[2025] NZTT 5295399

TENANCY TRIBUNAL AT WAITAKERE | TE TARAIPIUNARA RETIHANGA KI WAITĀKERE

APPLICANT: Barfoot & Thompson Limited As Agent For Simon & Vanessa Coles

Landlord

RESPONDENT: Aldyth Isabel Wikiriwhi

Tenant

TENANCY ADDRESS: 49 Kellett Road, Ranui, Auckland 0612

ORDER

1. Aldyth Isabel Wikiriwhi must pay Barfoot & Thompson Limited As Agent For Simon & Vanessa Coles $6,203.85 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Water rates	$101.34	
Lock/key replacement	$425.50	
Rubbish removal	$3,400.01	
Repairs – electrical	$750.00	
Repairs – glass windows and doors	$500.00	
Repairs – holes in walls and damaged doors	$1,000.00	
Filing fee reimbursement	$27.00	
Total payable by Tenant to Landlord	**$6,203.85**	

Reasons:

Introduction

1. For nearly five years, Aldyth Isabel Wikiriwhi (the Tenant) lived at 49 Kellett Road, Ranui, Auckland (the Premises) owned by Simon & Vanessa Coles (the Owner) and managed by Barfoot & Thompson Limited (Property Manager) (together, the Landlord).
2. The Landlord says that, after the tenancy ended in June 2025, the Tenant failed to pay outstanding water rates, failed to return the keys, failed to clean or remove all rubbish from the house and caused extensive damage to windows, doors and walls, and electrical fittings inside the Premises.
3. The issues I have to determine are:
    a. Did the Tenant fail to pay water consumption charges accrued during the tenancy?
    b. Did the Tenant fail to return the keys at the end of the tenancy?
    c. Did the Tenant fail to leave the Premises reasonably clean at the end of tenancy?
    d. Did the Tenant fail to remove all rubbish at the end of the tenancy?
    e. Is the Tenant liable for the cost of repairing windows, doors and walls in the Premises?
    f. Should the Tenant reimburse the Landlord's filing fee?
4. On 29 October 2025, the Property Manager attended the hearing on behalf of the Landlord, the Tenant did not attend. I am satisfied the Tenant was served with notice of the hearing and proceeded in their absence.
5. The Landlord stated, by agreement between the parties, the bond of $2,120 was refunded to the Landlord on 30 June 2025. The Landlord has applied the bond received to outstanding water rates and rubbish removal costs (discussed further below).

The Tribunal's approach to the issues

6. The relevant law that applies is found in the Residential Tenancies Act 1986 (the Act).
7. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards. That includes a requirement that the party bringing the claim establish their claim "on the balance of probabilities". The balance of probabilities means more likely than unlikely, or in mathematical terms, has a fraction more than 50% likelihood. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely.

8. This obligation carried by the applicant is referred to as the “burden of proof”. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

9. As noted by the District Court in *Kaipo v Clarke & McCarthy* (DC) TT233/02, in practical terms this means that:

> [L]ike anyone who brings an application before a Tribunal or 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 fail to pay water consumption charges accrued during the tenancy?

10. A landlord is responsible for all outgoings in respect of the premises that are incurred whether or not the premises are occupied, or are incurred for common facilities. A tenant is responsible for all outgoings in respect of the premises that are exclusively attributable to the tenant’s occupation of the premises or to the tenant’s use of the facilities.[1]

11. The Landlord says when the tenancy ended, there were outstanding water consumption charges of $126.01 to 8 May 2025. When the bond of $2,120 was refunded on 30 June 2025, the Landlord applied $126.01 of the bond to those outstanding water consumption charges.

12. On or about 1 July 2025, the Landlord received the final water bill for the Premises, for water consumption to 25 June 2025. The Landlord says after the Tenant moved out on 15 June 2025, the Premises was vacant until it was sold in October 2025. On that basis, the Landlord says all water consumption charges recorded in the final water bill are attributable to the Tenant.

