[2025] NZTT 5291419

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT: Inspire Real Estate Limited

Landlord

RESPONDENT: Margaret Falamoe

Tenant

TENANCY ADDRESS: Unit/Flat 28, 16 Alma Road, Gonville, Whanganui 4501

ORDER

1. Margaret Falamoe must pay Inspire Real Estate Limited $703.51 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of $1,520.00 (5904082-008) to Inspire Real Estate Limited immediately.

Description	**Landlord**	**Tenant**
Cleaning: and rubbish removal	$1,501.51	
Carpet Cleaning	$195.00	
Carpet replacement - insurance excess	$500.00	
Filing fee reimbursement	$27.00	
Total award	**$2,223.51**	
Bond	$1,520.00	
Total payable by Tenant to Landlord	**$703.51**	

Reasons:

1. Both parties attended the remote hearing.
2. The tenancy commenced in 2021 and ended in May 2025 following the landlord serving the tenant with a 90-day notice to terminate the tenancy.

3. The landlord has applied for:
    a. Compensation for rubbish removal, cleaning, carpet cleaning and carpet damage
    b. payment of the bond, and
    c. reimbursement of the filing fee following the end of the tenancy.

RELEVANT LEGAL CONSIDERATIONS

4. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA**"**).

Evidential burden

5. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations:
    a. That includes a requirement that 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.
    b. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely. 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.
    c. 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."

Compensation

6. The Tribunal may award compensation to a party for losses arising from a proven breach or breaches by the other party of their statutory responsibilities under the RTA. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.

7. In *Birch v Otautahi Community Housing Trust*[1]the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:

   • The nature of the breach;

   • The duration of the breach; and

   • The effect of the breach on the party.

TENANT'S OBLIGATIONS

8. At the end of the tenancy the tenant must:

   a. remove all his or her goods from the premises,[2]

   b. leave the premises (including the land provided with the premises) reasonably clean and tidy, and[3]

   c. remove all rubbish. [4]

9. When considering a claim for cleaning the following principles generally apply:

   a. There is no scientific way to determine what is 'reasonably' clean and tidy, what is required is for the Tribunal to evaluate the evidence available (particularly photographs presented), and then to determine whether the premises would be reasonably clean.

   b. The Tribunal will also consider factors such as the length of the tenancy, and the general condition of the premises (for example, surfaces that are new and in a good condition will be easier to clean than older and worn surfaces, particularly with paint work).

   c. Reasonably clean means clean to the standard an average, reasonable bystander would consider reasonable.[5]

   d. Reasonably clean does not mean commercially clean.[6]

   e. Reasonably clean does not mean spotless to a hotel or motel standard.[7]

   f. Reasonably clean is not necessarily to the standard a landlord considers acceptable for a new tenant.[8]

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[1] *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667
[2] See section 40 (1)(e) (ii) of the RTA.
[3] See section 40 (1)(e) (iii) of the RTA.
[4] See section 40 (1)(e) (iii) of the RTA.
[5] *Housing New Zealand v Holloway* TT Auckland TT215/93, 8 February 1993 at page 8
[6] *Mills v Kiwi Property Care Ltd* TT Hamilton 09/01418/HN, 27 July 2009
[7] *Richards v Scully* TT Christchurch TT2043/98, 21 July 1998.
[8] *Ace Property Management Ltd v Owens* DC Wellington CIV -2008-1441, 17 December 2008

TENANT'S RESPONSIBILITY FOR DAMAGE

10. When considering a claim in respect of damage to the premises the following principles apply:

    a. A tenant must not intentionally or carelessly cause damage or permit any other person to damage the premises.[9] Where a landlord is claiming compensation for damage a landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear.

    b. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the damage.

    c. Tenants are liable for the actions of people at the premises with their permission. [10]

    d. Fair wear and tear can be described as damage which might reasonably be expected to naturally occur over time, such as the deterioration or gradual wear occurring with everyday use. [11]

    e. 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). [12]

    f. 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).[13] Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage.[14]

    g. 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. [15]

    h. 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.[16]

    i. In assessing a claim for compensation, I must take into account betterment and depreciation. The landlord should be returned to the position they

