[2025] NZTT 5282144, 5280234

TENANCY TRIBUNAL AT NORTH SHORE | TE TARAIPIUNARA RETIHANGA KI ŌKAHUKURA

APPLICANT:	Boronia Trust (Trustees: Kate Bromfield & Michael Rodgers) Landlord
RESPONDENT:	Erin Brown Tenant
TENANCY ADDRESS:	Unit/Flat 2, 36 Beulah Avenue, Rothesay Bay, Auckland 0630

ORDER

1. The landlord is to pay $27.00 to the tenant for reimbursement of the filing fee.
2. The landlord's applications are dismissed.

Description	**Landlord**	**Tenant**
Filing fee reimbursement		$27.00
Total award		**$27.00**
Total payable by Landlord to Tenant		**$27.00**

Reasons:

1. Both parties attended the hearing.
2. The tenant applied for an order in relation to the landlord's right of entry.
3. The landlord applied for an order providing landlord entry and for exemplary damages.
4. The tenancy began on 30 November 2024 and is for a fixed term due to end on 30 November 2025.

5. In early February 2025 there was a pipe leak which the tenant notified the landlord of. Repairs were carried out to the pipes but there was damage to the floor and the subfloor in the entranceway.

6. After assessment by insurers and quotes from builders the landlord proposed carrying out repairs to the area. The scope for the work increased beyond what was covered by the insurance company to include replacement of the flooring (by overlaying the current flooring) in the lounge, kitchen and dining area which adjoins the entranceway. Included in the work was also removal of the firebox which is in the lounge area. The decision to replace the flooring was because the builder advised it was not possible to accurately match the current flooring in the open plan space.

7. After the leak the landlord proposed ending the fixed term tenancy early and then decided to put the premises on the market for sale.

8. The property was on the market for sale at the beginning of June 2025 and sold at the end of June 2025. Settlement is to take place on 8 December 2025, a week after this tenancy ends.

9. Section 48(2) of the Residential Tenancies Act 1986 provides,

   The landlord may enter the premises –

   (d) for the purpose of carrying out necessary repairs to or necessary maintenance of, the premises, at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it at least 24 hours before the intended entry; or

10. The issue in this situation is whether the repairs are "necessary". Necessary repairs include fixing anything that is broken or not functioning as it should and keeping the premises in a reasonable state of repair as required by the Act[1]. Also relevant is whether the repairs are required so as not to cause further damage to the property.

11. At the hearing the landlord said that the condition of the premises is getting worse.

12. The Tribunal heard by phone from a witness for the landlord, her builder, Tony Gamble from Absolute Building Solutions. Mr Gamble said that there was no risk in delaying the work because the leak was resolved and there is no further water ingress. He confirmed it was a cosmetic change but that there is a risk of mould growth but no evidence of this is apparent at this stage because if it was present, it would be under the flooring. Mr Gamble estimated that the area where the new flooring was to be overlaid was 50m^2.

[1] Section 45(1)(b) Residential Tenancies Act 1986

13. The leak occurred in early February 2025. The repairs (including the expanded scope of works) were planned to be carried out in June 2025. This four month delay is evidence that there was no urgency in relation to the repairs.

14. After the leak several people had attended at the tenancy including the landlord, a plumber, contractors to dry the premises, an insurance assessor and two builders. Then around the same time in relation to the sale of the property a real estate agent and a valuer attended as well as prospective purchasers who attended the six open homes held over three weekends.

15. The tenant complied with all these instances of landlord entry. At the time of the planned repairs the tenant asked whether the repairs could be carried out between 9am and 5pm. The landlord's builder advised that he could only move the start time from 7.30am until 8am. I note that the Act[2] provides that the work must be carried out between 8am and 7pm.

16. The tenant then sent an email to the landlord advising that they did not want the floors to be done during the tenancy due to the scope of works, the timing and location in the house.

17. The situation deteriorated between the parties and the landlord issued the tenant with a 14-day notice. The landlord's position is that she gave the tenant more than 24 hours' notice of the planned repairs. The builder's evidence is that the repairs could accommodate the tenant living at the premises. While that may be so, it still means that contractors are at the premises in the open plan kitchen, dining and lounge area carrying out repairs that are not urgent and the tenant, her husband and two young children would need to accommodate this by adjusting their lives from 8am (to up to 7pm) for a period of at least a week.

18. At the hearing the landlord acknowledged that the situation is different at the date of hearing (19 September 2025) than it was three months earlier in June. Since filing her application, the landlord has sold the property and allowed a week after the tenancy ends for the work to be carried out before settlement.

19. There is no condition in the sale and purchase agreement that the repairs are required but after the hearing ended the landlord provided the Tribunal with an unsigned disclosure document stating that the repairs will be carried out before settlement. That document does not change my view and this order.

20. Given that there is no evidence that the repairs are "necessary" or causing any further deterioration, the uncompensated inconvenience already suffered by the tenant and the time available to carry out the repairs before settlement, I see no reason for an order for the repairs to be carried out during this tenancy.

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[2] Section 48(2)(d) Residential Tenancies Act 1986

21. The landlord applied for exemplary damages in relation to the tenant not allowing the landlord to enter the premises, without reasonable excuse, in circumstances in which the landlord is entitled to enter[3]. The application of this unlawful act is also dependent on whether the repairs are necessary[4].

22. For the reasons above I do not consider that the repairs are necessary. As the tenant has a reasonable excuse to not allow the landlord to enter the premises there is no unlawful act and therefore exemplary damages are not available.

23. I make no order in relation to landlord entry for the repairs or for exemplary damages.

24. Because Erin Brown has substantially succeeded with the claim I have reimbursed the filing fee.

N Walker
19 September 2025

[3] Section 48(4)(b) Residential Tenancies Act 1986
[4] Section 48(2)(d) Residential Tenancies Act 1986

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.