[2025] NZTT 5315787

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. The Tribunal orders suppression of the Tenants and Landlord's names and identifying details.
2. The rent payable by the Tenants to the Landlord is reduced as follows:
    a. By $100 per week from the start of the tenancy until the remedial work required to make the premises watertight is complete.
    b. By a further $50 per week from 6 October 2025 until the scaffolding on the premises' patio is removed.
3. Where those rent reductions have not yet been applied, the Landlord is to immediately pay the relevant amount to the Tenants.
4. The Landlord is to immediately pay $603.18 to the Tenants, comprising of:
    (a) $200 for the cost of a dehumidifier the Tenants purchased to remove moisture from the air.
    (b) $270.18 for the loss of wages suffered by one of the Tenants who was unable to work on two days because she needed to stay home to deal with water entering the premises.
    (c) $106 for the medical expenses of one of the Tenants due to anxiety arising from water entering the premises.
    (d) The filing fee of $27

5. The Tenants' application for exemplary damages is dismissed.

REASONS

The water ingress

1. The tenancy started on 19 June 2025. The Tenants say that the property manager had assured them there was no mould or dampness. The Tenants say that he made the point several times that there was no mould or dampness.
2. The premises leaked from early in the tenancy. On 22 June 2025, the Tenants discovered mould in both bedrooms, and that the wall around the window in the smaller second bedroom was damp and soft. The Tenants have provided a video taken on 22 June 2025 showing a small hole in the soft wall beneath the windowsill and a small amount of mould on the wall beneath the window frame.
3. The Tenants also provided a bundle of photographs of the large bedroom taken on that day. Those photographs show mould around the window frame, cracks in the window frame, mould around the door frame and beneath the windowsill.
4. The Tenants also provided photographs taken on 30 June 2025, which show water leaking down the window frame in the large bedroom. The Tenants also provided photographs taken in September 2025 showing that the windowsill was rotting. The Tenants say that by September water had also started leaking through the windowsill. The Tenants also produced two videos, which shows the window frame was soft and cracking.
5. The Tenants then discovered water leaking through the joinery surrounding the French doors in the living room. The Tenants provided videos taken on 27 June and 29 July 2025 showing a large amount of water leaking through a crack in the wooden joinery. The Tenants also provided a photograph of the French door frame, which showed that the frame was rotting in places, consistent with a longstanding water ingress.
6. The Body Corporate has also become involved. Earlier this year, it seems that the Body Corporate commissioned a report from Home Solutions into water ingress issues with the neighbouring unit – Unit 5. The Landlord has provided a copy of a report from Home Solutions. That report shows that moisture was entering Unit 5 through the balcony from the unit above and through timber joinery. At that time, the Body Corporate does not appear to have been aware of any issues with these premises, and did not become aware until after the Tenants had moved in.
7. In July, the Body Corporate then instructed a contractor to inspect these premises for moisture ingress. The Tenants have provided photographs that show that the contractor found significant moisture ingress around the bedroom windows.

8. Home Solutions has also investigated these premises, and it considers that the moisture ingress is principally caused by a fault with balcony attached to the upstairs unit (Unit 8) and the wooden joinery.

9. The Body Corporate has also contracted Kleanfreeks to identify issues with the roof of the complex. An estimate dated 18 August 2025 records that gutters need clearing, some gutters and valleys need to be repaired and the roof needs to be cleaned.

10. The reports commissioned by the Body Corporate show that significant remedial work is required. That work was delayed while the Body Corporate conducted special meetings and raised a special levy. The remedial work then commenced on 6 October 2025 and is ongoing.

11. In the meantime, the Landlord engaged a contractor, who has installed internal guttering to divert the leak in the living room until the remedial work is complete.

12. The Tenants want to remain in the premises but seek compensation and exemplary damages. The Landlord has agreed to provide the following compensation to the Tenants:

    (a) A rent reduction of $100 per week from the start of the tenancy until the remedial work required to make these premises watertight is complete. This reduction recognises the inconvenience suffered by the Tenants due to the moisture ingress.[1]

    (b) A further rent reduction of $50 per week from 6 October 2025 until the scaffolding on the premises' patio is removed. This reduction recognises the loss of utility arising from the Tenants' inability to use the patio.

