TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT: Inspire Real Estate Limited As Agent For Carolyne Cappola And Justin Putze / Lotus Investments Trust

Landlord

RESPONDENT: Renee Robinson

Tenant

TENANCY ADDRESS: Unit/Flat A, 26 Hakeke Street, Whanganui East, Whanganui 4500

ORDER

1. Renee Robinson to pay Inspire Real Estate Limited As Agent For Carolyne Cappola And Justin Putze / Lotus Investments Trust $1,970.01 from the bond, calculated as shown in table below.
2. The Bond Centre is to pay the bond of $2,200.00 (BN-00040058) immediately apportioned as follows:

Inspire Real Estate Limited As Agent For Carolyne Cappola And Justin Putze / Lotus Investments Trust:	$1,970.01
Renee Robinson:	$229.99

Description	**Landlord**	**Tenant**
Rent arrears	$2,671.43	
Compensation: Loss of amenity - Oven		$150.00
Compensation: Loss of amenity - Dishwasher		$51.42
Exemplary damages		$500.00
Total award	**$2,671.43**	**$701.42**
Net award	$1,970.01	
Bond	$1,970.01	$229.99

Reasons:

1. Both parties attended the remote hearing on 24 September 2025.
2. This was a fixed term tenancy which commenced on 4 February 2024 and was due to end 4 February 2026.
3. The tenant says that she gave notice terminating the tenancy to the landlord on or about 30 May 2025. The landlord says that the notice was not received and that they became that the tenant had left the premises at a later date. Rather than pursue the matter further, the landlord took a pragmatic approach of accepting this as the tenant giving 21 days' notice, which brought the tenancy to an end on 13 July 2025.
4. On 21 July 2025, the landlord filed its claim with the Tribunal. The landlord claims;
    - Rent arrears
    - Reimbursement of the filing fee.
    - Release of the bond.
5. On the 12 September 2025, the tenant filed her claim with the Tribunal, she claims:
    a. Release of the bond.
    b. That the landlord failed to maintain the property to a reasonable condition:
        1. Flooring in the shower.
        2. Oven not working
        3. Dishwasher not working.
    c. Failure by the landlord to provide the premises in reasonable state of cleanliness.
    d. Exemplary damages.

The burden of proof

6. A party who brings a claim to the Tenancy Tribunal must prove on the balance of probabilities (more likely than not) that their version of events took place. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden of proof.

7. The issue of evidence at Tenancy Tribunal hearings was considered by the District Court in *Kaipo v Clarke & McCarthy (DC) TT233/02*. Judge Mather stated:

   "…[the applicant] needs to be reminded that like anyone who brings an application before a Tribunal or a Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to provide the necessary evidence. It is not up to the other parties and it is certainly not up to the Tribunal to extract evidence."

Relevant legal principles – compensation and exemplary damages

8. The Tribunal may award compensation to a tenant for losses arising from a proven breach or breaches by the landlord of their statutory responsibilities. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.

9. In *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667 the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:

   - The nature of the breach.
   - The duration of the breach; and
   - The effect of the breach on the party.

10. Exemplary damages are different. They are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

    Exemplary and punitive [damages] are different words for the same thing. The damages are
    exemplary because they are meant to teach an example to the guilty officer and others. They
    are punitive because they are meant to punish. They are like a fine, though they go to the
    citizen who has been the victim of conduct.

11. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has, with intent, committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must consider the factors set out in section 109 (3) RTA. Those factors are:

    - The intention of the person
    - The effect of the unlawful act

• The interests of the party against whom the unlawful act was committed; and
• The public interest.

DECISIONS AND REASONS.

Rent arrears

12. This was a fixed term tenancy. A fixed term tenancy may only be ended with the consent of both parties or order of the Tribunal.
13. The tenant had become frustrated as the property had been put on the market for sale and she considered that the landlord was not complying with its maintenance obligations. The tenant's evidence was that she had given written notice to the landlord to terminate the tenancy. The tenant was not as a matter of law entitled to give notice.
14. The landlord seeks rent arrears of $2,671.43 to 13 July 2025. The claim is proven. The tenant is ordered to pay that sum.

Failure to maintain.

15. The tenant claims that the landlord failed to maintain the property. Landlords have an obligation to provide and maintain the property in a reasonable condition, taking into account the age and character of the premises. (s45(1)(b RTA).
16. The landlord’s obligation to repair is not absolute, a landlord does not have to foresee a latent and unobservable defect before it causes damage, and a tenant must notify the landlord as soon as damage becomes apparent as to the need for repair. Together these obligations mean that a landlord has a responsibility to only repair and maintain items after they are broken or damaged or a reasonably observable as being damaged and in need of repair.

