[2025] NZTT 5183371

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Landlord

RESPONDENT: Robin Smith, Yang Soon Cho

Tenant

TENANCY ADDRESS: 93 Sylvan Avenue, Northcote, Auckland 0627

ORDER

1. The order dated 1 September 2025 is recalled, amended and reissued pursuant to the terms of this order. The order dated 1 September 2025 is not enforceable.
2. An application for suppression has been made in this case, and the Tribunal orders suppression of the Landlord's name and identifying details.
3. Robin Smith and Yang Soon Cho must pay [the landlord/s] $5,845.50 immediately, calculated as shown in the table below.

Description	**Landlord**	**Tenant**
Lawns and Garden word	$250.00	
Rubbish removal	$170.00	
Repairs: Waste disposal	$198.50	
Repairs: Painting	$2,800.00	
Lost rent	$2,400.00	
Filing fee reimbursement	$27.00	
Total award	**$5,845.50**	
Total payable by Tenant to Landlord	**$5,845.50**	

Reasons:

1. Both parties attended the hearing, which took place over two days on 19 June 2025 and 8 August 2025.
2. On 1 September 2025, I issued an order requiring the tenant to pay the landlord $5,845.50. On 26 November 2025, the landlord contacted the Registry advising that their name was spelt incorrectly on the intituling and in the body of the order. One of the landlord party's names is "[the landlord]" however, it appears as "[the landlord]" in the order dated 1 September 2025. The landlord is having difficulty enforcing the order because of this error. The landlord's application records their name as being "[the landlord]" and there appears to have been a typo when entering their details into the system. The purpose of this order is recall, amend and reissue the order dated 1 September 2025 with the correct spelling of the landlord's name. In all other respects, the order dated 1 September 2025 remains the same.
3. The tenant was represented by legal counsel, Nathan Regal, at the second hearing.
4. This tenancy began on 30 April 2022 and ended on 21 April 2024 by mutual agreement. The landlord claims the tenant did not leave the premises reasonably clean and tidy. The landlord also claims the tenant is responsible for damaging the premises. In particular, the landlord claims the tenant bred dogs at the premises which urinated on the floor, causing the premises to smell so bad that the landlord had to replace the carpet and repaint the inside. The landlord claims this delayed their ability to re-tenant the premises quickly. The landlord also claims that by breeding dogs at the premises, the tenant used the premises for an unlawful purpose and breached their obligation to occupy the premises principally for residential use.
5. The issues I must determine are:
    a. To what standard must the landlord prove their claim?
    b. Did the tenant leave the premises reasonably clean and tidy at the end of the tenancy?
    c. Did the tenant return all chattels provided by the landlord at the beginning of the tenancy?
    d. Did the tenant removal all rubbish at the end of the tenancy?
    e. Is the tenant responsible for damaging the premises?
    f. Should the tenant compensate the landlord for 9 weeks lost rent?
    g. Did the tenant use the premises for an unlawful purpose?
    h. Did the tenant breach their obligation to occupy the premises principally for residential purposes?

To what standard must the landlord prove their claim?

6. As the applicant, the landlord must prove their claim to the civil law standard of proof, on the balance of probabilities. This means that they must establish that what they are claiming is more likely than not. This is referred to as the "burden of proof." Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

7. As noted by the District Court in *Katipo 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 of 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.

8. I do not need to be completely certain, but I need to be more certain than uncertain. In deciding any particular claim, I must consider all the evidence presented (including oral evidence at the hearing). I must weigh this evidence to decide what is more likely.

Did the tenant leave the premises reasonably clean and tidy?

The law

9. At the end of a tenancy, the tenant must leave the premises reasonably clean and tidy.[1]

10. "Reasonably" clean means clean to the standard an average, reasonable bystander would consider reasonable.[2] It does not mean commercially clean,[3] spotless[4] or to a hotel or motel standard.[5] The better the premises and the higher the rent payable, the higher the standard expected.[6]

11. The term "premises", includes "any land and appurtenances, other than facilities." Therefore, the obligation to leave the premises reasonably clean and tidy relates to the inside and outside of the premises.

