[2025] NZTT 5230475

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] Landlord
RESPONDENT:	[The respondent/s] Tenant
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the parties' names and identifying details and the tenancy address.
2. The application is dismissed.
3. The Bond Centre is to pay the balance of the bond of $2,720.00 remaining, which is $2,398.06, to [The tenant/s], immediately.

Reasons:

1. Both parties, along with the tenant's support person, attended the video conference hearing.
2. The landlord has applied for compensation, outgoings, refund of the bond, and reimbursement of the filing fee following the end of the tenancy. During the hearing, the landlord clarified that the outgoings claim for water, was not an outgoings claim as such, but was to be included in the landlord's compensation claim instead. As such, with the tenant's agreement to this, the outgoings claim was withdrawn and was added to the landlord's compensation claims.
3. The parties agreed the tenancy ended on 24 January 2025.

4. The applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities.

5. 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."

Did the tenant comply with their obligations at the end of the tenancy?

6. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986.

7. The landlord said the tenant did not leave the premises reasonably clean and tidy, as the carpets required professional cleaning at the end of the tenancy.

8. As the landlord has claimed for cleaning the carpets professionally but has also claimed for replacement of the carpet's underlay, due to what the landlord said was damage caused during the tenancy, I will deal with all the claims relating to the carpet together, as set out below.

Is the tenant responsible for the damage to the premises?

9. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the damage. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.

10. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.

11. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

12. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

13. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

14. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

Landlord's evidence about the carpets

15. The landlord said the tenant damaged the carpets in the property during the tenancy and claimed the following:

    a. For attempts at carpet cleaning cat urine marks in the carpet - $442.75.

    b. For further cleaning of the carpet and replacement of the carpet's underlay - $2,548.64.

    c. For the cost of water used during the clean-up post-tenancy - $25.25.

16. The landlord said there was an odour smelled at the property at the end of the tenancy, which led them to investigate further about the condition of the carpet at the property. The landlord said she had smelled a cat odour when visiting the property during the tenancy in August 2024, had mentioned it to the tenant, but had been told by the tenant it was likely his cats' litterboxes that needed to be changed. The landlord then said she did not want to hurt the tenant's feelings by telling him there was a cat smell in the property.

17. The landlord said that they engaged a carpet cleaning company who visited the property on 7 February 2025 and on 20 February 2025.

18. The landlord provided an email dated 6 April 2025 from [Carpet cleaning company 1] saying they were asked to visit the property on 7 February 2025, that their technician noticed a very strong odour of urine and used a UV light and moisture sensor to locate the affected arears. They said the main damage appeared to be located in the upstairs hallway and parts of the bedrooms, and that they attempted to solve the problem with a topical treatment of identified areas and complete carpet clean using hot water extraction throughout. They then said the treatment did improve the odour, but the odour was still very strong.

19. [Carpet cleaning company 1] reported that they believed the damage appeared to have been caused over a prolonged period of time with multiple occasions of urine deposits. They said that following the first carpet treatment, they carried out a thorough decontamination process to treat the damage/odour over a 3-day period from 19-21 March 2025.

20. The landlord provided [Carpet cleaning company 1's] invoices for $442.75 for steam cleaning and deodorising the carpets and for $2,548.64 for the cleaning of the carpet, deodorising and replacing the underlay.

21. The landlord did not provide an Entry Inspection Report or an Exit Inspection Report. The landlord did provide some photographs which were attached to reports provided from their carpet cleaners, [Carpet cleaning company 1]. A few of these photographs showed parts of the flooring, appearing to show some coloured vinyl flooring, but it was difficult to see any detail in these photographs. The remaining photographs attached to the reports and provided by the landlord were UV photographs taken by the carpet cleaners. It was difficult to ascertain where these photographs were taken, other than indicating some staining was picked up by the UV photography. There were no photographs provided of the carpets generally, without UV photography, to show their general condition, either before the tenancy or at the end of the tenancy. Neither were there comparable UV photographs of the carpet before the tenancy started to see whether any stains were picked up by UV on the carpet at that time.

