[2025] NZTT 5266539

TENANCY TRIBUNAL AT NELSON | TE TARAIPIUNARA RETIHANGA KI WHAKATŪ

APPLICANT: Jeff Lance Campbell

Tenant

RESPONDENT: Sandra Coleman

Landlord

TENANCY ADDRESS: 21 Dehra Doon Road, Riwaka, RD 3, Motueka 7198

ORDER

1. Sandra Coleman must pay Jeff Lance Campbell $750.00 immediately, being compensation for a failure to maintain.
2. All other claims are dismissed.

Reasons:

1. Both parties attended the hearing. This was a continuation hearing on all claims other than retaliatory notice. That claim was heard and dismissed on 8 September 2025 by another adjudicator. The tenant joined by teleconference as he has relocated away from the region. The landlord had a support person in attendance.
2. The tenant sought unspecified compensation and exemplary damage for the landlord's accounting of electricity outgoings, interference with quiet enjoyment, and failure to maintain.
3. 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.

4. 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 providethe necessary evidence. It is not up to the other parties and it is certainly not up to the Tribunal to extract evidence."

5. In the decision that follows I may not have referred to all the oral testimony and other evidence presented, but the parties should know it has been considered.

Background

6. This was a very long tenancy that commenced in April 2016.
7. It operated informally with no written tenancy agreement. No bond was taken.
8. The premises is an approximately 100-year-old dwelling. It was the original home on the block of land but since used as, and referred to as. "the bach[1]". The owner did not live on the property but used the property for her separate commercial kitchen. This was not located in the premises. It drew electricity from the bach via an electrician installed underground cable with a check meter to read consumption. A separate dwelling was used by a family member as a second bach. That dwelling and occupancy had no relevance to this application.
9. The tenant undertook several improvements to the premises during this time. Some was compensated by rent rebates, some costs were reimbursed.
10. At the commencement of the hearing I pressed the tenant to state what compensation amounts he sought. He expressed a difficulty in doing so and wanted to leave it to me. This is unusual and a party is best placed to consider compensation as it relates to any loss they have endured, financial or beneficial. He stressed his goal in lodging the application was as much to understand the issues raised. The question of compensation was revisited at the end of the hearing, he still was unable to propose a monetary figure. I considered it inequitable his inability might preclude a final determination of compensation.
11. A separate disruption to this tenancy occurred early this year when the owner granted a house bus owner occupancy in a nearby paddock area. There was a lack of structure and demarcation that meant the tenant experienced some

[1] A bach is typically a small, often modest holiday home, occupied on a casual basis.

problems with the actions or behaviours of the house bus owner, or her guests within his premises and the property.

12. I deal with the three claims below:

Electricity/Outgoings

13. The tenant premises contained the revenue meter. The account was in the name of the owner but the tenant received "for information" copies from the utility company over the last two years of the tenancy (after requesting this). The exclusive use of the tenant electricity was calculated by the owner by subtracting her consumption logged in the check meter from that counted by revenue meter, applying the kWh cost plus GST and then advising the tenant. The cost was usually advised by text and as a whole number, suggesting some rounding of the final amount. While not as exact so as to include consumption information, that text, along with the information copy of the invoices should have permitted timely and appropriate energy management as the cost and consumption may have suggested.

14. Regarding fixed costs (such as daily line charges or other fixed fees from the utility provider), these cannot be passed on to the tenant unless the tenant is the account holder with the utility company. If the landlord holds the account and is on-charging the tenant, only the variable consumption costs (the actual electricity used) can be charged to the tenant. Fixed costs remain the responsibility of the landlord.

15. I reviewed historic and more recent invoices. Until near the end of the tenancy the electricity supply was based on a consumption only plan. There was a change made to the plan this year that meant a daily charge of approximately $1.50 was applied, the kWh consumption cost changed with that.

16. Due to a utility error, there was a three-month period of no invoicing. When one was raised it was for the preceding three months or so. Unsurprisingly this was larger than expected monthly. It led to some disagreement between the landlord and tenant regarding the cost and attribution. This was further clouded by the arrival of a house bus and occupant in a near by paddock. The tenant expressed concern the house bus was drawing power that he was later paying for. I am satisfied that was not the case. The electricity was drawing from the landlord's metered supply and accounted for in the check meter reads.