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[1] Residential Tenancies Act 1986, section 40(1)(e)(iii).
[2] *Housing New Zealand v Holloway* NZTT Auckland TT215/93, 8 February 1993 at [8].
[3] *Mills v Kiwi Property Care Ltd* NZTT Auckland TT215/93, 8 February 1993 at [8].
[4] *Chang v Driscoll* NZTT Christchurch TT2043/98, 21 July 1998 at [6].
[5] *Richards v Scully* NZTT Christchurch TT858/97, 8 May 1997 at [3]; *Chang v Driscoll* NZTT Christchurch TT2043/98, 21 July 1998 at [6].
[6] *Westwood v Western* [1994] DCR 759 at [770].

12. The landlord claims the tenant did not leave the inside or outside of the premises, including the deck, reasonably clean and tidy and seeks compensation for the following amounts:

    a. Internal cleaning: $430.00

    b. Lawns: $40.00

    c. Green waste removal: $210.00

    d. Deck cleaning: $373.75

13. I consider each issue individually below.

Internal cleaning

14. The landlord submitted 11 photographs to support their claim that the tenant did not leave the inside of the premises reasonably clean and tidy. None of the photographs show the inside of the premises taken from a distance. This means I am unable to assess the overall state of the property. The photographs are all close up photographs including, four closeup photographs of the toilet, a section of the laundry floor and the French door track.

15. The tenant denies they left the inside of the premises unreasonably clean and tidy, and the photographs submitted by the landlord are insufficient to support their claim. The photographs of the toilet show some corrosion to the bottom of the toilet bowl, but this could easily be fair wear and tear, as the toilet appears quite old. This factor alone is certainly not sufficient to render the entire premises unreasonably clean and tidy. The same can be said about the photographs of dust and dirt in the French door track and small section of the laundry floor.

16. For this reason, the landlord's claim for compensation of $430.00 for internal cleaning is dismissed.

Lawns and garden

17. The photographs taken at the end of the tenancy show the lawns are overgrown and full of weeds. There is also a significant amount of dead foliage in the garden that has not been cleared. On the balance of probabilities, I am convinced the tenant did not leave the lawns and garden reasonably clean and tidy. The landlord's claim for compensation is granted for the following amounts:

    a. Lawns: $40.00

    b. Removal of green waste: $210.00

18. The landlord submitted invoices for these amounts.

Deck cleaning

19. The landlord submitted photographs of the deck taken at the end of the tenancy. The deck is wooden and appears green all over in the photographs. The landlord claims the discolouration is due to the tenant's dogs urinating on the deck. The tenant denies this.

20. I am not convinced on the balance of probabilities that the discolouration to the deck is anything other than fair wear and tear, which a tenant is not responsible for.[7] The landlord did not submit any photographs taken at the beginning of the tenancy and instead submitted photographs taken when the premises were advertised for sale. The landlord purchased the premises in December 2021 and the tenancy began in April 2022.

21. The deck appears relatively old in the advertising photographs and the beginnings of some green discolouration are present. No evidence confirming that the reason for the discolouration was due to dog urine was submitted. The tenant denies this was the case.

22. It is common knowledge that wood discolours over time due to exposure to the elements and I cannot rule this out as a cause of the discolouration. This tenancy was two years long, which is a reasonable period of time for the discolouration to have developed.

23. The landlord has not proven on the balance of probabilities that the discolouration to the deck is not fair wear and tear. For this reason, the landlord's claim for $373.75 to clean the deck is dismissed.

Did the tenant return all chattels provided by the landlord at the beginning of the tenancy?

24. At the end of the tenancy, the tenant must leave all chattels provided by the landlord for the use of the tenant.[8]

25. The landlord claims two sink plugs were missing at the end of the tenancy. The tenant denies this.

26. The entry inspection report does not mention any sink plugs as being provided by the landlord at the beginning of the tenancy. The exit inspection report, which consists of a couple of pages of bullet points, does not mention missing sink plugs missing under the heading "kitchen and dining." In the absence of any supporting evidence, I am not convinced on the balance of probabilities that two sink plugs were provided at the beginning of the tenancy and not returned at the end.

