[2025] NZTT 5238494

TENANCY TRIBUNAL AT MANUKAU | TE TARAIPIUNARA RETIHANGA KI MANUKAU

APPLICANT: Ning Wang (aka Michael Wang)

Landlord

RESPONDENT: Mana Faraimo, Joshua Faraimo

Tenant

TENANCY ADDRESS: 2 Grammar School Road, Pakuranga, Auckland 2010

ORDER

1. The Bond Centre is to pay the bond of $1,860.00 (5946369-001) immediately apportioned as follows:

Ning Wang:	$207.77
Mana Faraimo and Joshua Faraimo:	$1,652.23

2. Mana Faraimo and Joshua Faraimo shall pay Ning Wang $207.77 from the bond being standard and wastewater usage charged on 6 November 2024 and 10 December 2024 as calculated in the table below

Description	**Landlord**	**Tenant**
Water rates charged 6/11/2024	$91.21	
Water rates charged 10/12/2024	$116.56	
Total award	**$207.77**	
Bond	$207.77	$1,652.23

Reasons:

1. Both parties attended the hearing. The landlord Ning Wang attended the hearing and the tenant Joshua Faraimo attended the hearing on behalf of both named tenants. The Tribunal hearing was assisted by a Mandarin interpreter.
2. This tenancy began in 2014 and ended on 10 December 2024.

The parties

3. The tenancy agreement provided names the landlord as RD and A Mosheim and the tenant as Mana Faraimo.
4. The application filed is seeking payment of water charges and bond refund.
5. This matter was first set down for hearing on 7 July 2025. At that hearing the landlord advised that there was a change in landlord as he purchased the property in April 2022.
6. Joshua Faraimo emailed the Tribunal to advise that he is the tenant in this matter but not named as a party. He advised that his father was the former tenant and he took over the tenancy.
7. The Tribunal added Joshua Faraimo as a party and the hearing was adjourned for Joshua Faraimo to be served and attend the hearing and also for the landlord to file further evidence to prove his claim as follows:
8. The Tribunal stated in the adjournment order dated 7 July 2025 at paragraph 7:

   "7. In order for the Tribunal to consider the claim the following is required:

   (a)Evidence of who the parties to the tenancy are. If there has been a change in landlord and/or tenant evidence of these changes and when they took place.

   (b)Evidence that the tenant was billed regularly for water usage and that the tenant was not billed for fixed charges.

   (c)Evidence of the water charges that are exclusively attributable to the tenant's use of the premises."
9. The Tribunal directed that any further evidence was to be filed 7 days prior to the hearing.
10. No evidence was filed prior to the hearing. The landlord advised he had difficulty uploading the evidence so brought it to the hearing.
11. The parties gave verbal evidence that the property was purchased by Mr Wang in April 2022. He visited the home and met Joshua Faraimo and introduced himself as the new landlord. He stated that he assumed he was speaking with Mana Faraimo.

12. Joshua Faraimo advised that he is the son of Mana Faraimo and he and his family lived at the home with his father. He stated that prior to the change in landlord he spoke with the previous landlord as his father was moving out but he wished to continue the tenancy. He stated that the previous landlord agreed to this, however, nothing was formalised in writing.
13. Joshua Faraimo stated that he explained the change in tenant to Mr Wang when he met him.
14. Mr Wang provided a copy of a text message he sent stating *"Hello Josh, I'm Michael Wang and will be the new owner of the property, please deposit the weekly rent ($640.00)to my account from 08/04/2022. Account details are below…"*
15. There is no dispute that from then on the rent was paid to Mr Wang.
16. The bond continues to be lodged under the name Mana Faraimo.
17. Having considered the evidence I find that there has been a change of landlord to Ning Wang (aka Michael Wang) from April 2022. I find that there is an implied agreement that Joshua Faraimo be added as a tenant to this tenancy and as such he was added as a party to these proceedings.
18. I now turn to consider the landlord's claims.

The Claim

19. The landlord seeks payment of water charges of $3470.00 and bond refund.
20. The onus is on the landlord to prove the claim for water charges on the balance of probabilities. The Tribunal will carefully consider the verbal evidence of the parties and will also look to any documentary evidence provided to support the claim and will consider this in light of the applicable law.

The Law

21. Section 39 of The Residential Tenancies Act 1986 provides that the landlord is responsible for all outgoings that apply whether or not the premises is occupied. That is why the landlord is responsible for fixed charges on the water bills. The tenant is responsible for all outgoings in respect of the tenancy premises that are exclusively attributable to the tenant's occupation of the premises or the tenant's use of the facilities. This requires a transparent means of quantifying the use of water at the tenancy premises during a tenancy and communicating this to the tenant.
22. In his decision in Woollams v Simpson CIV 2005-004-1583 16/3/2006 in the District Court in Auckland, Judge McElrea, observes that there is an implied term in a tenancy agreement that the landlord ought to provide accounts to the

tenant at regular intervals so as to enable payment to be made. At paragraph 13 he states "… in my view, the implied term which I read into the Act and into this agreement is necessary in order to make the clause a workable one from a commercial point of view, and in order to decide this matter according to the substantial merits and justice of the case [as provided by s85(2) of the Residential Tenancies Act 1986]."