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[9] See s 40 (2)(a) of the RTA.
[10] See sections 40(2)(a), 41 and 49B RTA.
[11] See *Taylor v Webb* [1937] 2KB 283 (CA).
[12] See section 49B(3)(a) RTA.
[13] See section 49B(3)(b) RTA.
[14] See section 49B(3A)(a) RTA.
[15] See section 49B(1) RTA.
[16] See *Guo v Korck* [2019] NZHC 1541.

would have been in had the tenant not breached their obligations and should not be better or worse off. In calculating depreciation, I must take into account the age and condition of the items at the start of the tenancy and their likely useful lifespan.

THIS CASE

CLEANING AND RUBBISH REMOVAL

11. The tenant did not leave the premises reasonably clean and tidy and did not remove all rubbish.
12. The landlord arranged for the premises to be cleaned to a reasonably clean and tidy standard and arranged for the rubbish to be removed, including furniture and a double door fridge.
13. The tenant said that she would have placed some of the rubbish in the residents skip bin however another tenant stopped this from happening. The landlord said some of the tenant's rubbish was placed in the skip bin by the cleaner, however the larger items could not go in the resident's skip bin. In reviewing the photographs, I consider that not all of the tenant's rubbish could have been placed in the resident's skip bin and rubbish removal was required. The amount invoiced by the cleaners was reasonable having regard to the size, weight and time involved in removing the larger items of rubbish.
14. Carpet cleaning was required as there were marks, dog faeces and slime on the floors.
15. The amounts ordered for cleaning and rubbish removal **($1,501.51**) and carpet cleaning (**$195**) are proved with post-tenancy inspection reports / photographs and invoices.

IS THE TENANT RESPONSIBLE FOR THE DAMAGE TO THE PREMISES?

CARPET DAMAGE

16. The landlord claimed that the carpets were damaged by pets during the tenancy. The landlord says despite having the carpets professionally carpet cleaned, which removed the stains and dirt, the premises smelled strongly of animal smells / urine.

17. A smell cannot be shown in photographs, but I accept the oral evidence of the property manager that attended at the property at the end of the tenancy and said the smell was throughout the property.
18. The general cleaners invoice refers to suspending cleaning until “the carpets are sorted”. The property manager said the cleaner was unable to remain in the home because the smell was so strong and unpleasant. The landlord replaced the carpets, and the cleaners invoice notes an additional task after the carpets were cleaned to complete the cleaning.
19. The tenant acknowledged having cats and sometimes dogs at the premises.
20. The landlord said the carpet was 4 years old.
21. The replacement cost for the carpet was $3,230.47 however the landlord’s insurance was accepted, and the landlord claims the insurance excess of $500 from the tenant. I consider the damage to the carpet is likely to have been the result of the tenant carelessly allowing her pets to urinate and defecate in the premises.
22. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
23. The amount ordered of **$500** is proved.

BOND

24. The bond is to be paid to the landlord immediately to offset the amounts ordered.

FILING FEE

25. If an applicant has been wholly successful in their claim, the Tribunal must order that the respondent pay the applicant the filing fee paid for the application.[17] If an applicant has been partly successful in their claim, the Tribunal may order that the respondent pay the applicant the filing fee paid for the application.[18] As the landlord has succeeded with the claim, I have reimbursed the filing fee of **$27**.

SUPPRESSION

26. 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

[17] See section 102 (4)(a) of the RTA.
[18] See section 102 (4)(b) of the RTA.

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. [19]

27. 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.[20]

28. The landlord did not seek name suppression.

29. The tenant seeks name suppression, however the public interest in this case outweighs the tenant's personal reasons for wanting name suppression. Name suppression is declined for the tenant.

N Bradley
11 September 2025

[19] See section 95A (1) of the RTA.
[20] See section 95A (4) of the RTA.

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.