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[7] Residential Tenancies Act 1986, section 49A(2).
[8] Residential Tenancies Act 1986, section 40(1)(e)(v).

27. The landlord's claim for compensation of $7.98 is dismissed.

Did the tenant remove all rubbish at the end of the tenancy?

28. A tenant must remove all rubbish at the end of the tenancy.[9]

29. The landlord submitted photographs of the outside of the premises taken at the end of the tenancy. These show rubbish left in bags, boxes and piles outside the premises. Clearly, the tenant did not remove all rubbish at the end of the tenancy.

30. The landlord submitted an invoice for $170.00 for rubbish removal. Their claim for compensation is granted for this amount.

Did the tenant return the keys at the end of the tenancy?

31. A tenant must return all keys provided to them by the landlord at the end of the tenancy.[10]

32. The landlord claims the tenant did not return three out of four keys provided to them at the beginning of the tenancy. The tenant claims his son returned the keys.

33. The inspection report attached to the tenancy agreement includes a section titled "No. of keys" but has not been completed by the parties. The landlord's own entry inspection template does not include any information about keys. No photographs of any keys provided to the tenant at the beginning of the tenancy were submitted. The exit inspection has a note about missing keys, but this is made underneath the signature of the landlord and tenant's son. Therefore, I am unsure whether the note was added after the parties signed the exit inspection report. The landlord did not submit an invoice for the cutting of any keys.

34. In the absence of any supporting evidence, I am not convinced on the balance of probabilities that four keys were provided to the tenant at the beginning of the tenancy and only one was returned at the end.

35. The landlord's claim for compensation of $30.00 is dismissed.

[9] Residential Tenancies Act 1986, section 40(1)(e)(iii).
[10] Residential Tenancies Act 1986, section 40(1)(e)(iv).

Is the tenant responsible for damaging the premises?

The law

36. 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.[11]

37. Fair wear and tear has been defined as the deterioration of premises due to both reasonable use and ordinary operation of natural forces, reasonable conduct on the part of the tenant being assumed. The amount of damage is not relevant.[12]

38. 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).[13]

39. 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).[14] Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage.[15]

40. 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 applied to anything the tenant does and anything done by a person they are responsible for.[16]

41. 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.[17]

42. The landlord claims the tenant is responsible for the following damage:

    a. French door: $150.00

    b. Power board cupboard: $200.00

    c. Kitchen waste disposal: $198.50

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[11] Residential Tenancies Act 1986, sections 40(2)(a), 41 and 49B.
[12] See discussion in *Accessible Properties New Zealand Ltd v McKeefry* [2019] NZTT 4114629, 4169403.
[13] Residential Tenancies Act 1986, section 49B(3)(a).
[14] Residential Tenancies Act 1986, section 49B(3)(b).
[15] Residential Tenancies Act 1986, section 49B(3A)(a).
[16] Residential Tenancies Act 1986, section 49B(1).
[17] See *Guo v Korck* [2019] NZHC 1541.

d. Sink stop plug: $7.98

e. Bathroom extractor fan: $142.00

f. Dog urine smell throughout the premises: $4,000.00

43. The landlord's insurance did not cover any of these items.

44. I deal with each item individually below.

French door

45. The landlord submitted a photograph of the outside of the French door taken at the end of the tenancy. The door is made from wood and a small – moderate sized chunk of wood is missing at the bottom on the outside of the door. The landlord claims the tenant's dogs chewed it off, which the tenant denies.

46. The landlord only submitted one photograph of the French door taken before the tenancy. The photograph is an advertisement photograph from when the premises were advertised for sale. The landlord purchased the premises in December 2021 and the tenancy began on 30 April 2022.

47. In the advertisement photograph, the French door is open and only a small section of it is visible. The photograph appears to have been taken from a different angle than the photograph taken at the end of the tenancy. The door is a multi-panelled door and because the two photographs have been taken at different angles, a different panel is shown in each. This means a comparison of the two sets of photographs does not help me to determine whether the damage was pre-existing or not.