22. The landlord confirmed that the previous tenant before this tenancy had had a cat living in the property and said the previous tenant had had the carpets cleaned professionally but had paid the carpet cleaner directly, so the landlord had no proof of this. The landlord said, during the hearing, that the carpets were clean and did not smell at the start of this tenancy.

23. The landlord provided one water company invoice for the period 6 March 2025 to 2 April 2025, which showed consumption of $10.13 of water for that period, as well as a balance remaining to be paid of $15.22, for a total of $25.35. The landlord said this would have covered the cost of water used during the clean-up and claimed $25.35 for this. There was no further evidence provided by the landlord as to the amount of water used by the carpet cleaners at the property during the time they worked at the property, however.

24. The landlord said their insurance claim for damage to the carpets was declined.

Tenant's evidence about the carpets

25. The tenant accepted that he kept 2 cats at the property, that his cats were house trained, and he kept litter boxes for them in the bathroom, which was tiled. He explained that, at the exit inspection no urine damage was identified or notified to him, only that the landlord said there were cat smells in 2 rooms – his

son's bedroom and the music room. The tenant said that, at the end of the tenancy, he had engaged a carpet cleaner, not to professionally clean the carpets, as he had been told that was not required legally, but to provide him with an opinion about the condition of the carpets at the end of the tenancy, given the concerns raised by the landlord. Prior to this, the tenant said he had vacuumed the carpet and put an older deodoriser on the carpets at the end of his tenancy. The tenant said that his carpet cleaner, [Carpet cleaning company 2], visited the property twice, on 5 February 2025 and again on 20 February 2025. He indicated that [Carpet cleaning company 2] said they could not smell an overpowering odour at the property when visiting on 5 February 2025, only a faint smell, and they recommended using a power vacuum and odour neutraliser costing $100.00. He said [Carpet cleaning company 2] said the carpets were in reasonable rental condition.

26. The tenant indicated the property was shown to new tenants more than once over December 2024 and January 2025, and the landlord and the viewers did not complain of a smell. He said he would have wanted the landlord to bring to his attention any pet smell during his tenancy, had the landlord noticed this, so he could have rectified that sort of issue.

27. The tenant said he had paid extra rent for the period of the tenancy @ $20.00 per week to include his cats and believed this was to be used for any pet-related issues. This was disputed by the landlord, who acknowledged the tenant had contributed $10.00 per week for the cats in his rent, but only up to 16 December 2023, when the rent was increased to median market rent rates. The landlord said there had been no consideration in that new median market rent rate of any contribution towards pets by the tenant. I do not make any findings on this issue, as it is not required given the Order made.

28. The tenant said the landlord rejected [Carpet cleaning company 2]'s recommendation of a power vacuum and odour neutraliser at a cost of $100.00 and proceeded to engage their own carpet cleaners, [Carpet cleaning company 1]. He believed [Carpet cleaning company 1] made the smell worse or even potentially reactivated previous times of other pet soiling, pre-dating his tenancy. He said he did not consent to or accept the landlord's costs for the carpet cleanings or underlay replacement.

29. The tenant said he did not dispute the landlord's UV photographs indicating that there may have been some stains in the carpets at the property but said these did not come from his cats.

30. The tenant indicated that he had asked the landlord where the UV photographs were taken but they refused to answer him. The landlord said they directed the tenant ask [Carpet cleaning company 1] about this, as they did not personally know which rooms related to which photographs. [Carpet cleaning company 1]

then responded they did not have details of which photograph related to which room but that they found urine stains in every room at the property.

31. The tenant said some of the UV photographs showed areas that were covered by his heavy furniture, where his cats could not have gone. He pointed out that UV light can reveal stains that are many years old and said the landlord did not have baseline evidence of the condition of the carpets at the start of the tenancy.

