in relation to the bedroom door.

Failure to allow access – Compensation and exemplary damages

61. The landlord says that the tenant did not allow access for the landlord or a tradesperson on different occasions. They seek compensation and exemplary damages.

62. Section 48 RTA sets out the landlord's right of entry. Section 48(2) RTA sets out that a landlord may enter the premises for the purpose of carrying out necessary

repairs to or necessary maintenance of, the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry.

63. Failure by the tenant, without reasonable excuse, to allow the landlord (which includes the agent of the landlord (see s2 RTA)) to enter upon the premises in any circumstances in which the landlord is entitled to enter in these circumstances is an unlawful act (s 48(4)(b) RTA).

64. The landlord says that an electrician was scheduled to come to the house. They told the tenant maintenance was scheduled by email (23 March 2025) and then the landlord says that the tradespeople contacted the tenant directly to make arrangements.

65. A time was then arranged between the tenant and the electrician directly by text message. The text messages exchanged between the tenant and electrician were provided and include the electrician giving the tenant a range of options and the pair ultimately conclude:

> ***Monday, Apr 7 · 6:58 AM***
>
> *Hiya. How does Wednesday 9am suit you for us to look at needs to be done...?*
>
> ***Monday, Apr 7 · 9:25 AM***
>
> *Yip sounds good*

66. The landlord says that when the electrician went to the house on 9 April 2025 he arrived (as agreed by the text messages) but that the tenant did not answer the door. Because the electrician had friends who were local the electrician stayed in the area and had a coffee to try and get access.

67. However, by the time the tenant messaged the electrician had already moved to another job. Text messages provided support this and show the following exchange:

> ***Wednesday, Apr 9 · 9:01 AM***
>
> *Good morning. I'm here.*
>
> *Let me know when you're up. I'm around the corner having coffee at mates 9:07 am*
>
> *We just cooking some breakfast I'll message soon k - 9:41am*
>
> *I've just had another job come in. We'll catch up another time... 9:44 am*
>
> *Ok sweet as 9:50am*

68. The landlord says that the electrician charged them $86.25 for this failed attendance and provided an invoice to show this.

69. The RTA provides that a tenant should be given 24 hours' notice for maintenance and I am satisfied that the tenant was given such adequate notice because she was told what the work was for by the landlord and then the electrician agreed with the tenant a time that he would visit 24 hours in advance.

70. Although the notice was sent by text message (rather than in one of the formal ways as provided for in the RTA) it is clear here the tenant received the messages, and they gave her adequate notice.

71. The fact the electrician was at the premises, as agreed, at 9am is supported by his text message saying, "I'm here".

72. I am satisfied that the tenant failed to allow the electrician access as agreed and as she had notice of. I am satisfied that it is reasonably foreseeable that if an electrician is called out and cannot do the work there will be a call out fee and that the sum charged here is reasonable. I therefore find that the tenant therefore must pay the cost charged by the electrician to the landlord of $86.25.

73. The landlord also seeks exemplary damages for this breach.

74. I decline to award exemplary damages in respect of this breach because I am not satisfied the breach was intentional. The text messages sent by the electrician are casual in their nature suggesting that after he could not get access he was engaged elsewhere (having coffee) and the tenant could simply let him know when he was ready.

75. The claim for exemplary damages for this breach is therefore dismissed.

76. The landlord also says a builder (Aaron) was prevented access by the tenant. The landlords thought that he had gone on both 9 and 10 June 2025 but were not certain. The landlords could not provide details of notice as it was given by the builder direct. This is sufficient to dismiss this part of the claim.

77. I note that in any event, there are text messages headed "Arron Builder" on the file that suggest that on 6 June 2025 the agreement was that the builder would be there on 9 June at around 8am. At 7.52am he says he will be there at 9.30 and then at 9.35 a text is sent saying he is having smoko and then will be over. From this, it would appear that the tenant was given a time, and then it was changed by the builder and then she was kept waiting again while the builder had smoko.

78. Should these be the relevant messages, I consider there would be no valid notice upon which the landlord can rely. If an appointment is not kept (here 8am), then a tenant does not have to allow access at a later time. Further the

contemporaneous text messages go on show the tenant questioning whether the builder actually turned up at all.