48. The lack of photographs taken at the beginning of the tenancy also means I am unable to determine if the damage exceeds fair wear and tear. This is because I am unable to get a sense of the condition of the door at the beginning of the tenancy. The alleged damage is on the outside of the door, which is likely to deteriorate at a faster rate than the inside of the door, due to exposure to weather conditions.

49. The landlord has not proven on the balance of probabilities that the damage occurred during the tenancy or exceeds fair wear and tear. Therefore, their claim for compensation of $150.00 is dismissed.

Kitchen waste disposal

50. The landlord claims the tenant damaged the kitchen waste disposal unit. The tenant denies this and claims they never used the waste disposal, because they had a compost.

51. The landlord submitted an email from Alison Weakley, the real estate agent who marketed the property when it was sold to the landlord. In it, Ms Weakley states that the kitchen was only 4 months old and had a new stove, cooktop and waste disposal.

52. The email from Ms Weakley convinces me on the balance of probabilities that the kitchen was recently renovated and relatively new at the beginning of the tenancy. The tenancy was only three years long and the estimated useful lifespan of a residential waste disposal unit is 8 years, according to Inland Revenue General Depreciation Rates IR265. The fact that the waste disposal broke so early on in its lifespan suggests the damage is not the result of fair wear and tear.

53. The landlord also submitted an email from an electrician, which states that a cover plate from the sink fell into the waste disposal unit causing it to jam, rust and burn the motor. This could only have happened if the waste disposal unit was turned on when the cover plate was in it, which is inconsistent with the tenant's claim that they never used the waste disposal unit. I have reservations about the credibility of this statement.

54. On the balance of probabilities, I am convinced that the waste disposal was damaged during the tenancy and is beyond fair wear and tear.

55. The landlord has not replaced the waste disposal unit but gave evidence they have promised the new tenant to do so. I accept the landlord's evidence.

56. The landlord submitted a quote from Bunnings for the purchase a new waste disposal unit for $198.50. The landlord's claim for compensation is granted for this amount.

Bathroom extractor fan

57. The landlord claims the bathroom extractor fan was working at the beginning of the tenancy, but not at the end. The tenant claims it had not been working for some time due to fair wear and tear.

58. No photographs of the bathroom and extractor fan were submitted.

59. No evidence was given about the age of the extractor fan. The email from Ms Weakley does not mention anything about the bathroom being recently renovated. The only evidence given by the landlord was that the extractor fan would not turn on at the end of the tenancy. No evidence to suggest any unreasonable use of the extractor fan was submitted.

60. I am not convinced on the balance of probabilities that the reason the extractor fan was not working at the end of the tenancy is anything other than the result of fair wear and tear.

61. The landlord's claim for compensation of $142.00 is dismissed.

Power board cupboard

62. The landlord claims the tenant broke the power board cupboard in a fit of rage. The tenant denies this and claims the damage is fair wear and tear.

63. No photographs of the power board taken at the beginning of the tenancy were submitted. It appears relatively dated in the photograph taken at the end of the tenancy. Any damage could reasonably be fair wear and tear.

64. The landlord claims the tenant damaged the power board cupboard in front of the electrician, but the landlord did not call the electrician as a witness or submit any written statement from them.

65. In the absence of any evidence supporting the landlord's version of events, I am not convinced on the balance of probabilities that the tenant intentionally damaged the power board cupboard.

66. The landlord's claim for compensation of $200.00 is dismissed.

Dog urine smell throughout the premises

Evidence and submissions of the parties

67. The landlord claims the tenant kept 10 dogs inside the premises, which urinated all over the floor causing the premises to smell very badly. The landlord replaced the carpet throughout the premises but claims this did not eliminate the smell. The landlord claims they struggled to tenant the property due to the smell and therefore, decided to paint the entire premises to eliminate it. The landlord claims they purchased the paint themselves for $2,800.00 and do not seek to recover this cost form the tenant. The landlord submitted an invoice for $4,000.00 for the labour to paint the premises and seeks compensation for this amount.