    (c) $200 for the cost of a dehumidifier the Tenants purchased to remove moisture from the air.

    (d) $270.18 for the loss of wages suffered by one of the Tenants who was unable to work on two days because she needed to stay home to deal with water entering the premises.

    (e) $106 for the medical expenses of one of the Tenants due to anxiety arising from water entering the premises.

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[1] The Landlord has expressed reservations about the potential open-endedness of this order. It is concerned that the Tenants might continue to insist on a rent reduction where the repairs are effectively complete, but minor additional cosmetic work may be required. To address this concern, I have ordered that this rent reduction is to apply until the premises are made watertight. Lack of watertightness has caused the harm that needs to be remedied, so the rent reduction applies until the time the work required to make the premises watertight is done. If minor additional work is required after that time, the rent reduction will not continue. The Landlord also sought assurances that any notice to terminate the tenancy would not be considered retaliatory where vacant possession might be required to finish repairs. I cannot give that reassurance. Any retaliatory notice claim would have to be considered at the time and on its facts.

13. I endorse that resolution of the compensation claim and commend the Tenants and the Landlord's property manager for the constructive approach they took to that resolution. Those amounts are consistent with what I would have awarded in compensation if the decision had been left with me.

14. That means the only issues I need to resolve relate to the Tenants claims for exemplary damages.

The issues

15. In deciding whether the Tenants are entitled to exemplary damages, the issues I must determine in this case are:

    (a) What has caused the water ingress into the premises?

    (b) Do the Healthy Homes Standards apply to the issues with these premises?

    (c) Did the Landlord fail to provide and maintain the premises in a reasonable state of repair?

    (d) Did the Landlord fail to provide the required notice to enter the premises to perform repairs and maintenance?

    (e) Are the Tenants then entitled to exemplary damages?

What has caused the water ingress into the premises?

16. The evidence is clear that there is water ingress into the premises during the tenancy. All parties agreed. There is water leaking through the framing of the French doors in the living room, water leaking through the window frame and damp walls in the larger bedroom and damp walls in the smaller bedroom. There is also mould, no doubt due to the moisture ingress.

17. The leak in the living room is due to a fault with the balcony in the unit above, as set out in the Home Solutions report. That report was initially prepared for the neighbouring units, but the design and construction of the units appear identical and the issues those units are experiencing are identical to the issues the Tenants complain of.

18. That repair must be managed by the Body Corporate, as it relates to a building element that serves more than one unit. The Body Corporate is liable for the repair and maintenance of building elements.[2]

19. The cause of the water ingress into the bedrooms is not so clear. The water ingress is not caused by the balcony above. The balcony does not extend across those bedrooms. The Landlord seems to think that it might be due to a problem with the roof. In that regard, the Landlord has produced evidence to show that the Body Corporate has also authorised repairs to the roof. If that was the case, the Body Corporate would be liable for the repair.

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[2] Unit Titles Act 2010, section 138(1).

20. The water ingress into the bedrooms may be due to the roof, but I am not convinced. The water ingress is concentrated around the wooden window frames, suggesting water is entering through or around the frames. That is a maintenance issue for the Landlord.

Do the Healthy Homes Standards apply to the issues with these premises?

21. The Tenants alleged that the Landlord has failed to comply with the Healthy Homes Standards because of the water ingress. The relevant standard – the Moisture Ingress and Drainage Standard (the Standard) – does not apply to these facts.

22. The Standard applies to drainage systems, gutters, downpipes, and ground moisture barriers. The Tenants have not proven that water ingress in these premises was due to any failure with the drainage systems, gutters, downpipes or ground moisture barriers and there was no evidence to show that the premises failed to comply with the Standard. As I have noted, the evidence suggests the water ingress is due to a fault with a balcony and issues with the timber joinery around the windows. Those matters are not covered by the Standard

23. In reaching this conclusion, it is important to note that the Standard is not a guarantee that premises will be free of moisture ingress. It simply establishes requirements for drainage systems, gutters, downpipes, and ground moisture barriers that assist in ensuring that there is no moisture ingress. Moisture ingress may still occur by other means – as it has here – without being a breach of the Standard. Where such moisture ingress occurs, tenants must look elsewhere for a remedy.