17. Given the metering in place, and lack of fixed charges until this year, I am satisfied the electricity accounting is reasonable. I decline to make an adjustment for the later daily line charges as the landlord absorbed some of the tenant liable cost in the "catch up" invoice from the utility, that being in excess of any fixed-charge redistribution.

Quiet enjoyment

18. The tenant claimed the landlord breached his right to quiet enjoyment.

19. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises (see s 38(2) Residential Tenancies Act 1986).

20. In this instance, the cause of interruption was identified as arising from the actions of the house bus owner. I asked the tenant if he had advised the landlord of the problems as they arose. His response was no.

21. In the decision of the District Court in *Cavanagh* v *Kainga Ora* [2022] NZDC 7003 makes it clear that section 38(2) and (3) do not apply in this type of situation. There, Judge Neave endorsed and followed the earlier decision of the District Court in *Howard* v *Housing NZ Corporation* [2017] NZDC 4742 in which the Court noted: *"[21] [The tenant's] argument must be to the effect that the landlord was in breach of subsection (2) by permitting interference with his reasonable peace, comfort or privacy by failing to take appropriate measures against [the other tenant's] parents to ensure that his interference with [the tenant's] reasonable peace comfort or privacy ceased.*

> *[22] In my view, subsection (2) cannot be interpreted in that way. Section 38 is directed to insuring that the landlord, or any person standing in the stead of the landlord, such as for instance a beneficiary of a trust owning the subject property, shall not interfere with the tenant's quiet enjoyment.*
>
> *[23] The section is directed to acts by or on behalf of the landlord which interfere with that quiet enjoyment.*
>
> *[24] Section 45 on the other hand creates an obligation on the landlord to ensure that none of the landlord's other tenants interferes with the quiet enjoyment of a tenant's use of the premises. There is a clear distinction between actions by the landlord personally which are prescribed by s.38 and actions of the landlord's other tenants which are prescribed by section 45(1)(e). The legislature clearly did not intend that a failure of a landlord to ensure that the other tenants did not interfere with a tenant's quiet enjoyment amounted to an unlawful Act"*

22. As in the *Cavanagh* case, the issue here is really whether the landlord breached its obligation under s.45(1)(e) to, *"take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises."*

23. I do consider the landlord should have put a better structure in place regarding boundaries and responsibilities once the house bus was parked.

24. I do not find the landlord failed to take all reasonable steps as she was not informed of the problems in a timely manner as unexpected behaviours occurred.

25. I dismiss the claim for that reason.

Failure to maintain

26. It is well settled that, the landlord's obligation under s 45 RTA is to investigate and repair a defect brought to its attention within a timeframe which is reasonable in the circumstances, and as to what that time is, depends on the gravity of the problem but also on the objective attempts made by the landlord to investigate, and put right, whatever the problem might be.

27. The Tribunal must also have regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes

28. A tenant has a statutory duty to advise of any defects under section 40(1)(d) RTA. Therefore, a tenant should promptly notify a landlord of any defects and a landlord should be given a reasonable opportunity to remedy the defect before being liable for any failure to do so.

29. Over this long tenancy the tenant undertook a number of maintenance or improvement tasks. He is a practical person. There historic activities extended to the installation of a wood burner and the replacement of ovens, improvements to a second room for his son to stay in, and the building of a woodshed.

30. More reactive tasks included spot repairs to the roof after a leak.

31. Compensation for these was provided at times. As at today, the tenant feels aggrieved about these previous undertakings, but I must review them in a time context. The tenant received some benefits from the improvement and there is no evidence of subsequent rent increases that would have nullified in some way his enjoyment of the "fruits of his labour".

32. That said, the tenant produced photos of areas of the bach that showed significant deterioration that exposed these areas to unreasonable draughts (inside and out). The bach was showing its age and the landlord acknowledged it needed significant repair or demolition. Given a recent reroofing at some cost it appears a repair approach will be adopted.