68. The tenant claims they had three adult dogs at the premises. They accept they bred puppies but deny there was ever 10 dogs in the premises at once. The tenant claims there was a maximum of 8 dogs at any one time and they only bred the two female adult dogs in the last year of the tenancy, but not before.

69. The tenant denies that the premises smelt like dog urine. The tenant claims they protected the flooring by placing vinyl over the carpet and the puppies were kept in a pen until 6 weeks old when they were trained to go to the toilet on puppy pads, which were changed throughout the day. The tenant claims the puppies were sold at 8 weeks old and not kept inside the premises for very long. Further, the tenant claims the premises were professionally cleaned at the

end of the tenancy and the carpets have been replaced. The tenant claims these measures would have been sufficient to address any smell.

70. The tenant also claims the dogs and puppies were only ever kept in the lounge and dining room. The tenant denies the dogs ventured into any other area in the house. The tenant claims any damage to the carpet was caused by water leaking from the roof.

Analysis

71. The landlord did not submit any photographs taken at the beginning of the tenancy. The only photographs submitted prior to the tenancy are the photographs that were used to advertise the property when it was for sale. I accept the tenant's submission that I cannot rely on these photographs as being entirely accurate, because they may have been enhanced for marketing purposes to attract potential buyers. Even if I make a generous allowance for this factor, it cannot be denied that the state of the carpet as shown in the photographs taken at the end of the tenancy is markedly different to the state of the carpet in the advertising photographs. In the advertising photographs, the carpet in the bedrooms looks relatively old, but no discolouration or stains are present. In contrast, the photographs of the carpet in the bedrooms at the end of the tenancy shows significant discolouration and large stains.

72. The photographs taken at the end of the tenancy are not the only evidence of dog urine in the premises. The landlord also submitted a quote from Carpet Mill, which states the following:

> Full replacement of the existing carpet as it has dog urine stains in every room…The smell is pungent.

73. The photographs of the carpet and comments by Carpet Mill support the landlord's claim that the tenant's dogs were not confined to the lounge and dining room, and the carpet was not protected by vinyl. On the balance of probabilities, I am convinced that the tenant's dogs and puppies were allowed to venture throughout the premises and urinated on the floor in various parts of the house.

74. The tenant gave evidence that they bred puppies in the last year of the tenancy. The tenant claims both adult female dogs birthed one litter each, yielding approximately 4 - 5 puppies per litter. That equates to a total of approximately 8 - 10 puppies in the final year of the tenancy, all of whom were allowed to venture throughout the premises. This increases the likelihood that a significant amount of dog urine was deposited inside the premises during the tenancy and supports the landlord's claim regarding the extent of the smell.

75. On the balance of probabilities, I am convinced that there was a lingering smell of dog urine, even after the carpet was replaced. It was reasonable for the landlord to paint the inside of the premises to remove the smell.

76. The landlord submitted an invoice for $4,000.00 for painting however, there needs to be an adjustment to reflect betterment and depreciation. The landlord has had the entire premises newly painted, including the ceilings. The capital value of the premises has increased as a result. The landlord must be returned to the same position they would have been in had the tenant not breached their obligations and must not be any better or worse off.

77. The landlord claims they purchased the paint themselves for $2,800.00 and no adjustment should be made, because they are not seeking to recover this cost. No proof of the purchase of the paint was submitted and therefore, I can only take this factor into account to a limited degree.

78. The landlord does not know when the premises were last painted, but claims they were in good condition at the beginning of the tenancy. The email from Alison Weakley, the real estate agent who advertised the property for sale, only refers to the kitchen as having been newly installed and painted. No mention is made of any other area of the house. The house is not newly built and Ms Weakley states in her email that the carpet is not new. I consider it more likely than not that the paint had some age to it and was probably as old as the carpet. In these circumstances, I consider an adjustment of 30% is fair and reasonable.

79. The landlord's claim for compensation for painting the inside of the premises is granted for $2,800.00.

Should the tenant compensate the landlord for 9 weeks lost rent?

