TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] Landlord
RESPONDENT:	Stuart Mairs, Maria Quesada Rodríguez Tenant
TENANCY ADDRESS:	Unit/Flat Upstairs, 14 Crescent Road West, Ostend, Waiheke Island 1081, Up Stairs

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Landlord name and identifying details.
2. The Bond Centre is to pay the bond of $2,800.00 ([Bond number suppressed]) immediately apportioned as follows:

[The landlord/s]:	$200.00
Stuart Mairs and Maria Quesada Rodríguez:	$2,600.00

Description	**Landlord**	**Tenant**
Break lease fee	$700.00	
Exemplary damages: Failure to provided HH report		$500.00
Total award	**$700.00**	**$500.00**
Net award	$200.00	
Bond	$200.00	$2,600.00

3. All remaining claims are dismissed.

Reasons:

1. Both parties attended the hearing.

2. The tenancy commenced on 9 August 2024 and was for a fixed term due to end on 7 August 2025.

3. The parties agreed for the tenancy to end early, and the tenants left the tenancy on 3 July 2025. A new tenant moved in on 5 July 2025, so the tenant was liable for one extra day for rent.

4. The landlord seeks a break lease fee of $700.00. The tenancy agreement states at clause 24, *"The tenant may be charged a break fee and/or be liable for costs relating to breaking a fixed term tenancy".*

5. As there is no agreement between the parties in relation to the break lease fee sought the Tribunal can determine what is fair and reasonable in the circumstances based on the actual loss suffered by the landlord.

6. At the hearing the landlord produced an invoice for $2,024.00. That amount is not fair and reasonable. While the $700.00 sought by the landlord is equivalent to one weeks rent, I consider that it is a reasonable amount given the extra work required by landlord to secure a new tenancy. I accept that the landlord has mitigated the tenant's loss by securing a new tenancy so quickly after the tenants vacated.

7. On the evidence produced I accept the claim for the break lease fee of $700.00.

8. The tenants claim in respect of the Healthy Homes standards. The landlord provided a Healthy Homes compliance statement with the tenancy agreement, which complies with the requirement of the Residential Tenancies Act 1986[1].

9. The tenant queried about the insulation at the premises because the interior was extremely hot. The tenant produced a letter from The Waiheke Health Trust which is a WellChild provider as the tenants have a young baby. The letter states that the optimum temperature for a baby sleeping is 18-20 degrees celsius but can be up to 24 degrees in summer. It is further stated in the letter that *"Despite having doors and windows open in the bedroom when you enter you can feel the heat radiating through the ceiling. The room temperature was 27C without any direct sunlight through the windows or sliding door area."*

10. I note that in the compliance statement completed by the landlord it states, *"the ceiling above half the house was replaced in 2022. The other half was built on unknown date and I don't know what insulation was installed and it is not accessible".*

11. As a result of this issue the landlord obtained an independent Healthy Homes report and the inspection for that took place on 10 February 2025. That report concludes that the premises passed the Healthy Homes standards.

12. There is a recommendation in page 10 of the report as follows:

[1] Section 13A(1A)

We noticed that the ceiling in the upper-level bedroom felt significantly hotter than the lounge ceiling, which may indicate a lack of insulation in the roof space above the bedrooms.

Recommendation: Remove the roofing iron, install ceiling insulation, and then reinstall the roofing iron to enhance temperature regulation. However, as this was a non-invasive inspection, we were unable to access the roof space to confirm the insulation status.

13. Unfortunately, the landlord did not act on this recommendation even though the tenant remained living at the premises for a further five months. However, the landlord is entitled to rely on the outcome of the independent report being that the premises complied with the Healthy Homes standards.

14. Both parties obtained photographs of the roof cavity. The tenant's photographs show areas where there is no insulation and the landlord's show that there is insulation. The landlord argues that the tenant's photographs are not from the premises. There may be areas that are not insulated but the evidence is not sufficient to establish that the outcome of the Healthy Homes report is wrong. The tenant's claim in respect of the Healthy Homes standards is dismissed.

15. The tenant was present during the inspection that took place on 10 February 2025 and had asked the landlord for a copy of the report. The landlord refused to provide a copy of the report and instead referred the tenants to the compliance statement prepared by the landlord at the beginning of the tenancy.

16. Under section 45, a landlord must, if requested by the tenant, supply the records or other documents that relate to the landlords' compliance with the Healthy Homes Standards within 21 days after receiving the request.

17. Breaching any of these obligations without a reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of $750.00. See section 45(1AD) and Schedule 1A Residential Tenancies Act 1986.

18. The landlord declined to provide the tenant with a copy of the report. I find they have committed an unlawful act.

19. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied 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) Residential Tenancies Act 1986.

20. The report commented on the issue about the interior temperature at the premises. This may have assisted the parties with this issue. Even though the report confirmed compliance with the Healthy Homes standards the tenant was entitled to be provided with a copy of it. The report reaches the conclusion that the premises comply with the Healthy Homes standards so the only possible

reason for the landlord withholding the report must have been the recommendation referred to above.

21. I consider that the withholding of the report has had a negative impact on the tenant. I award exemplary damages of $500.00 which I consider to be reasonable.

22. The landlord claimed exemplary damages on the basis that the tenant had tampered with the landlord's property when he accessed the roof cavity to take photographs. The tenant explained that he unclipped two light fittings, one on the soffit and the other in the kitchen. He then put his phone in the cavity to take photographs. After doing so he reinstated the light fittings. There is no evidence that the tenant caused any damage to the premises. The landlord was also unable to identify an unlawful act relevant to this situation which could result in an award of exemplary damages.

23. As there is no unlawful act the landlord's claim for exemplary damages is dismissed.

24. As both parties have had some success with their application I make no award for reimbursement of the filing fee. For the same reason I suppress the landlord's name as sought.

N Walker
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.