Did the Landlord fail to provide and maintain the premises in a reasonable state of repair?

24. In this case, the Tenants can look to the Landlord's responsibility to provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises.[3]

25. The Landlord did not comply with this obligation. The Tenants' evidence is clear that:

    (a) there was mould in the premises when they moved in;

    (b) the walls surrounding the windows in the two bedrooms were damp when they moved in;

    (c) the leaks in the living room and larger bedroom became evident on the first days of rainfall after the start of the tenancy.

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[3] Residential Tenancies Act 1986, section 45(1)(b).

26. The Landlord says that the exterior condition of the premises is the responsibility of the Body Corporate, not the Landlord. I accept that to be the case under the Body Corporate rules and the Unit Titles Act. However, under the Residential Tenancies Act, it is the Landlord who bears the responsibility for ensuring the premises are provided and maintained in a reasonable state of repair. The Landlord did not comply with that obligation in this instance.

Did the Landlord fail to provide the required notice to enter the premises to perform repairs and maintenance?

27. The Landlord (or its agents/contractors) were required to give the Tenants at least 24 hours' notice before entering the premises for maintenance.[4] The Tenants say that the Landlord breached this obligation because the repair contractors set up scaffolding on their patio, which formed part of their premises, without notification.

28. I accept the Tenant's evidence on this point. The Landlord has therefore breached section 48(2)(d) of the RTA.

Are the Tenants entitled to exemplary damages?

29. The Landlord has offered compensation to the Tenant, as set out above. In my view, that compensation adequately remediates the Tenants for the loss they have suffered.

30. The Tenants also seek exemplary damages. Exemplary damages are intended to punish and are only available for unlawful acts that are committed intentionally.[5] The Tribunal must be satisfied that the person (in this instance the Landlord) has "turned their mind to the act and deliberately set about to commit it".[6] Carelessness or negligence is not enough.

The failure to provide and maintain premises

31. I am not satisfied that the Tenants have proven that the Landlord acted intentionally, in that I am not satisfied that the Landlord knew that there was a chronic water ingress issue with the premises before the tenancy started.

32. There is evidence to show that the Landlord knew the following:

    (a) That water had leaked into the living room on one occasion.

    (b) That the window frames in the bedrooms and the living room French door frames were degrading and required putty.

    (c) That there was a substantial water ingress issue in the adjacent unit.

33. The Landlord may have been careless or negligent in failing to properly inspect the premises to determine whether there was a water ingress problem before it

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4 Residential Tenancies Act 1986, section 48(2)(d).
5 Residential Tenancies Act 1986, section 109(3).
6 *Birch v Otautahi Community Housing Ltd* NZDC 17767.

was rented to the Tenant. But I am not satisfied that its actions were intentional. That is because the evidence does not show that the Landlord knew of the damp walls, mould, or substantial water ingress, but nonetheless rented the premises to the Tenant. In that regard, I accept the Landlord's submission that it would not have rented the premises at all if it had known of these issues.

34. The Tenant's strongly disagree. They point to the evidence of longstanding moisture ingress issues, including the rotting timber around the French doors, cracking in window frames and previous inspection reports that demonstrate that the French doors and window frames are cracking and require putty to prevent further moisture ingress. They also submit that the property manager observed water on the living room floor and around the French doors before the tenancy started.

35. I accept that evidence, which shows that the premises were old, and in need of maintenance. But I am not satisfied that this evidence demonstrates that the Landlord knew of the significant moisture ingress or of the issues that led to the moisture ingress.

36. I also accept the Tenants' submission that, although the Landlord provided copies of the three most recent inspection reports for the premises, the Landlord has not provided all the photographs from those reports. The Landlord says that was because the photographs were not relevant.