The law

80. The general law provides that if an applicant has suffered damage that is not too remote, then they must, so far as money can do, be restored to the position they would have been in had the breach not occurred. Compensation cannot be recovered for all types of damage and a line must be drawn somewhere. Therefore, the law does not permit compensation for damage that is considered to be too remote. Recovery is limited to actual loss resulting from the breach that was reasonably foreseeable when the contract was made.

Evidence and submissions of the parties

81. The landlord seeks 9 weeks lost rent calculated at a rate of $800.00 per week ($7,200.00 total), as compensation for the time the premises were untenanted from 21 April 2024 – 23 June 2024.

82. The landlord claims there was a delay in re-tenanting the premises due to the need for repairs. The landlord claims the main issue that delayed re-tenanting the premises was the damage caused by dog urine, which required the carpets to be replaced and premises painted.

83. The tenant denies there was a smell of dog urine in the premises. Even if this were the case, the tenant claims it is not reasonable to attribute the entire period of 9 weeks to this issue.

Analysis

84. In an order dated 12 November 2024, the Tribunal found the tenant's dogs damaged the carpet during the tenancy. The landlord did not submit any photographs taken at the beginning of the tenancy or know how old the carpet was. Therefore, the Tribunal ordered compensation in the form of a contribution of $500.00, rather than the total $5,175.00 sought by the landlord.

85. In addition to the damage sustained to the carpet, I have found there was most likely a lingering smell of dog urine after it was replaced.

86. The landlord submitted invoices dated 14 May 2024 for the carpet replacement and 1 June 2024 for the painting.

87. I accept that the need to replace the carpet and paint the premises contributed to a delay in advertising and re-tenanting the premises quickly. These are both relatively big jobs that require some time. I am not convinced however, that these issues were the sole cause for the delay. This is because the landlord advertised the premises for rent at $850.00 per week, which they claim they were advised to do by Barfoot & Thompson. This was an increase from the previous rent of $800.00 per week. After the painting was complete, the landlord reduced the rent from $850.00 per week back to $800.00 and secured a new tenant shortly thereafter. This leads me to believe that the increased rent was most likely a contributing factor to the delay as well. Further, there is usually always a delay of around 3 – 4 weeks between tenancies, due to the need for new tenants to give notice to end their existing tenancies. A landlord cannot reasonably expect that premises will be immediately re-tenanted after the end of a tenancy.

88. In all the circumstances, I am satisfied that compensation of 4 weeks rent at $800.00 per week reasonably reflects the delay attributed to the smell and damage caused by dog urine.

89. The landlord's claim for lost rent is granted for $2,400.00.

Did the tenant use the premises for an unlawful purpose?

The law

90. A tenant must not use or permit the premises to be used for any unlawful purpose.[18] Breach of this obligation is an unlawful act for which exemplary damages up to a maximum of $1,800.00 may be granted.[19]

Evidence and submissions of the parties

91. The landlord claims the tenancy agreement only permitted three dogs in the premises. The landlord claims the tenant bred dogs. The landlord claims none of the dogs kept by the tenant were registered and submitted an email from the Auckland Council which reads:

> Hello [landlord]
>
> I can confirm that on January 2nd 2024 at 17.52hrs (6.52pm) Auckland Council Animal Management received a complaint about barking at 93 Sylvan Avenue, Northcote…
>
> One of Auckland Council Animal Managements Barking Advisores investigated this complain and spoke with a male residing at the address via phone. During a telephonic conversation on January 17 2024 the Bark Advisor had with a male residing at 93 Sylvan Avenue, the male admitted to having 5 (five) small dogs that were unregistered and not desexed.
>
> …

92. The landlord claims the tenant used the premises for an unlawful purpose, because they bred dogs, all of whom the landlord claims were unregistered.

93. The tenant submits that "unlawful" means "illegal" and therefore, the fact the tenant may have breached the tenancy agreement by having more than three dogs does not mean that they used the premises for an unlawful purpose. The tenant also characterises non-registration of a dog as "regulatory non-compliance", rather than a crime.