79. I find that the landlord is unable to prove its claim for failure to allow access on this occasion.

80. The claim for exemplary damages and compensation on this occasion is therefore dismissed.

81. Another issue is that the landlord says that the tenant did not allow access on 2 July 2025 when he attended with a tradesperson to fix the door.

82. The landlord says the tenant was sent a text message advising that access was required for maintenance on 2 July 2025. The landlord says that the notice was sent by text message at 5.46am on 1 July 2025 advising of work the following day between 8am and 7pm. The landlord says that he arrived at the premises and knocked but that the tenant told him that he could not come in.

83. Section 136 RTA allows electronic addresses to be used for service of notices when they are provided as a service address. I am not satisfied that the tenant provided her telephone number as a service address upon which she could be served by SMS.

84. Unlike the above instances, there is no evidence of the tenant replying to the text message referring to the visit (to show that she had received it and when) and therefore I am not satisfied there is sufficient evidence as to establish service of the notice on the tenant. This means I cannot be satisfied she was given the required 24 hours' notice.

85. I therefore dismiss the claim in relation to failed access on 2 July 2025.

86. While the above is enough to dismiss this part of the claim, I also note that the text message also gave a very wide time frame (and not a specific time) for the works. It is not clear why the landlord needed all day to undertake the work which I heard was to fix the bedroom door.

87. A blanket notice may be effective in some circumstances where notices for repeat or prolonged attendances would be unnecessary given the pattern of work (e.g. construction work). However, the landlord's evidence was that the work required here was simply to fix the door so I consider that a narrower time window should have been given.

88. Section 48 RTA stipulates the minimum number of hours (e.g. 24 or 48 hours) and maximum number of days' notice that must be given before "the intended entry". That necessarily requires the landlord to give a specific time for the intended entry.

89. The Tribunal has previously ruled that a notice given by a landlord under s48(3)(b) stating that the landlord would be showing prospective purchasers through the premises “Monday to Friday between 10am and 5pm”, without giving specific notice of the date and time of any viewing, was unreasonable and a breach of section 38(2) (breach of the tenant’s quiet enjoyment). The District Court agreed with that conclusion on appeal[2].

Failure to quit – Compensation

90. The landlord also referred to the event on 2 July 2025 in the context of the tenant failing to quit the premises after the tenancy had terminated on 27 June 2025.

91. On the termination of the tenancy the tenant must quit the premises (s 40(e)(i) RTA). To not do so without a reasonable excuse is an unlawful act (see section 40(3A)(a) RTA).

92. The landlord seeks considerable compensation for travel generally including from Australia because he was not able to access the property because the tenant had not left yet as well as the 2 July contractors call out fee.

93. While I am satisfied that as at 2 July 2025 the tenant is in breach of her obligations under section 40(e)(i) RTA (because she failed to quit after the tenancy had ended) it does not follow that the sums that the landlord can claim as compensation are boundless.

94. I have found that there was a lack of suitable notice permitting the tradesperson access. A landlord is under a duty to mitigate its loss. The loss could have been avoided by the landlord ensuring they had served a valid a notice allowing access. I explained at the end of the last hearing how a possession order would be needed if the tenant did not leave. It is unusual for a landlord to undertake minor repairs such as this in these circumstances.

95. The above is sufficient to dismiss that part of the claim but I also note that the tradesperson has claimed 2 hours of travel time and I do not consider that to be reasonable. It is unexplained why the invoice for this failed visit by the tradesperson is greater than that charged for the occasion when he came back and actually did the work.

96. Turning to the landlord’s claim for their own time and travel costs I do not consider this to be recoverable as compensation.

[2] *Lieven and Grieve v Bowles, Lipski and Cholmondeley-Smith* [2020] NZDC 17768

97. When a landlord rents a premises far away from where they live they make a "commercial decision" to do so. The tenant is not liable for high travel costs just because the landlord lives further away from the property. A landlord's travel to the rented premises is part of the operational costs of managing a property and the business that is being run and are not recoverable.

98. By way of comparison, a local property manager cannot claim their fuel cost for driving from their office to a premises they manage to, for example, conduct an end of tenancy check or to let contractors into a property. This is not different.

