[2025] NZTT 5283200

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	Queenstown Property Management Limited As Agent For Van Aalst Residential Trust Landlord
RESPONDENT:	[The respondent/s] Tenant
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. The Tribunal orders suppression of the Tenant names and identifying details.
2. [The tenant/s] to pay Queenstown Property Management Limited As Agent For Van Aalst Residential Trust $296.13 from the bond, being compensation for a damaged hob.
3. The Bond Centre is to pay $296.13 from the bond of $2,400.00 ([Bond number suppressed]) to Queenstown Property Management Limited As Agent For Van Aalst Residential Trust immediately. The balance of the bond of $2,103.87 is to be paid to the tenants.

Reasons:

1. Both parties attended the hearing, conducted via teleconference. Cindy Bonn and Holly Clarke represented the landlord.
2. The landlord has applied for compensation from the bond, and reimbursement of the filing fee following the end of the tenancy.

Is the tenant responsible for the damage to the premises?

3. 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 Residential Tenancies Act 1986 ("RTA").
4. 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.
5. 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.
6. The insurance excess was more than either claim.
7. The following damage was caused during the tenancy:
    a. A chipped kitchen hob, and
    b. Water damage to a kitchen panel.
8. I consider each in turn.

Kitchen hob

9. The kitchen had a glass hob top. It was approximately 4.5 years old. A noticeable chip on the right-hand side was discovered near the of the tenancy by the tenants, and by the landlords at exit.
10. A photo of the damage was provided. It was accepted by the tenant that the damage occurred during the tenancy, most likely from something dropped.
11. A simple report by a contractor, dated 9 May 2025 stated (in part):

Upon inspection, it is our professional opinion that the chip present on the hob surface is the result of physical impact and not due to any manufacturing or appliance fault. The damage is characterised by a sharp, localized chip consistent with an object being dropped or struck against the surface.

Due to the sharp nature of the chip, this damage poses a potential health and safety risk to tenants, particularly in a kitchen environment where exposed edges could lead to cuts or injury. Additionally, the surface has now been weakened, which increases the likelihood of further deterioration or cracking over time, especially under normal cooking conditions.

For these reasons, we recommend that the hob be repaired or replaced to ensure the continued safety and compliance of the property.

12. The report included a quote for the replacement glass top kit of $592.25.
13. In an email to the landlord dated 8 May 2025, the tenant stated, "*I don't recall an event that has caused the chip to appear, therefore, it could be related to the quality or age of the hob, etc. We wouldn't try to get out of taking responsibility for any damages caused by us, and we don't think that it is fair to assume that the chip is our fault*."
14. Despite the report noting a potential health and safety issue, the hob remains in place. I was told the owner intends to replace it once this hearing concluded. I record a new tenancy has formed and those tenants using this hob since May 2025, so any health and safety concerns must be being managed.
15. I accept the damage was due to a careless action. Despite no financial loss yet to be incurred, I have accepted the quote as a basis for determining a future loss and accelerated depreciation. I do also consider, as did the tenant, that some consideration to its age and expected life should be given.
16. I have adopted an eight-year economic life. I have depreciated the likely replacement cost established by the quote by 50%. This strict application of a straight-line depreciation reflects the continued use of the hub today, despite contractor warnings.
17. This depreciated award equates to a compensation order from the bond of $296.13.

Kitchen panel

18. The rental included an upright fridge as a chattel.
19. Later in the tenancy, a puddle was observed by the tenant in what she described as on the floor on the left-hand side of the fridge. She stated this was not a single occurrence but infrequent, first noticed after the second tenant joined in May 2024 (some six months after commencement). Her working

assumption was that the water was from a spill and it was mopped up as required.

20. This is important as it is appears more likely that there was a water issue or leak/overflow emanating from the fridge itself. The tenant suggested the fridge received direct sunlight and that further leaks may have occurred while they were out during the day and have evaporated before their return, meaning they remained unaware of possible other leaks.

