TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: Gwendolyn Holmes, Evelyn Mary Serendipity Walford-Bourke, Hayley Percival, Louisa Percival

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Landlord name and identifying details.
2. The tenancy of Gwendolyn Holmes, Evelyn Mary Serendipity Walford-Bourke, Hayley Percival and Louisa Percival at [Tenancy address suppressed] is terminated, and possession is granted to [The landlord/s], at 11.59pm, Wednesday 27 August 2025.
3. The Bond Centre is to pay the bond of $3,600.00 ([Bond number suppressed]) to [The landlord/s] immediately.
4. Gwendolyn Holmes, Evelyn Mary Serendipity Walford-Bourke, Hayley Percival and Louisa Percival must pay [The landlord/s] $5,149.43 immediately, calculated as shown in the table below:
5. All other claims are dismissed.

Description	**Landlord**	**Tenant**
Rent arrears to 27.8.2025	$8,721.43	
Filing fee reimbursement	$28.00	
Total award	**$8,749.43**	
Bond	$3,600.00	
Total payable by Tenant to Landlord	**$5,149.43**	

Reasons:

1. Both parties attended the hearing.
2. The tenants have applied to terminate the fixed term tenancy early on 13 July 2025 due to the landlord's alleged failure to maintain the property.
3. The landlord has cross applied for termination of the tenancy, rent arrears and refund of the bond.

Background facts

4. This was a fixed term tenancy which commenced on 5 February 2023 and expired on 5 February 2024. Prior to the fixed term ending, the landlord sent an email on 15 November 2023 offering various extension options for the tenants to complete, sign and return. Two of the tenants advised that they wished to depart. Ms Holmes and Ms Walford-Bourke advised that they wished to remain with two new proposed tenants, Ms Hayley Percival, and Ms Louisa Percival (referred to as the new tenants). They messaged the landlord on 15 November 2023 advising that they intended to extend the lease for at least 2 years and were in the process of arranging for the new tenants to complete the required application process and pay the departing tenants' share of the bond. They also stated: "*We would prefer to have them added to the tenancy agreement and then sign the renewal, if that's possible? Or would you prefer we sign the extension then amend the tenancy. Please let me know how it's best to proceed."* The landlord replied asking them to sign and return the email extension. Ms Holmes and Ms Walford-Bourke signed the extension email opting for a 2-year renewal until 5 February 2026. For a 2-year renewal, the landlord agreed to charge weekly rent of $1275 for the first 12 months, which was less than the market rent assessment they had obtained of $1350/week.
5. The landlord says that the new tenants were approved, although there is no evidence of this in writing. However, the continuing tenants, the departing tenants, and the new tenants signed a Change of Tenancy Form recording the tenancy change and sent it to the landlord for signing and lodging at the Bond Centre. This was done because the new tenants names are recorded at the Bond Centre. The landlord also indicated that they would prepare and forward a variation of the tenancy agreement for the new tenants to sign. The tenants followed up requesting the paperwork but say they were not sent anything. The landlord says that the paperwork was generated but there is no evidence of it being sent to the tenants and no evidence of it being signed.
6. On 23 June 2025, the tenants purported to give 21 days' notice to end the tenancy with the last day to be 13 July 2025. They advised that the reason for the notice was because of maintenance and access issues in the apartment building affecting their health and safety. They felt that many of the issues could

not be addressed especially with the approaching expiry of the “yellow sticker” on the building regarding earthquake strengthening/building code compliance.

7. The landlord replied the same day advising that they are in a fixed term tenancy which cannot be ended by notice. He advised that they could break the lease by following the process for finding replacement tenants. He also asked that they explain the maintenance and access issues they were referring to because the landlord was not aware of any outstanding complaints. He also advised that the date for compliance under the yellow sticker had been extended to 2031 and the building owner was in the process of updating the displayed building notices.
8. The tenants vacated the premises on 13 July and stopped paying rent after that date.

Preliminary issue-Was the tenancy renewed/extended for 2 years?