33. The challenge for the applicant here is establishing that the landlord failed to resolve any specific maintenance issue as advised by the tenant. There was little written evidence to weigh against what were different recountings of verbal discussions and visits. The landlord took a hands-off approach with no routine inspections conducted. She submitted the tenancy extended beyond that

originally anticipated due to her consideration the tenant's needs and future plans, with any major renovation deferred.

Should the tenant be compensated?

34. When considering claims, the Tribunal must consider s 85 RTA which 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.

35. In *Nixon v Geal-Otter* DC North Shore TT 216/94, 6 December 1995, Judge Thorburn made the following comments on the approach that s 85 requires the Tribunal, and the District Court on appeal, to take in residential tenancy disputes:

> The long title to the Act includes as part of the philosophy of the Act, expeditious determination of disputes. The Tribunal and the District Court must adopt an approach which protects that philosophy. Section 85 elaborates on the philosophy, requiring jurisdiction to be applied in a manner that is most likely to ensure the fair and expeditious resolution of disputes, and injuncts that disputes should be determined in accordance with general principles of law and substantial merits and justice but not so as to be bound to give effect to strict legal forms or technicalities.
>
> There must be an approach that reflects a broad intuitive sense of propriety in the circumstances of each case and recognises the overall impression and sense of fairness and equity. The broadness of this approach imports a recognition of earthy commonsense to resolution which could be marginalised if the Tribunal and courts slavishly applied technically correct legal niceties.

36. The inability of the tenant to articulate a compensation sum, in my mind, reflects the overall nature of this tenancy. The rent, while increased over time remained modest at $250.00 per week. That the tenancy extended for over nine years suggests some good along with any bad recounted in this application.

37. That said, based on the external photos I struggle to accept the landlord was oblivious to the declining condition of the premises and the need for maintenance. It is not solely for the tenant to raise issues, some anticipation or reaction by the landlord on her own instigation appears a reasonable expectation in this matter.

38. Having weighted up the submissions and limited evidence, I have determined the tenant should be compensated the equivalent of three weeks rent for the

extended impact due to building deficiencies as evidenced. The tenant is awarded $750.00 compensation.

Should exemplary damages be awarded?

39. The tenant claimed exemplary damages for:

> *1. the landlord not providing a written tenancy agreement.*
>
> *2. charging me for power without having a separate meter*
>
> *3. The landlord and her associates has repeatedly breached my right to quiet enjoyment of the property, by unjustified visits, shouts, trespassing (from other people).*
>
> *4.Failing to comply with healthy homes standards.*
>
> *5. Verbally abusing me*

40. Exemplary damages under the Act are different from compensation. The provision of such damages is designed to punish and deter; *Attorney-General (Commissioner of Crown Lands) v Little Bo Peep Sheep Company Ltd* (HC CIV 2010-412-134).

41. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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. See section 109(3) RTA.

42. Any failure by the landlord as per Claim 1 is an unlawful act now but at the time of tenancy formation (2016) the failure of the landlord to provide a written tenancy agreement was not an unlawful act.

43. Of the five claims, numbers 2. and 4. are not considered for exemplary damages. The electricity outgoings were accounted for adequately although there is no provision for any failure in s 39 to be unlawful regardless. The Healthy Homes Standards final compliance date for the tenancy was 1 July 2025 – the tenancy ended before then. No evidence of insulation failures were evidenced by the tenant.

44. Claim 3 relates primarily to the impact of the house bus neighbour and guests. As already determined, the landlord was not made aware of the impacts so no failure of s 38 occurred. Claim 5 relates to one phone call and a derogatory term used by the landlord about the tenant. While undesirable, the instance is considered a long way from reaching the threshold of harassment in s 38, such a level being required to trigger the unlawful act provisions in that section.

45. Even if I am wrong in these assessments, to order exemplary damages requires the act to be intentional committed. If required, I would not have considered the landlord was acting intentionally.

Filing fee

46. The tenant has not been wholly or substantially successful, here, or in the prior non-retaliatory notice determination. Therefore, I leave him to carry his filing cost of $27.00.

Suppression

47. Section 95A RTA states regarding suppression orders that the Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case.

48. Further, 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.

49. The tenant requested suppression in his application. As he has not been wholly or substantially successful, suppression is not ordered.

M Brennan
17 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.