37. Whether the photographs are relevant is my call to make. Where a party relies on a document as evidence, I expect that party to provide the complete and unredacted version of the document. Not doing so immediately begs the question – what is the party trying to hide?

38. I can, and do, draw an inference from the failure to provide that information. However, the inference that I can draw is not strong enough for me to conclude that the Landlord has acted intentionally in renting the premises to the Tenants despite knowing of the moisture ingress issues. Those photographs may be evidence that the Landlord may have known, or even should have known if they had carefully looked at the photographs, but that is not enough. I must be satisfied, on the balance of probabilities, that it did know, but nonetheless rented the premises to the Tenants.

39. In making that finding, I also note that, despite the Tenants' suspicions otherwise, the evidence does not show that the Landlord knew that there was a chronic leak through the French doors. The evidence establishes that the Landlord only knew of one instance where water had leaked through the French doors. There is no evidence of any other knowledge.

40. I also note that the leak worsened dramatically from early in the tenancy, suggesting that the issue may well have been minor to start with, but coincidentally, escalated at about the same time as the tenancy started.

41. I acknowledge the possibility that the Landlord knew. But a possibility is not enough. Neither is a suspicion. I must be satisfied that it is more than likely that the Landlord knew of the moisture ingress that became apparent early in the tenancy. I am not.

42. Finally, the Tenants referred me to two previous Tenancy Tribunal decisions, which they say demonstrate that the Tribunal has ordered exemplary damages in similar situations. I make the following observations about those decisions:

    (a) The first decision[7] related to a breach of the Healthy Homes Standards, and the Adjudicator found that the Landlord knew that the premises did not comply with the Standard at the start of the tenancy due to water ingress from a leaking retaining wall and then intentionally ignored the issue. The delayed repair was deemed to be an intentional breach.

    (b) The second decision[8] related to a leaking roof and ceiling. Again, the Tribunal found that the Landlord knew of the leaks but then took too long to remedy them. The delay in the repair was deemed to be intentional, and therefore justified exemplary damages.

    (c) This case has crucial differences. First, there was no breach of the Standard. Second, the evidence does not establish that the Landlord has intentionally ignored the water ingress or taken too long to remedy it. As set out above, the evidence does not show that the Landlord knew of the water ingress before the tenancy. It did know about the ingress shortly after the tenancy started, and the Body Corporate was informed. The Body Corporate is responsible for the required repairs – the Landlord could not act without its authority - and the evidence shows that the Body Corporate has acted promptly and reasonably once it was made aware of the water ingress issues. The Tenants believe that the repairs should have been done much sooner, but the Body Corporate repair process can take time. In this case, I am satisfied that the time taken has been reasonable.

43. The Tenant's claim for exemplary damages is therefore dismissed. This finding does not, in any way, seek to minimise the harm caused to the Tenants' by living in a leaking home. I acknowledge that harm. I am just not satisfied that the Landlord intentionally caused it.

The failure to notify of maintenance work

44. Exemplary damages are not warranted for this breach because I am not satisfied that the conduct was intentional. The contractors were engaged by the Body Corporate, and the evidence does not show that the Landlord knew that those

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7 *Morris & Di Leva v Sunshine Property Group Ltd* [2025] NZTT 5024828
8 *Taffard v McFayden* [2025] NZTT 5220511

contractors would be on site at that time and intentionally failed to notify the Tenants.

45. The property manager says that he found out that the repairs had started after the Tenants. The evidence shows that the property manager was chasing up the Body Corporate for information about the repairs, and not receiving a response.

46. I accept that evidence and conclude that the Tenants have not shown that the Landlord knew that the contractors would enter the premises on that day. I therefore dismiss the claim for exemplary damages.

Filing fee and name suppression

47. The Tenants have substantially succeeded in their claim. They are entitled to recover the filing fee and to name suppression. The Landlord has also had substantial success – in that it has successfully defended the exemplary damages claim. I also grant suppression to the Landlord.

B Carter
29 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.