[2025] NZTT 5112108

TENANCY TRIBUNAL AT PAPAKURA | TE TARAIPIUNARA RETIHANGA KI PAPAKURA

APPLICANT: Legacy Portfolio Management Limited

Landlord

RESPONDENT: Frances Mela Martin, Shannon Heemi

Tenant

TENANCY ADDRESS: 360 Creightons Road, Clevedon, RD 2, Clevedon 2582

ORDER

Frances Mela Martin and Shannon Heemi must pay Legacy Portfolio Management Limited $27,147.95 immediately, calculated as shown in table below.

Description	**Landlord**	**Tenant**
Meth screening of house	$287.44	
Meth testing – detailed assessment of house	$3,271.75	
Meth testing – post decontamination of house	$3,122.25	
Meth decontamination (limited to insurance excess)	$2,500.00	
Replace furnishings: blinds and curtains	$14,660.90	
Carpet replacement (less depreciation)	$1,251.07	
Sofa replacement	$1,599.00	
Bookcase replacement	$2,490.00	
Lock/key replacement	$738.54	
Filing fee reimbursement	$27.00	
Total award	**$29,947.95**	
Bond (since refunded to the landlord)	$2,800.00	
Total payable by Tenant to Landlord	**$27,147.95**	

Reasons:

1. Both parties attended the rehearing before me.

2. This rehearing was ordered by adjudicator M Edison after issuance of the initial Tribunal order of 5 May 2025.
3. The bond has since been disbursed to the landlord pursuant to the Tribunal order of 5 May 2025. As the outcome of this rehearing is largely in favour of the landlord, the bond may be retained by the landlord accordingly, as set out in the table above.
4. The landlord has applied for compensation and reimbursement of the filing fee following the end of the tenancy.
5. Having heard from the parties in today's rehearing, I largely adopt the reasonings and conclusions reached by the previous adjudicator, with a few exceptions as set out below.

Is the tenant responsible for the damage to the premises?

6. 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.
7. Tenants also must not use the premises, or permit the premises to be used, for any unlawful purpose. See section 40(2)(b) RTA.
8. The tenancy commenced on 1 February 2024 and was terminated on 24 April 2024 pursuant to an order of the Tribunal under application 4858760. The Tribunal found that the tenants had allowed the premises to be used for an unlawful purpose, namely for possession, use and manufacture of methamphetamine.
9. I am also satisfied on the available evidence given by the police in Tribunal application 4858760 that the tenants permitted the premises to be used for the possession, use, and potentially the manufacture of methamphetamine.
10. Notwithstanding the absence of pre-tenancy methamphetamine testing being conducted in this case, I find on balance that methamphetamine contamination likely occurred during this tenancy.
11. A Police Statement provided by Detective Senior Sergeant Williams dated 16 April 2024, stated:

    a. The Police executed a search warrant at the premises on 10 April 2024.

    b. The occupants at the premises refused to leave the dwelling. After one hour a female left the address who said she was the "occupant". After another hour a male and children left the premises, and then after a further three hours, another male and children left.

c. Whilst clearing a caravan on the property they immediately identified what appeared to be a clandestine methamphetamine lab.

d. Whilst the house was cordoned an occupant inside began burning items in the fireplace at the address, when police later examined the fireplace contained a number of electronic devices including laptops.

e. It is believed the male was trying to destroy evidence relating to the manufacture of methamphetamine whilst in the house.

f. The Police Clan Lab team conducted an examination of the caravan and the dwelling. A clan lab set up comprising of heat source par bomb a distillation condenser and unknown liquids, cooling system were located in the caravan. Likely used to manufacture Methamphetamine.

g. Iodine, which is a precurser chemical used for the manufacture of methamphetamine was located within the main house and bathroom.

h. Once Clan Lab had finished, Police searched the rest of the property and located several items of interest, …

i. Two firearms were located inside the main dwelling as well as a large number of different calibre rounds of ammunition.

j. One adult male was arrested and charged for Methamphetamine related charges and obstruction and is before the courts for this.

12. It is clear to me from the events that occurred immediately prior to the landlord applying to the Tribunal to terminate the tenancy due to the tenant using the premises, or permitting the premises to be used, for an unlawful purpose, that the subsequent methamphetamine contamination confirmed at the premises were attributable to the tenant's occupation of the premises during the tenancy. The absence of pre-tenancy methamphetamine testing being conducted in this case did not, in my view, break the chain of causation established by the police findings before the Tribunal.

13. I therefore reject the tenant's submission that because she has yet to be convicted of any offence and her case is still before the Courts, that I should disregard the evidence and material given by the Police.