9. The tenants submit that because the variation of tenancy paperwork was not completed and the landlord did not respond to their requests for confirmation about it, they understood that the 2-year extension had not been finalised and that the tenancy had rolled into a periodic tenancy, which could be terminated on 21 days’ notice.
10. I am satisfied on the evidence that a 2-year extension of the tenancy agreement is currently in place until 5 February 2026 for the following reasons;
    a. Ms Holmes and Ms Walford-Bourke accepted the offer of a 2-year extension and signed the extension agreement by email which is effective regardless of whether the new tenants signed on as tenants;
    b. Rent has been charged and paid in accordance with the terms of the 2-year extension.
11. While Louisa and Hayley Percival did not sign a variation of tenancy agreement, they signed a change of tenancy form and paid out the departing tenants’ share of the bond. They have not asked the Tribunal to determine their specific liability under the tenancy agreement and, therefore, I am not required to consider that issue. However, I note that they along with Ms Holmes and Ms Walford-Bourke have jointly brought this application to the Tribunal as tenants.

Should the tenancy be terminated early for failures by the landlord to maintain?

12. The Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate. See section 56(1) Residential Tenancies Act 1986 (RTA). In this case the tenants allege

that the landlord has failed to maintain the premises in breach of their obligations under the RTA.

13. Where the breach is capable of remedy the tenants must first serve a notice on the landlord requiring them to remedy the breach within at least 14 days and establish that the landlord has failed to do so.

14. The first issue to establish is whether the landlord is in breach of their maintenance obligations under the RTA.

15. Under section 45(1)(b),(bb) and (c) RTA, a landlord must provide and maintain the premises in a reasonable state of repair; comply with any relevant enactment in relation to buildings, health, and safety, and comply with Healthy Homes Standards as set out in the Residential Tenancies Act (Healthy Homes Standards Regulations) 2019.

16. It is well settled that, the landlord's obligations under section 45 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. Furthermore, 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.

Tenant case

17. The tenants allege that the landlord has breached their obligations in various respects which may be summarised as follows:

    a. The tenants notified the landlord of maintenance issues in an email dated 14 February 2023. These issues were fixed within 2 months or so, except the damaged bathroom sink which was not replaced before the tenants vacated;

    b. A leak in the kitchen ceiling was reported to the landlord by the tenants in an email on 15 February 2023 which the tenants allege was not fixed before they vacated the premises on 13 July 2025;

    c. A second leak occurred in late 2023/early 2024 in the ceiling above the rangehood affecting the ability to use the rangehood extractor;

    d. A third leak in 2024 developed in the hallway ceiling;

    e. Leaks worsened in the kitchen, running down the wall from the ceiling and affecting power points;

    f. A leak reached the power cord for the waste disposal in the kitchen bench which stopped working in April 2025;

g. A leak in the main bathroom skylight was reported by the tenants to the landlord in an email on 26 June 2025;

h. Water pooling occurred on the exterior deck;

i. The tenants have concerns about the safety of the building because of the yellow sticker expiry date; the building no longer being insured; and repeated lift outages and carpark gate outages.

j. Other minor maintenance issues occurred during the tenancy which took time to be fixed;

k. There have been difficult communications with the landlords failing to respond on issues.

18. The tenants produced photos taken in February 2023 showing cracks and bubbling underneath the paintwork in the kitchen ceiling and bubbling underneath the paintwork of a wall column in the kitchen and water pooling on the exterior deck. They also produced photos of those areas taken more recently in or about July 2025. Water pooling on the deck is also shown in undated videos taken by the tenants. All areas are also shown in a video taken by the tenants of the premises after they vacated.

19. The tenants produced photos taken of the hallway ceiling showing a slight crack but were unable to advise the dates the photos were taken.

20. The tenants provided evidence of some follow up emails with the landlords about the issues they raised in February 2023, including the kitchen leak with the last email dated 29 March 2023.