21. The landlord believes the tenant failed to notify it in a timely manner. It believes timely advice and prompt maintenance of the unit may have eliminated any later leaks.

22. This is an important consideration. The panel that was damaged was the vertical board to the right of the fridge. It was constructed with MDF and the finish was uncertain, be it laminate or other. What was apparent was the MDF was somehow exposed to water after some penetration or failure of any prior surface or finish protection. It swelled at the front base (on both bottom sides), and likely further back.

23. The damage is obvious. It is not considered fair wear. That means I must determine if the damage was caused by careless, or less than careless actions, of the tenants (the tenant is liable for careless or intentional damage).

24. In *Bolton v Stone* [1951] AC 850 "careless" was considered as:

> "Its usual meaning is the lack of care, negligence or lack of forethought… Also heedless or thoughtless, and can cover a situation of inadvertent lack of care. The standard of care is the standard of an ordinary careful person. An ordinary careful person is not expected to take precautions against every foreseeable risk, but only against those risks that are reasonably likely to happen."

25. In *Utrust Property Management Ltd vs None* [2023] NZTT 4459482, 4509090, the adjudicator there considered any "lack of attention, care, or precaution that an ordinary, careful person would take. It is relevant to ask whether the tenant was negligent in allowing damage to continue after it should have been obvious that it was occurring."

26. The loss here is established. Unlike the hob, the owner has replaced the panel at a cost of $1,030.00. The claim effectively seeks that cost burden to be transferred onto the tenant.

27. For the following reasons I do not find the damage to the kitchen panel to be due to a careless act of the tenants. I do not find, in this instance, the risk to the panel was foreseeable:

    a. The fridge was a chattel provided by the landlord. Any specific knowledge on servicing or steps to ensure no overflow from failure of the fridge draining or evaporation functions did not reside with the tenants.

b. It appears more than likely the leaking occurred later in the tenancy, given the good condition of the panel in earlier photos. That may relate to the aging appliance failing to deal with any water leaks, especially once another tenant joined and the likely more frequent use of the fridge increased the refrigeration cycling and water byproduct.

c. The occasional leak appears to have been observed to the left or centre of the fridge. Neither party referred to water or dampness against the later damaged righthand side panel. That provides, in my mind, some legitimacy to the tenant action of mopping up and treating the instances as spills with no obvious potential consequence to the right-hand side panel, with no need to notify the landlord. Direct causation of any water as observed and mopped up and the later failure of the MDF panel is not considered obvious.

d. I consider the possibility of leaks occurring, penetrating the panel and the later evaporation of any liquid while the premises was unoccupied to be real.

e. MDF is a challenging material once exposed to water. Swelling further corrupts any water proofing, compounding damage from any further water or liquid exposure. Once damaged, repair rather than replacement is problematic.

28. I determine the damage to the panel was not due to any careless action of the tenant, nor due to any failure of them to notify the landlord. There is a liability gap in this fact pattern between fair wear and tear (landlord) and carelessness (tenant). That being so, I must dismiss the claim and leave the cost with the landlord.

Filing fee

29. As the applicant has not been wholly or substantially successful, I leave the applicant with its application filing fee.

Suppression

30. Section 95A RTA states regarding suppression orders that the Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case.

31. Further, the Tribunal may, on the application of any party to proceedings or on its own initiative, having regard to the interests of the parties and to the public

interest, order that all or part of the evidence given or the name or any identifying particulars of any witness or party not be published.

32. The landlord requested suppression in its application. As it has not been wholly or substantially successful, suppression is not ordered. This decision is counter is what might have been suggested during the submissions regarding suppression at the end of the hearing. This restriction to tenant suppression only reflects the final determination.

33. The tenant requested suppression. This was not opposed by the landlord who confirmed this had been a good tenancy, bar the two disputed claims here. Given the determination, the tenants had some justification in their stance. I consider it reasonable to order their suppression as requested. Their interests in obtaining name suppression are significantly greater than any public interest.

M Brennan
10 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.