Flooring in the shower

17. The tenant said that she noticed that the flooring in the bathroom next to the shower was soft at the commencement of the tenancy. The tenant was concerned that she or one of her children could fall through the floor. The tenant advised the property manager of the issue on 12 February 2025.
18. The property manager arranged for a contractor to look at the issue. The tenant says that she was told by the contractor that the flooring on the sides of the shower was not safe. She should be careful in using the shower.

19. The tenant asked the landlord what was happening with the repairs. She said that the landlord indicated that no repairs would be carried out on the shower until the new owner took possession of the premises.

20. The tenant said that she did not think that the issue was taken seriously by the property manager despite her concerns about safety.

21. The landlord said that she had been informed of the issue by the tenant on or about 18 February 2025. The landlord said she did not think that the shower flooring was too soft. She arranged for a plumber to fix the leaks.

22. A maintenance contractor was called by the landlord. The maintenance contractor confirmed that the floor was rotten and that it was a major job to pull the shower out and replace it. The landlord said that she was not told that the shower was unsafe. The owner informed the property manager that the work would be completed by the new purchaser and so nothing was done by the landlord.

23. The burden of proof in this claim is on the tenant. I am satisfied on the evidence provided that the tenant informed the landlord of the problem with the floor and that the landlord has not repaired the floor within a reasonable. The landlord has committed an unlawful act.

Oven

24. The oven did not work at the commencement of the tenancy.

25. The landlord was informed of the problem on 10 February 2025.

26. There was correspondence between the parties over the next weeks in an attempt to have the oven replaced. The landlord arranged for the replacement oven and it was installed on 3 March 2025.

27. The Tribunal must consider whether a period of 3 weeks it was a reasonable time to complete the replacement. What will be a reasonable time will be case specific on every occasion. I consider that that period of time to complete the work was not unreasonable and therefore dismiss any claim for exemplary damages. I consider that there has been a loss of amenity to the tenant during the three-week period where she had no oven. I access the weekly loss of amenity at $50.00 per week. The landlord is ordered to pay $150.00 to the tenant.

Dishwasher

28. The dishwasher did not work at the commencement of the tenancy.

29. The landlord was informed of the problem on 10 February 2025.

30. There was correspondence between the parties over the next weeks in an attempt to have the dishwasher replaced. The landlord arranged for the replacement of the dishwasher and it was installed on 28 February 2025.

31. I consider that the period of time for completion of the replacement was not unreasonable and therefore dismiss any claim for exemplary damages. I consider that there has been a loss of amenity to the tenant during the 18 days that the tenant was without a dishwasher. I access the weekly loss of amenity at $20.00 per week. The landlord is ordered to pay $51.42.

Failure to provide in a reasonable state of cleanliness.

32. Section 4591)(a) RTA requires a landlord to provide the premises in a reasonable state of cleanliness. This includes lawns and gardens.

33. The tenant said that at the commencement of the tenancy she discovered a large rubbish pile at the back of the section. She told the landlord this on the 12th of February. The landlord said that it had been noted.

34. The tenant said that she had put up a gate to prevent her children playing in the rubbish pile. The rubbish pile was still present when the tenant moved out. She said that rodents had twice come from the pile and entered the house. The landlord had indicated that nothing would be done about the pile until the new owners moved in.

35. The landlord said that she was aware of a pile of grass clippings that had been left at the rear of the property, but otherwise was not aware of the issue and says that she had not been told about it by the tenant.

36. A failure to comply with this section is an unlawful act for which exemplary damages may be awarded.

37. The burden of proving the claim is on the tenant. Entry inspection photos show an area at the rear of the premises where there appears to be both rubbish and grass clippings. I am satisfied that the landlord (having taken the photos] was aware of the issue. I consider that the landlord has committed an unlawful act. The relevant factors being;

Should exemplary damages be awarded for the breaches?

38. I have found that the landlord failed to maintain the shower floor and failed to provide the premises in a reasonable state of cleanliness. Breaches under s45(1)(a) and (b) RTA that are both breaches under s 45(1A) RTA, to which exemplary damages of up to $7200.00 may be awarded.

39. The District Court has held that when there are multiple breaches under this section (section 45(1A) RTA) that the maximum award is $7,200.00.

40. I award the tenant $500.00 for this failure to maintain and to provide premises in a reasonable state of cleanliness. In coming to this award I have taken into account the following factors:

    - That the landlord had a level of intentionality – The landlord was aware of both issues and failed to act.
    - That there is public interest in ensuring that landlords comply with their obligations and that when they don't, that there is a sufficient amount awarded so as to act as a deterrent to other landlords.
    - The breaches are at the lower end of the scale.

41. The landlord applied for reimbursement of the filing fee. The landlord has not been wholly or substantially successful in this hearing. The landlord's application is dismissed.

S Young
25 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.