Discussion

32. Whilst the landlord has provided photographs, mainly UV photographs, attached to their carpet cleaner's report, that they say showed cat urine stains in every room at the property, there were no photographs provided by the landlord as to the general condition of the carpets at the start or at the end of the tenancy, by way of Entry or Exit Inspection Reports, or any other similar photographs. Neither did the landlord provide similar UV photographs of the carpets at the start of the tenancy to compare with the UV photographs taken at the end of the tenancy, which would have provided an opportunity to assess like for like UV photographs before and after the tenancy about any possible stains. There was also no other additional supporting evidence provided by the landlord about the lack of pet odour smell or pet urine stains on the carpets at the start of the tenancy, other than the property manager's verbal evidence of this during the hearing.

33. When each party has different evidence about a claim, the Tribunal looks to whether there is any additional supporting evidence provided by either party. Given the lack of additional supporting evidence provided by the landlord about the condition of the carpets at the start of the tenancy, as outlined above, that would have provided some baseline evidence with which to compare the landlord's evidence at the end of the tenancy, I find the landlord has provided insufficient evidence to prove their claims for the requirement to clean the carpet in the amount of $442.75, for their claim for $2,548.64 to further clean the carpet and replace the underlay of the carpet and for $25.35 for water costs during the clean-up. As such, I dismiss these claims.

Lost rent

34. The landlord claimed $5,920.00 for lost rent, due to the property being untenantable during the period that the carpet repairs were required. The landlord said this covered 8 weeks from 25 January 2025 to 22 March 2025 at a cost of $740.00 per week. The landlord confirmed the tenant's rent at the end of the tenancy had been $710.00 per week but said they had planned to increase the weekly rent to $740.00 per week. The landlord provided a copy of a listing of

the property at $740.00 per week after the tenancy ended in support of their claim.

35. The landlord confirmed that the property was next tenanted on 12 July 2025, after this tenancy ended, so that there was a period from 22 March 2025 until 12 July 2025 when the landlord could not get new tenants in any event.

36. The tenant said he did not believe that any loss of rent on the landlord's part was caused by his tenancy. He indicated the landlord had an obligation to mitigate their loss and could have cleaned the carpets as per [Carpet cleaning company 2]'s recommendation of a power head vacuum and odour neutraliser at a cost of $100.00, without incurring further cost, in his view.

37. As the landlord has not proved their claims that the tenant damaged the carpets, the landlord similarly has not shown that any loss of rent they incurred was due to any carpet or other damage caused by the tenant. I note further that the landlord could not get new tenants from 22 March 2025, even when the clean-up was complete, until 12 July 2025.

38. As such, I dismiss the landlord's claim for lost rent, as they have not proved the tenant likely caused the loss of rent for the period claimed.

Filing fee

39. As the landlord has not been successful with the claim, I do not reimburse the filing fee.

Refund of the bond

40. The parties agreed at mediation that, out of the total bond of $2,720.00, the landlord could be paid $321.94 for drug testing at the property, with the balance of the bond, being $2,398.06, to be held at the Bond Centre pending adjudication of the landlord's application.

41. As the landlord's claims are dismissed, the Bond Centre is to pay the balance of the bond of $2,720.00 remaining, which is $2,398.06, to the tenant, immediately.

Suppression

42. Both parties requested name suppression. As the landlord has not been successful with the claim, they cannot be granted name suppression pursuant to section 95A(1) Residential Tenancies Act 1986 ("RTA").

43. Section 95A(4) RTA provides that the Tribunal may, on the application of any party to proceedings or on its own initiative, having regard to the interests of the

parties and to the public interest, order that all or part of the evidence given or the name or any identifying particulars of any witness or party not be published.

44. As the claims are dismissed, I find the tenant's interests outweigh the public interest in publishing his name. Therefore, I order that the tenant's name and identifying details are not to be published.

45. The landlord has, since the end of the tenancy, from the evidence provided, apparently attempted to resolve the matters with the tenant prior to filing the application, by having an exit meeting and communicating with the tenant about the issues, albeit without success. Given this and other evidence provided, I find the landlord's interests outweigh the public interest in publishing their name. Therefore, I order that the landlord's name and identifying details and the tenancy address are not to be published.

C Price
09 October 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.