99. Indeed, in *Bowen v Klasema* TT 230/90 the landlord among other things, was claiming for his transport costs between Christchurch, where he lived, and Wellington where the property was situated. In dismissing this application, the Tribunal noted that the landlords had made a commercial decision to let a property in Wellington while they lived in Christchurch. It was therefore inevitable they would have costs which were associated with that decision. If those costs were awarded the effect would be to penalise tenants for renting a property which is owned by people who do not live in the region. The Tribunal concluded this was not appropriate.

100. The landlord's claim for a week of Mr Millar's own time seemingly because Mr Millar was in New Zealand essentially waiting, and then seeing family, has no basis. By way of comparison this would allow property managers to simply sit back and do absolutely nothing at all, yet get paid full time for it, while an application for possession was progressing in the Tribunal. This loss is too remote.

101. For the sake of completeness, even if this was a claimable loss, at the previous hearing the landlord asked me what would happen next, citing the fact they had flights booked. I set out that they would need to make a separate application for possession if an order was not made in the tenant's favour and the tenant did not leave voluntarily. The landlord was therefore aware (or should have been aware) of the fact that they may not have possession on the termination date. Therefore, I consider that the landlord could have mitigated their travel and time costs claimed by ensuring that they had possession of the property prior to travel.

102. I therefore dismiss these compensation claims.

Failure to quit – Exemplary damages

103. For the sake of completeness, I note here that I will hear the landlord's claim for exemplary damages in relation to the failure to quit the premises at the next

hearing because the claim for exemplary damages is included in the landlord's third application.

Locks on the garage and bedroom - Exemplary damages

104. The landlord says the tenant put a lock on the bedroom door and changed the code on the garage lock. This was referred to in the context of access and also specifically in relation to the addition/change of locks.

105. In the absence of any notices of inspection, I find this is best considered as a breach under s 46(2) RTA which the landlord has also referred to in their application.

106. Section 46(2) RTA provides that neither the landlord nor the tenant shall alter any existing lock or similar device or add to or remove from the premises any lock or similar device, without the consent of the other given at the time that, or a reasonable time before, the alteration, removal, or addition is carried out.

107. Breaching this obligation without reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,500.00. See s 46(3) and Schedule 1A RTA.

108. Even if the landlord could prove this was also a failure to allow access, where there can be a number of exemplary damages orders made for the same underlying event, only one order should be made[3].

109. The landlord says that their agent was prevented from accessing the bedroom on 10 November 2024 due to a lock being put on the door. The tenant let the agent in to the property to do a routine property inspection but then did not have a key to allow the agent access to the bedroom. This is reported in a letter from the property manager and set out in a number of emails sent by the landlord to the tenant.

110. The landlord also says that this lock also prevented them from undertaking maintenance work in the bedroom in December 2024 and provided contemporaneous text messages sent to the tenant referring to this. The landlord says they had a whole week without being able to access the room.

111. I am satisfied on the evidence before me that the tenant put a lock on the bedroom door.

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[3] *Manage My Rental Limited v Baxter* [2015] NZDC 12011 and *Ministry of Business, Innovation and Employment v Hillis Shearing Limited* [2024] NZDC 27583

112. The landlord also claims that the tenant changed the access code to the garage preventing access for the agent conducting a property inspection on 26 June 2024. They say that the lock is a non-digital code box which can be changed by the person who has access to the lock. I have no reason to doubt this and note that the tenant puts forward in her own application a note saying she was advised to change the code by the police. The landlord says the new code was given a few days after the inspection.

113. I am satisfied on the evidence before me that the tenant changed the code to the lock on the garage door.

114. I am satisfied that the tenant has not sufficiently proven a reasonable excuse for locking the bedroom or changing the code on the garage. While I see that she says the police may have advised her to do this this is not supported by evidence and in any event, she could have advised the landlord of this in advance or given the new code to the landlord immediately, but there is no evidence that this was the case and this does not begin to address why a lock was on the bedroom door for such a prolonged time preventing access.

115. I am satisfied that the tenant has committed an unlawful act.

116. I find that the Tenant intentionally performed this unlawful act and it is appropriate to award the Landlord $500.00 in respect of this claim. It is in the public interest and interest of landlords that tenants do not unilaterally change the locks to a property. The lack of access to the bedroom was particularly inconvenient as the landlord was trying to carry out maintenance and the breach was ongoing.