13. The final water bill recorded consumption charges of $101.34 to 25 June 2025. The Landlord seeks payment of that amount.

14. I am satisfied the Landlord has proved the amount sought is owed for water consumed during the tenancy. The Premises were not re-let after the tenancy, and the Premises have since been sold. I am satisfied all water consumption recorded in the invoice dated 26 June 2025 is for water consumed during the tenancy.

15. I make an order for payment of $101.34 for water consumption charges.

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[1] Section 39(1) and (3) of the Act.

Did the Tenant fail to return the keys at the end of the tenancy?

16. At the end of the tenancy the tenant must return to the landlord all keys and security or pass cards provided by the landlord for the use of the tenant.[2]

17. The Landlord says the Tenant did not return the keys for the front and back door, nor the downstairs entryway. The Landlord produced an invoice for $425.50 from a locksmith who attended on 19 June 2025. The Landlord also produced a text message from the Tenant dated 16 June 2025 in which the Tenant confirmed she had lost the keys.

18. I am satisfied the Landlord has proved the Tenant failed to return the keys and make an order for $425.50 for the cost of changing the locks.

Did the Tenant fail to leave the Premises reasonably clean at the end of tenancy?

19. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy.[3] A tenant is not required to leave a property in an immaculate standard of cleanliness. The standard is what an average, reasonable bystander would consider “reasonably clean” and “reasonably tidy”.

20. The Landlord says the Tenants did not leave the Premises reasonably clean. The Landlord has produced photos taken on 19 June 2025 which show the Premises was no cleaned at all. Dirt is visible on surfaces throughout the Premises.

21. The Landlord produced a quote dated 24 June 2025 for $558 from a cleaning company. At the hearing, the Property Manager stated the house had been cleaned, but that it was organised by the Owner and the Property Manager was unsure whether the Owner had engaged the cleaning company who provided the quote, or whether the Owner arranged another cleaning company, or did it themselves. No final invoice, or other evidence of actual cost incurred, was produced.

22. I am satisfied the Landlord has proved the Premises was not left reasonably clean at the end of the tenancy, however I am not satisfied the Landlord has proved they incurred the cost claimed. The Property Manager was unable to state when the cleaning was completed, or the actual cost incurred. No photos were provided to show the condition of the Premises after cleaning had been completed. Without such evidence, I am not satisfied the Landlord has proved the work was carried out or, if it was, that the Landlord incurred the cost claimed.

23. The Landlord’s claim for cleaning costs is therefore dismissed.

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2 See section 40(1)(e)(iv) of the Act.
3 See section 40(1)(e)(iii) of the Act.

Did the Tenant fail to remove all rubbish at the end of the tenancy?

24. At the end of the tenancy the tenant must remove their belongings and all rubbish.[4]

25. The Landlord says the Tenants did not remove all of their belongings or rubbish from the Premises. The Landlord has produced photos taken on 19 June 2025 which show furniture, clothing, cutlery, wood and rubbish were left throughout the interior and exterior of the Premises.

26. The Landlord produced an invoice dated 25 June 2025 for $5,394.00 from a rubbish removal company which states 6 bins (each measuring $9m^3$) were filled with Tenant belongings and/or rubbish and disposed of.

27. The Landlord says when the bond of $2,120 was refunded on 30 June 2025, the Landlord applied $1,993.99 to the rubbish removal costs. The Landlord now seeks payment of the remaining $3,400.01.

28. I am satisfied the Landlord has proved the Tenant did not remove all rubbish and belongings from the Premises at the end of the tenancy, and that the cost claimed was actually incurred.

29. I make an order for payment of $3,400.01 for rubbish removal.

Is the Tenant liable for the cost of repairing windows, doors and walls in the Premises?

30. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear.

