[2025] NZTT 4910633

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT: Xinxian Wang

Tenant

RESPONDENT: Zihan Fu

Landlord

TENANCY ADDRESS: Unit/Flat Flat 34, 39 Pitt Street, Auckland City Central, Auckland 1010

ORDER

1. Zihan Fu must pay Xinxian Wang $1,217.00 immediately, being the bond of $990.00, refund of the cleaning fee of $200.00, and the filing fee of $20.44.

Reasons:

1. The hearing was conducted via teleconference. The calls to the applicant were not answered. The respondent answered. A court appointed Mandarin interpreter had been arranged and was joined to the hearing.
2. There has been no Registry contact from the applicant since the hearing regarding this, either querying why she was not called (if the number used was incorrect) or explaining why the call was not taken.
3. This was a continuation hearing after a previous order and rehearing was granted, several adjournments and part-heard jurisdictional hearings.
4. A failure to attend by an applicant will often result in the dismissal of the application.
5. In this instance, I have determined it appropriate to conclude this application via a determination now. In deciding this I have balanced the long history of this application and previous in-person hearings, the lack of any new evidence since the last hearing, and the requirement of section 85(1) Residential Tenancies Act 1986 ("RTA") that the Tribunal exercise its jurisdiction in a "manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies".
6. It is time to bring this dispute to an end.

History

7. This application was submitted on 10 June 2024. A previous application to the Disputes Tribunal regarding the same dispute had been lodged but jurisdictionally rejected there.
8. The matter was first heard I this Tribunal in August 2024 by another adjudicator, without the respondent appearing. An order confirming jurisdiction of this Tribunal and orders in favour of the applicant for compensation, exemplary damages and the return of the bond were made.
9. An application for a rehearing was made by the respondent and an order made in October 2024 granted a rehearing to be heard by a different adjudicator, to firstly consider jurisdiction and then the substantive if jurisdiction was confirmed.
10. The matter first came before me via teleconference in December 2024. The respondent was overseas at that time and claimed she was unable to access and provide critical evidence until she returned to New Zealand in February 2025. An adjournment was granted and an in-person hearing scheduled for June 2025.
11. At that time the respondent was again back in China and joined by video conference. On 17 June 2025 a further adjourning order was required due to some confusion regarding evidence as provided. An additional impediment was

that a number of documents were WeChat messages in Mandarin without formal translation. Timetabling was set and further documents received. An order confirming jurisdiction was made on 21 July 2025 with an adjournment for a hearing to consider the substantive claims. Final timetabling for any documents for substantive was ordered (no later than five working days before the hearing).

12. The parties received a notice of the substantive hearing for 17 September 2025 (this hearing). No further documents had been submitted after the 21 July order.

13. The previous orders provided background as well as detailed reasons for the jurisdiction determination. Some sections of the 21 July 2025 order are repeated below for context.

> 10. The landlord provided a tenancy agreement that established her and one other person as tenants with a landlord named Elva Li. That tenancy agreement struck rent at $900.00 and required a bond of $2,700. The tenancy commenced 26 September 2023 as a one-year fixed term. It appears Ms Li lives in China and she had a relative living locally who interfaced with those two tenants. The tenancy of Zihan Fu was brokered through an internet community application. That bond appears to never have been lodged by Ms Li.
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> 11. A separate tenancy agreement was entered into between Zihan Fu as landlord and Xinxian Wang as tenant. It appears Ms Wang moved in shortly after Ms Fu as one claim relates to a payment for cleaning demanded and made on or around 28 September 2023. A tenancy agreement was later signed, dated 21 February 2024. Ms Wang has consistently stated that Ms Fu acted as her landlord. This was not, in her view, a flatmate arrangement.
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> 12. Ms Fu claims that Ms Wang joined her tenancy as a third tenant under her tenancy agreement but she was not recorded on the tenancy agreement as such. Payments by Ms Wang were made to Ms Fu's bank account, as provided in the tenancy agreement.

14. And later:

> 15. This tenancy construct and operation is confusing. There were other instances of short-term subletting under residential tenancy agreements, again in the name of Ms Fu as landlord. I accept Ms Fu may have her own issues regaining her bond and her tenancy. Ms Fu considers it would be unfair to require her to pay Ms Wang back any bond. Given the time lapsed, it would have been appropriate for a tenant application by Ms Fu and her co-tenant against their landlord regarding the bond and its treatment. Ms Wang does not have that legal recourse. I encourage her to consider such action. If successful, it may alleviate some concerns regards any future obligation she might have to pay Ms Wang. That is a decision for her.

