[2025] NZTT 5261819

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Michelle Courtney Butler-Willis, Adam Burgess Tenant
RESPONDENT:	Bronwyn Kay Properties Limited T/A The Agency Landlord
TENANCY ADDRESS:	304 Ormond Road, Mangapapa, Gisborne 4010

ORDER

1. The application is dismissed.

Reasons:

1. This matter concerns an application by tenants, Michelle Courtney Butler-Willis and Adam Burgess, for compensation of $1,969 for electricity charges and $10,000 for lawn mowing costs, totalling $11,969. The tenants say that electricity was included in the rent under the original tenancy agreement and that the landlord unilaterally removed this benefit from 5 October 2021 without a written variation. They also say lawn mowing was the landlord's responsibility, but they mowed the lawns themselves for over three years without receiving the agreed shed access in return.
2. The tenancy commenced on 19 March 2021 and ended on 13 August 2024. The original tenancy agreement tenancy was for a fixed term to from 19 March 2021 to 5 September 2021. The agreement records that the landlord was responsible for power, gas, and lawns/garden maintenance.
3. The Tribunal must determine:
    a) Whether the landlord unlawfully varied the tenancy agreement by requiring tenants to pay electricity from 5 October 2021, and if so, whether compensation of $1,969 is payable.
    b) Whether the tenants are entitled to compensation for lawn mowing and, if so, in what amount.

Legal Framework

4. Section 13A(1) of the Residential Tenancies Act 1986 ("RTA") requires all tenancy agreements to be in writing and to contain certain prescribed terms, including any services that are included in rent.
5. Section 13B and 13C provide that any variation to a tenancy agreement must be in writing and signed by both parties, unless it is a minor change agreed verbally.
6. Where a tenancy agreement is silent on particular responsibilities, default provisions apply.
7. Section 45(1)(d) requires landlords to maintain the premises, including the grounds, where such maintenance forms part of the tenancy.
8. Section 40(1)(e) requires tenants to keep the premises reasonably clean and tidy, including lawns and gardens, unless the tenancy agreement specifically states otherwise.
9. The Tribunal may award compensation under section 77 where loss is proven due to a breach of the Act or tenancy agreement.
10. Under section 85, the Tribunal must act fairly and according to the substantial merits of the case.
11. The burden of proof lies with the party bringing the claim, in this case the tenants, and must be satisfied on the balance of probabilities.

Electricity Claim

12. The original tenancy agreement confirms that electricity was included in the rent at the outset. The tenants say the landlord unilaterally removed this benefit from 5 October 2021, requiring them to take over the electricity account and begin paying directly, without any written variation to the agreement.
13. The landlord provided a written statement from the owner in evidence which accepts that electricity was paid for the first six months of the tenancy but says there was a verbal agreement in or around August 2021 that the tenants would assume responsibility for the electricity going forward. While there is no written variation signed by both parties, the landlord argues that the tenancy moved into a new periodic phase following the end of the fixed term agreement and that the change was agreed orally as part of that shift.
14. Although section 13C requires that a variation to a tenancy agreement be in writing and signed, it is also true that when a fixed-term agreement ends, the parties may form a new agreement—written or oral—under section 13. The Tribunal notes that the tenants did in fact assume responsibility for electricity payments from October 2021 and continued to do so for nearly three years without raising a formal objection or claim until after the tenancy ended in 2024.

15. This conduct is significant. It suggests acceptance of the new arrangement and undermines the argument that the landlord unilaterally imposed the change. The Tribunal also notes that the tenants have not produced any evidence of contemporaneous protest or challenge to the new arrangement, despite having had multiple opportunities to do so. On the balance of probabilities, the Tribunal is not satisfied that the landlord breached the agreement or that the variation was made unlawfully.

16. Accordingly, the claim for reimbursement of electricity charges is dismissed.

Lawn Mowing Claim

17. The tenants say the landlord was responsible for lawn mowing under the tenancy agreement but that they undertook the mowing themselves over a period of more than three years. They assert that this was done in exchange for the use of a lockable shed, which was never made available. They now seek compensation of $10,000 for the work done.

18. The tenants calculated their claim by taking a final invoice from the landlord for lawn mowing at the end of the tenancy—$115—and multiplying this by 45 mows per year over three years, then halving it to arrive at a round figure of $10,000. However, they have not provided any photographs, dated records, receipts for materials, or corroborating evidence to substantiate the frequency of lawn mowing or the actual loss suffered.

19. The landlord says that there was no formal agreement regarding compensation and that the tenants volunteered to mow the lawns as part of a mutual understanding. The owner confirmed in their written statement that the lean to the garage was cleared for the tenants use. It was noted that the garage was not part of the original agreement as this used by the owner for storage.

20. The Tribunal must assess whether there was a binding agreement, whether the consideration (shed use) was provided, and whether the tenants have proven the quantum of loss.

21. The Tribunal accepts that the tenants did undertake lawn mowing but is not satisfied that the parties entered into a binding agreement that would entitle them to reimbursement or compensation. Nor is the Tribunal satisfied that access to the shed was definitively withheld. Even if there was a misunderstanding or breakdown in communication, the amount claimed appears speculative and lacks evidentiary support. The Tribunal is required to assess claims based on evidence, not estimates or assumed values.

17. For these reasons, the claim for lawn mowing compensation is also dismissed.

J Setefano
23 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.