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[18] Residential Tenancies Act 1986, section 40(2)(b).
[19] Residential Tenancies Act 1986, section 40(3A)(c) and Schedule 1A.

Analysis

94. The term “unlawful” is broader than “illegal” however, the activity complained about needs to be relatively serious and there must be a correlation between the unlawful act and negative effect on the premises.

95. The most common cases where tenants are found to have used premises for an unlawful purpose involve instances where they have used or manufactured drugs at the premises. These types of offences are serious and carry maximum penalties between 3 months – life imprisonment. The use and manufacture of drugs within premises also has a direct negative effect on the premises, due to contamination. In contrast, failure to register a dog who is older than 3 months carries a maximum penalty of a $3,000.00 fine.[20] It is not an imprisonable offence. Further, there is no causal nexus between the failure to register a dog and damage to the premises. Damage occurs whether the dog(s) is registered or not.

96. For these reasons, I find the tenant did not use the premises for an unlawful purpose by breeding and keeping unregistered dogs at the premises.

Did the tenant breach their obligation to occupy the premises principally for residential purposes?

The law

97. A tenant must ensure that the premises are occupied principally for residential purposes.[21]

98. The RTA specifically envisages that premises may be used for both commercial and residential purposes[22] however, it is necessary that the premises are being principally occupied by the tenant as a place for them to live. A tenant who sleeps on the premises and generally uses them as a domestic base will probably be regarded as principally occupying them for residential purposes, even if they also use them for business purposes.[23] It is a matter of fact and degree in each case. There is no ‘hard and fast rule” that applies to determine the issue.

Evidence and submissions of the parties

99. The landlord claims the tenant bred dogs at the property every year during the tenancy, which began on 30 April 2022 and ended on 21 April 2024. The

[20] Dog Control Act 1986, section 42(1).
[21] Residential Tenancies Act 1986, section 40(1)(b).
[22] Residential Tenancies Act 1986, section 2(3).
[23] See *Franklin Real Estate v Anderson* Tenancy Tribunal Otahuhu TT 828/93, 14 May 1993.

landlord claims the tenant bred their dogs more than once per year and sold the puppies for $3,000.00 each. The landlord lives next door and says they saw people pay the tenant cash for the puppies.

100. The landlord also claims the tenant bred and sold birds at the premises. The landlord claims that in a previous hearing, the tenant's son gave evidence that the tenant had around 26 birds and 10 dogs. The landlord claims the tenant's son also said that the birds sold for more than the puppies.

101. The landlord claims the breeding operation was big and occurred at the premises. Therefore, the landlord claims the tenant was not occupying the premises principally for residential purposes.

102. The tenant denies they bred and sold birds at the premises. Whilst the tenant accepts they bred dogs, they claim they only bred them in the last year of the tenancy and each female dog produced a litter each. One litter yields around 4 – 5 puppies each.

Analysis

103. There is a disagreement between the parties about the nature and extent of the breeding operation conducted by the tenant. The landlord bares the onus of proving on the balance of probabilities that the breeding operation was extensive. They have not done this. No supporting evidence was submitted by the landlord such as statements from neighbours or copies of advertisements for the sale of puppies or birds placed by the tenant. There are no photographs taken as part of an inspection, which supports the landlord's claim either. The only photographic evidence are three photographs, two of which show 3 - 7 dogs inside the premises and one photograph of a bird cage on the deck with 2 – 3 birds in it. The tenant claims they gave the birds away, which the landlord denies, but no evidence to support this was submitted.

104. The tenant gave evidence that they bred their two adult female dogs in the last year of the tenancy, which yielded two litters of 4 – 5 puppies. In the absence of any evidence suggesting otherwise, I am not convinced on the balance of probabilities that the tenant's breeding operation exceeded this.

105. The tenant lived in the premises the entire tenancy. In these circumstances, I am not convinced on the balance of probabilities that they ceased to occupy the premises principally for residential purposes.

106. This claim is dismissed.

Filing fee

107. Because [The applicant/s] has substantially succeeded with the claim I have reimbursed the filing fee.

L Ryken
28 November 2025
(Reissued)

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.