The tenant not allowing insulation to be fitted – Compensation

117. The landlord says that the tenant's partner threatened a tradesperson not allowing him to complete insulation work.

118. The landlord told him he did not have to return. The landlord could not identify how the tenant had breached the RTA and therefore did not pursue this claim.

119. This claim is dismissed.

Missing rent payments – Exemplary damages

120. The landlord seeks exemplary damages because the tenant missed rental payments.

121. I am not satisfied that this breach is an unlawful act for which exemplary damages can be awarded.

122. This claim is dismissed.

Not advising of damage, alterations and rubbish - Exemplary damages

123. Exemplary damages are not available for all breaches of the RTA. The breach must amount to an unlawful act as set out in the RTA.

124. The landlord seeks exemplary damages because the tenant did not inform them of damage to the house (bedroom door, holes in walls and French doors).

125. I am not satisfied that this breach is an unlawful act for which exemplary damages can be awarded. This claim is dismissed.

126. The landlord seeks exemplary damages because the tenant did unauthorised alterations to the property (moving doors (above), patching holes badly, damaging the water cistern and the French doors). The landlord says they gave no permission for any of these to happen.

127. I am not satisfied that this breach is an unlawful act for which exemplary damages can be awarded. This claim is dismissed.

128. The landlord seeks exemplary damages because the tenant did not remove car wrecks and rubbish from the property after being asked repeatedly for over 2 years. I am also not satisfied that this breach is an unlawful act for which exemplary damages can be awarded. This claim is dismissed.

Bond release

129. I have released the bond to the landlord as part payment to the sums so ordered.

Filing fee

130. The landlord has had some success in its first application, so I award the filing fee in respect of this. The second application has not been successful so I do not award reimbursement of the filing fee here.

Case management for the third application – What will happen next?

131. The amount of time scheduled for this hearing was not enough to address the landlord's third application.

132. The landlord's claims in their third application are as follows:

a. Damage from stickers having to be removed from the ceiling - $20.00

b. Power point stash box/safe in wall of lounge by French Doors installed without permission - $50.33 and $230.00

c. 4 areas of damage to walls - 1 by kitchen, 1 around corner in lounge, 1 in lounge by bedroom 2 and 1 in bedroom 2. We have included a quote to repair these - $2800.25

d. Damage to kitchen sink - dried paint in sink and on kitchen bench - $598.00

e. Damage to carpet - multiple stains and 8 x burn holes - $1150.00

f. French Doors - glass in bottom window of surround broken. Piece of wood placed by tenant - this needed temporary fix by Contractor - $45.00

g. French Doors - glass in bottom window of surround broken. Remove Perspex and ply, prepare area for new glass, replace glass (Kelson's Glass $200), fill screw holes, paint putty and repaired holes. $372.50

h. Cleaning - $398.00

i. Possession order application fee - $27

j. Exemplary damages for:

i. Failure to quit the premises (Not obeying Adjudicators order to leave the property on eviction date

ii. Not informing the landlord of damage to the house: 4 x areas of damage to the walls (by kitchen, around corner in lounge, by bedroom 2 in lounge and in bedroom 2).

iii. Not informing the landlord of damage to the house: paint damage to kitchen sink and stainless bench.

iv. Not informing the landlord of damage to the house: damage to carpet.

v. Not informing the landlord of damage to the house: French Doors

vi. Smoking in the house

vii. Removal of smoke alarm from outside of bedrooms - I have heard evidence and submission in relation to smoke alarms but reserve my decision in that matter pending the conclusion of all of the claims in application number three.

viii. Unauthorised alterations to the property. Intentionally putting in a power point stash box/safe in the wall which has left us with a hole in the wall.

ix. Unauthorised alterations to the property. Attempting to fix holes in walls in lounge x 3, bedroom 1 x1 and bedroom 2 x1.

133. Tenancy Services will advise the parties of the date and time of the next hearing which will consider the landlord's third application only. This is because the tenant's application and the landlord's first and second applications are complete and have been determined by this order.

134. The landlord may attend the next hearing by video conference. The tenant should attend in person (as she has said she does not have access to video conference facilities and the remainder of the claim remain relatively substantial requiring a reasonably lengthy hearing).

M Kemp
09 September 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.