21. After that, the tenants say that they advised the landlords of the worsening and further leaks verbally at inspections and also relayed these issues verbally to the handyman sent to the premises to fix other issues many times. However, there is no documentary evidence of the tenants notifying the landlord of new or worsening leaks, except for reporting the skylight leak on 26 June 2025.

22. The tenants did not at any stage serve a 14-day notice on the landlord requiring them to remedy any issues.

Landlord case

23. The landlord's evidence is summarised as follows:

a. The landlord received notice of a kitchen leak in February 2023 which the landlord says was followed up in May 2023 with the Building Manager employed by the Body Corporate. They believe that repairs were done and The landlord asked the tenants whether it was still an issue in July 2023. The landlord says that there were no further communications from the tenants to complain about any leaks at the premises in the kitchen, the hallway or about water pooling on the exterior deck;

b. With regards to the bathroom skylight leak reported on 26 June 2025, this was fixed by 15-20 July 2025;

c. The landlord inspected the premises on 31 July and 20 August, after there had been major rainfall. He took photos of the premises at those inspections produced in evidence. He advised that there was no evidence of any water ingress in the kitchen or hallway. The range hood and power points were working. While there is cosmetic paint damage, he says the areas are bone-dry;

d. There are some gib/joist cracks post-earthquakes but no water ingress through those cracks;

e. There are two drains on the deck which just required clearing of debris to stop water pooling;

f. The landlord says there is no evidence of the tenants reporting new or worsening leaks, or water pooling on the deck after February 2023, until they advised that they wanted to end the tenancy on 23 June 2025. In the intervening period, the landlord has not received any emails, text messages or photos of leaks from the tenants since their February 2023 email concerning one leak in the kitchen;

g. There are no records of leaks being mentioned by the tenants during inspections. He notes that there is only a record of one inspection in September 2024, and no water ingress issues were recorded;

h. The landlord did not receive any reports of leaks or problems raised by the tenants via their maintenance contractor. They also note that advising a contractor is not notice directly to the landlord;

i. In many emails from the tenants to the landlord during the tenancy, including emails raising other maintenance issues that were fixed, they did not raise the issue of new or worsening leaks;

j. The landlord says that the photos taken by the tenants in February 2023 of the damaged ceiling and walls from leaks are similar to the photos he took in July/ August 2025. In other words, he believes based on the photo evidence that the damage has not progressed or got worse because of further leaks;

k. The landlord noted that the damaged bathroom vanity reported in February 2023 should have been replaced and that has now been done;

l. The landlord accepted that there have been other issues regarding the lifts not working; problems with car park access and other minor maintenance raised by the tenants, but all of those issues were fixed in a reasonable timeframe;

m. The landlord confirmed that the time for compliance with earthquake strengthening/building work under the yellow sticker has been extended to 2031;

n. There is no evidence to suggest that the building is not safe to occupy.

Discussion and findings

24. After carefully considering all the available evidence, I am not satisfied that the tenants have proved that there were ongoing problems with leaks at the premises which were not addressed by the landlord. If there were, I am not satisfied that they notified the landlord of the problems. There is no evidence of their complaints in writing to the landlord by way of text messages, emails or photos. The landlord cannot address problems if they are not advised about them.

25. In relation to some maintenance items that were not completed sooner, such as the bathroom vanity sink, those breaches are not in my view serious enough to justify termination of the tenancy.

26. Furthermore, all of the maintenance issues raised by the tenants were capable of remedy. Therefore s56 requires the tenants to serve a breach notice on the landlord requiring them to remedy the breach within a reasonable period being not less than 14 days. It is only if the landlord fails to remedy the breach in the required timeframe that the Tribunal may consider termination. The tenants did not serve a 14-day breach notice on the landlord. Therefore, one of the grounds for a termination order under s56 has not been met.

27. For all of the above reasons, I must dismiss the tenants application to terminate the fixed term tenancy early for maintenance breaches by the landlord.

Is the landlord entitled to terminate the tenancy?

28. The landlord has applied for termination of the tenancy for abandonment and/or rent arrears and refund of the bond. The basis for abandonment is because the tenants vacated the premises on 13 July 2025 with no intention of returning and no intention of honouring their obligations under the lease such as payment of rent. Rent has not been paid since they vacated.