20. I encourage both parties to review all evidence provided to date and ensure any further evidence regarding the issue of bond lodgment, cleaning fee, smoke alarms, ceiling leak and anything else of relevance has been provided. I expect the respondent, if claiming her landlord failed to action, to evidence how and when any such issues raised by Ms Wang were communicated to the landlord.

15. This application deals with the claims of Ms Wang only. It was open to Ms Fu to pursue her landlord herself. She submitted her parents had advised her not to bother with this, given the challenges of pursuing her overseas landlord, Ms Li. That is her decision to make but given there is no contractual relationship between Ms Wang and Ms Li, the only recourse open to Ms Wang is as pursued here.

Claims

16. The tenant sought the return of her bond as well as compensation of $3000.00 due to a leaky ceiling and a lack of smoke alarms, as well as the demand of a cleaning fee from her early in the tenancy.

17. Exemplary damages for the landlord's failure to lodge the bond were also sought.

Should the tenant be compensated?

18. I have considered the claims for compensation.

19. Given the mingled of this, and any linked tenancy agreement and operation, I have also considered application of the previously referenced section 85 RTA. This section also provides that the Tribunal shall determine a dispute according to the substantial merits and justice of the case and in doing so, shall have regard for the law but shall not be bound to give legal effect to strict legal rights or obligations or to legal forms or technicalities. This provision recognises that, although applying established legal principles will generally produce a fair result, there are circumstances where it will not. In this situation, the Tribunal is entitled to depart from the strict application of the law to achieve a just outcome. Equally, where the law is uncertain, the Tribunal may adapt an approach that best meets the merits and justice of the case.

20. I am satisfied that there was no evidence to support the demand for the payment of $200.00 as made for cleaning at the start of the tenancy. It was open to Ms Fu to challenge that demand with Ms Li at the time if appropriate. The $200.00 paid is returned to the tenant via this award.

21. In terms of the claims for the ceiling leak and smoke alarms, I accept the tenant was more than likely disadvantaged by any such failures to maintain. However, I do not consider the sub-landlord here was greatly advantaged financially (if at all) by the tenancy arrangement she put in place, when considering the total

rent due under the “master” tenancy agreement for the premises. Given she will be liable for any further compensation orders on top of those made, I have some reservation regarding full liability.

22. Having considered the confused arrangements, actions and timeline, I have determined that the landlord be accountable for the bond and cleaning fee of $200.00, this being a more just outcome than if the full compensation claimed was ordered. In finding this, I have some consideration of the likely challenge for Ms Fu successfully pursuing and receiving any monetary order Ms Li by way of her own application, if so proven.

Did the landlord fail to lodge the bond?

23. The tenant paid the landlord a $990.00 bond.
24. The landlord did not lodge the bond with the Bond Centre. She claims it was paid to her landlord.
25. A landlord must send any bond payment to the Bond Centre within 23 working days after the payment is received.
26. Breaching this obligation is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of $1,500.00.
27. The landlord failed to lodge the bond within the requisite time. I find they have committed an unlawful act.
28. Section 109(3) of the RTA provides that where a party has **committed an unlawful act intentionally**, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party’s intent, the effect of the unlawful act, the interests of the other party, and the public interest.
29. I find the landlord did not intentionally commit an unlawful act here. She too has failed to have her bond returned.

Should the landlord return the bond of $990.00

30. In short, yes. The bond was demanded and paid. The tenancy agreement confirms Ms Fu as the landlord and regardless of any on-payment to Ms Li, if as claimed, she remains legally responsible and has taken no steps of her own to have the full bond returned. While this may seem unfair to Ms Fu, this reflects who had control of the bond process and the lack of any other recourse open to Ms Wang.
31. Ms Fu could have taken her own steps to recover the bond if lodged with Ms Li as claimed. This was best done as soon as Ms Wang demanded her bond returned at the end of the tenancy. Such recourse remains open to her.

Filing fee

32. Xinxian Wang has had sufficient success with the application to have her filing fee reimbursed.

M Brennan
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.