23. At paragraph 9 of his decision Judge McElrea states "For any tenant to be supplied with a bill for three years' water rates at the end of a tenancy is, in my view, quite unconscionable."

24. The District Court considered that the water charges that arose within a reasonable time frame prior to the application to the Tenancy Tribunal were recoverable and ordered the tenant to pay the last two accounts.

25. Parties also have a duty to mitigate any loss when there has been a breach by the other party. Section 49 of the RTA states that where there is a breach the other party has a duty to mitigate damage or loss as follows:

    "Where any party to a tenancy agreement breaches any of the provisions of the agreement or of this Act, the other party shall take all reasonable steps to limit the damage or loss arising from that breach, in accordance with the rules of law relating to mitigation of loss or damage upon breach of contract."

The Evidence

26. The landlord claimed that the tenant owes water in the sum of $3740.00

27. At the hearing the landlord provided an excel spreadsheet which records water charges from 6 May 2022 to 21 August 2025 together with some payments in 2022 and 2025. There are no totals on the spreadsheet and it does not separate out the charges exclusively attributable to the tenant's usage as fixed charges and penalty charges are also listed.

28. The landlord did not provide copies of the water invoices.

29. It is not clear from the evidence filed that the amount sought is proved.

30. The landlord sought further time to file more evidence but as this hearing is almost five months after the application was filed and the tenancy ended in December 2024 I consider the landlord has had ample time to provide evidence and the request for further time was declined.

31. The tenant stated that letters that he understood to be from the water company came to the address during the tenancy addressed to the landlord's company name but due to privacy reasons he was not comfortable to open these without permission from the landlord. He stated that he informed the landlord that mail addressed to his company was coming to the premises. He stated that on one

occasion he messaged the landlord offering to pay the water direct and be reimbursed for the fixed charges but this was not put in place as when he called the water company to inquire about paying for water they would not speak to him as he was not the account holder.

32. The landlord stated that he assumed the tenant was paying for the water and never checked up on this. He stated that he agreed to pay the tenant $20 per month for the fixed charges but never did this as the tenant did not give him an account number. The spreadsheet provided by the landlord records fixed charges of greater than $20 per month.

33. It is possible for a landlord to arrange for the water charges to be sent direct to the tenant but then must have an arrangement in place to monitor payment and ensure the fixed charges are deducted and paid by the landlord. The responsibility is on the landlord to set up the arrangement not the tenant.

34. In this case the landlord took no active steps during the tenancy to monitor receipt of invoices or put in place an arrangement for payment of the fixed charges. Although there are some intermittent messages between the parties about water which indicate both parties knew the water was not getting paid no arrangement was ever put in place.

35. The landlord took no active steps to follow this up and address the water charges until after the tenancy ended and now seeks payment of a lump sum of $3470.

36. The landlord knew or ought to have known that the tenant was not paying for water but took no steps to mitigate any loss arising out of this.

The Decision

37. In line with the District Court decision referred to above I order the tenant to pay the final two water invoices as I consider these arose within a reasonable time frame towards the end of the tenancy. The excel spreadsheet records charges of water and wastewater for the November and December 2024 invoices as $91.21 and $116.56 which totals $207.77 and this amount is ordered accordingly.

38. I dismiss the remainder of the landlord claim for the following reasons:

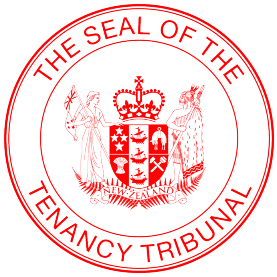
    (a)The landlord has not provided sufficient evidence to prove the total amount of water owed by the tenant on the balance of probabilities.

    (b)Even if the landlord could prove the amount owed I am not satisfied that the landlord made arrangements during the tenancy for the tenant to be charged on a regular basis for the actual usage less fixed charges.

(c)The landlord has not taken all reasonable steps to mitigate the loss and has instead allowed the situation to continue and then sought a large lump sum payment following the end of the tenancy.

39. A split bond refund is ordered accordingly.

40. As the landlord has not been wholly or substantially successful with his claim I have not ordered reimbursement of the filing fee and have not ordered suppression of his details. See sections 102(4) and 95A(1) Residential Tenancies Act 1986.



G Guptill
22 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.