29. Where a fixed term tenancy is abandoned, section 61(3)(b) RTA provides that the tenant is liable for rent until the earlier of: the end of the tenancy, or the date the premises are re-let, whichever event first occurs. Section 61(4) provides that a landlord is not required to mitigate their loss by granting a new tenancy.

30. In this case the landlord wishes to terminate the tenancy for abandonment so that he is not prevented from recovering any loss of rent should he be unable to find tenants to take the premises on for the remainder of the term at the same rent. However, the landlord advised at the hearing that he does not wish to

terminate the tenancy if the Tribunal considers that an abandonment has not occurred and where terminating the tenancy would prevent him from claiming loss of rent after the termination date.

31. I referred in the hearing to another Tribunal decision *Oxygen.Co.Nz Limited v Mundy and another*[1] which I consider correctly states the position regarding termination for abandonment versus termination for repudiation of the contract and the flow on effects for the landlord.

32. Abandonment is not defined in the RTA. It has been described as:

    An abandonment occurs when a tenant unlawfully departs the premises with no intention of returning and no intention of honouring his or her obligation under the lease.[2]

33. The adjudicator in *Mundy* considered the above definition was too broad and includes "repudiation' which is where a party no longer wants to be bound by their obligations under the contract. However, not every act of repudiation amounts to abandonment. He noted that in most cases of abandonment, the tenant leaves the premises without notifying the landlord, the premises are left unclean, with rubbish and goods left behind. It is not necessary for all these factors to be present for there to be an abandonment, but in most cases lack of notification is a decisive factor.

34. In Mundy, the adjudicator stated at [13]:

    "Where a tenant makes it clear to the landlord by words or actions that they want to end a fixed term tenancy early, and they stop paying rent, this is a repudiation of the contract but not necessarily an abandonment. This is particularly so where the parties discuss ending the tenancy but cannot agree on the terms. In this situation the landlord can terminate for rent arrears but not, in my view, for abandonment."

35. The adjudicator in *Mundy* then examined whether a landlord may recover rent after the termination date and reached the following conclusions after examining the relevant principles;

    a. Where a tenancy is terminated for abandonment, the landlord can claim rent past the termination date (until the tenancy ends or the premises are earlier-tenanted) and is not required to mitigate loss;

    b. Where the landlord elects to terminate the tenancy for rent arrears, and there is no evidence the tenant has repudiated the tenancy, the landlord cannot claim rent past the termination date;

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[1] [2020] NZTT 4225871
[2] *Grinlinton: Residential Tenancies: the Law and Practice* (4th ed), 2012

c. Where the landlord applies to terminate the tenancy for rent arrears, and there is convincing evidence that the tenant has repudiated the tenancy, the landlord may be entitled to compensation for loss of rent past the termination date. However, the landlord must take reasonable steps to mitigate loss.

36. I accept in this case that the tenants have not abandoned the tenancy but repudiated the tenancy contract because: the tenants advised the landlord of their wish to end the tenancy early; the parties could not reach an agreement for early termination; the landlord advised the tenants of the process for finding replacement tenants but the tenants did not take steps to find new tenants; the tenants advised the landlord that they intended to vacate and they did so after tidying the premises; they returned the keys, and stopped paying rent.

37. Because the case involves repudiation rather than abandonment, the tenancy may only be terminated for rent arrears. The landlord confirmed that he wishes to terminate the tenancy for that reason.

38. The landlord confirmed that they will take steps to find a replacement tenant to mitigate their loss and may apply to the Tribunal in future to recover loss of rent after the termination date.

39. Rent was at least 21 days in arrears on the date the application was filed. The tenancy is terminated. See section 55(1)(a) RTA.

40. The landlord provided rent records which prove the amount owing at the end of the tenancy.

41. As the landlord has substantially succeeded in the proceedings they are entitled to suppression of their name and identifying details.

K Stirling
28 August 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.