31. If this is established, to avoid liability, a 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.[5] A Tenant is responsible for any destruction or damage that was intentional.[6]

32. 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).[7]

33. 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). Where

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4 See section 40(1)(e)(ii)-(iii) of the Act.
5 Sections 40(2)(a), 41 and 49B of the Act.
6 Section 49B(1) of the Act.
7 Section 49B(3)(a) of the Act.

insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage.[8]

34. The Landlord says the Tenant caused extensive damage to the interior of the Premises during the tenancy and sought compensation for the following repairs:
    a. Electrical repairs $1,025.32;
    b. Broken glass in joinery $770.50; and
    c. Holes in walls and damaged internal doors $6,187.00.

    (together, the Damage)

35. At the hearing, the Property Manager stated the Owner held insurance for Tenant damage with an excess of $750 per claim. The Property Manager stated the Owner had not made a claim with their insurer for the Damage on the basis the Owner considered the Damage was intentional and therefore a claim would not be accepted by the insurer.

36. Intentional damage requires evidence the Tenant deliberately caused the damage, for example by punching a wall. By contrast, careless damage is accidental, as a result of a Tenant failing to take reasonable care, such as when moving furniture or some other accident.

37. I am satisfied the photos taken on 19 June 2025 prove damage to the walls and doors of the Premises occurred during the tenancy and is more than fair wear and tear.[9] I also accept the Landlord's submission that damage to the walls and doors was caused intentionally because the size of the holes (for example, the holes in the walls in the hallway, Bedroom 2 and Bedroom 4) appear to be at shoulder height and are consistent with being struck with a person's fist or shoulder. I am satisfied such damage was therefore likely caused by an intentional punch to the wall/ or door, or shoulder charge to the same.

38. I am also satisfied the broken glass in the downstairs entry door and bedroom 3 are consistent with having been deliberately broken as they also appear to be at shoulder height, that is, they are consistent with being punched. In addition, the evidence that three windows/doors had broken glass makes it very unlikely that they were accidentally broken – it would be a highly unlikely coincidence that three separate windows broke accidentally.

39. As for the electrical repairs, being replacement fittings for interior lights, I am satisfied the damage to the lights occurred during the tenancy and is more than fair wear and tear. However, there is no evidence the damage to lights was

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[8] Section 49B(3A)(a) of the Act.

[9] Photos taken during the in-going inspection dated 10 September 2020 show the interior of the Premises was in good condition with no holes in walls and doors were free from damage.

intentionally caused, instead, light shades are just missing. I am satisfied it is more likely that the light fittings were broken or removed due to carelessness.

40. The issue I face is how to quantify the loss the Landlord suffered for damage to electrical fittings, walls and doors, and glass. The Landlord obtained quotes for repairs to the Damage, but did not undertake the work. Instead, the Premises was put on the market for sale and was sold on 28 October 2025. It was sold in an "as is where is" condition. The Landlord submits they could have sold the property for a higher sale price if the Damage had not been present, and therefore seeks compensation based on the quotes obtained to repairs the Damage.

41. For the damage to electrical fittings, I am satisfied the Landlord could have made a claim under their insurance. The Tenant should not be disadvantaged due to the Landlord's own choice not to lodge an insurance claim. I therefore award the Landlord $750 for damage to electrical fittings.

42. For the damage to glass in windows and doors, I award the Landlord $500. I accept the damage was intentional, and therefore the Tenant is liable for the damage caused. While I accept the broken windows (which were boarded up by the Landlord for the purposes of selling the property) would have impacted the appeal of the property to prospective purchasers, it was ultimately the Landlord's choice to put it on the market in that condition.

43. For the damage to walls and doors, I award the Landlord $1,000. I accept that damage was also intentional, and therefore the Tenant is liable for the damage caused. However, the Landlord did not produce evidence to demonstrate the actual loss suffered was the amount quoted to repair the damage, nor that the sale price was impacted by that amount. As with the broken glass windows and doors, it was ultimately the Landlord's choice to put the Premises on the market in that condition.

Should the Tenant reimburse the Landlord's filing fee?

44. As the Landlord has partly succeeded with the claim the Tenant must reimburse the filing fee.

N Small
07 November 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.