14. The discharge or conviction (or otherwise) of the tenant before the criminal courts and/or criminal conviction of the associates of the tenant are not determinative of the material issues before me. I remain satisfied on the preponderance of evidence that methamphetamine contamination has occurred during this tenancy.

15. The tenants were evicted on about 1 May 2024. A methamphetamine screening assessment was performed on 21 May 2024. The screening assessment identified an average of 26µg/100cm² per sample, in a composite of 10 samples taken from various rooms in the house. This meant that, if all the

methamphetamine residues were in one sample, the maximum reading would be 260µg/100cm².

16. Those numbers substantially exceed both current New Zealand Standard of 1.5µg/100cm2 as well as the opinion from the Chief Science Advisor Sir Peter Gluckman of 15µg/100cm2 regarded as acceptable levels.

17. The contamination was at levels considered potentially hazardous for human health. There was likely heavy use of methamphetamine at the premises and quite possibly manufacturing as well.

18. The statement given by a Police Senior Sergeant dated 16 April 2024 said there was a “clan lab” in a caravan on the premises and precursor chemicals to the manufacture of methamphetamine were found in the house. I find that the premises were “damaged” by the contamination and had to be decontaminated.

19. In breach of section 40(2)(b) of the Act, I find that the tenant has used and/or permitted the premises to be used, for an unlawful purpose, and thus liable for the cost of methamphetamine testing and decontamination.

20. The decontamination costs total $13,524.02 for which insurers had paid less the insurance excess of $2,500.

21. I award the uninsured decontamination costs of $2,500, together with methamphetamine testing costs set out in the table above.

22. I have disallowed the landlord’s claim to do with the cost of methamphetamine testing in the sleep out, granny flat and barn of $1,207.50. These areas were locked, and not part of the tenancy, and there is no evidence before me that they were contaminated or ever used or accessed by the tenant. Indeed, the landlord concedes that there is nothing to suggest that the tenant had broken into or trespassed into the sleep out, granny flat and barn at any time during the tenancy. For those reasons, I dismiss the landlord’s claim for methamphetamine testing in the sleep out, granny flat and barn.

23. Furnishings belonging to the owner had to be replaced due to the methamphetamine contamination. The cost of replacing a sofa was $1,599.00 and replacing a Rimu bookcase cost $2,490.00. The costs claimed for replacement of curtains and blinds are also proved.

24. The carpet was removed and replaced due to the contamination. The Management Agreement between the owner and the landlord noted that the carpet and vinyl in the bathrooms were 20 years old, and that the property was built in 1984. I adopt adjudicator Edison’s conclusions that the carpets were due for replacement in any event but award 10% of the cost of new carpet ($12,510.65) to reflect the fact that the old carpet must still have had some useful life ($1,251.07).

25. Lastly, an invoice for $5,439.09 from Searle Builders dated 15 July 2024 refers to replacing a ranch slider door in the sleep out, replacing a damaged handle in the barn door and replacing the glass in the rear door of the granny flat. Despite these areas not being part of the tenancy, the landlord sought reimbursement of this invoice on the basis the damage was caused because of the unlawful use of the property by the tenant.

26. As per my above findings, the sleepout, barn and granny flat were not included in the tenancy and the tenants did not have access to them. Those items were damaged by the Police during execution of the search warrant on 10 April 2024 when the occupants of the house were reluctant to come out of the house when asked to do so by the Police.

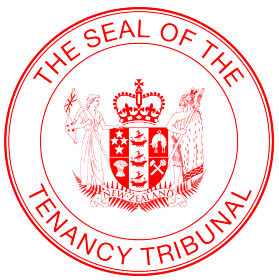
27. In denying the landlord's claim for compensation for the Police damage to the sleepout, barn and granny flat, I am not satisfied that such damage was a foreseeable consequence of the use of premises by the tenant for an unlawful purpose. Even if it was foreseeable, the loss is too remote.

28. The landlord confirmed being contacted by the Police at the material time of their execution of the search warrant on the premises. The landlord had told the Police that the sleepout, barn and granny flat were not part of the tenancy and that the tenant did not have access to those areas. No one was hiding or seeking refuge at the sleepout, barn and granny flat at the material time of the Police executing the search warrant. I consider that the tenants are only responsible for the actions of the Police to do with their tenanted premises, ie., the house.

29. For those reasons, I dismiss the landlord's claim for reimbursement of the repair invoice for $5,439.09 to do with repairs of the sleepout, barn and granny flat.

30. Only the claims set out in the table above are proved, including the costs of replacement of keys and locks due to eviction proceedings being carried out on the premises by the landlord.

31. I also order reimbursement of the filing fee because the landlord is substantially successful in their claims.



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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.