TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Barfoot & Thompson Limited Landlord
RESPONDENT:	Zoe Liu Tenant
TENANCY ADDRESS:	Unit/Flat Apartment 411, 223B Green Lane West, Epsom, Auckland 1051

ORDER

1. The landlord's application is dismissed.
2. The tenant's application is dismissed

Reasons:

1. On 24 July 2025 the landlord filed an application seeking compensation for flood damage and reimbursement of the filing fee following the end of the tenancy.
2. On 3 November 2025 the tenant filed a cross application seeking general damages for stress arising out of the landlord's claim, compensation for breach of quiet enjoyment, compensation for failure to provide the exit inspection report and bond mismanagement and a market rent review. The tenant also invited the Tribunal to dismiss the landlord's application.
3. The hearing proceeded by way of telephone conference. Mr Slater, Senior Property Manager, and Mr Nassiri, Head of Property Management, appeared for the landlord. The tenant appeared.
4. The Tribunal will consider the landlord's claims and then the tenant's claims.

Relevant legal considerations

5. The relevant law that applies is found in the Residential Tenancies Act 1986 (the "Act").
6. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.
7. That includes a requirement that the party bringing the claim (the applicant), establish their claims "on the balance of probabilities." The balance of probabilities means more likely than unlikely, or in mathematical terms, has a fractionally 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.

History of the tenancy

10. The property is a one-bedroom apartment located on the fourth floor of an apartment block.
11. The tenancy commenced on 30 September 2022.
12. On or around 22 October 2022 the tenant arranged for the landlord's washing machine to be removed and securely stored and for her own washing machine to be installed in the property.
13. The tenant's actions were observed by a neighbour, a cousin of the landlord, and reported to the property manager.
14. On 27 October 2022, following a discussion between the parties, the tenant agreed to have the landlord's washing machine reinstalled by a professional tradesperson, at her own cost, at the end of the tenancy.
15. On or around October 2023 (after 12 months living in the property) the tenant's rent was increase from $650.00 to $710.00 per month.

16. On or around October 2024 the landlord sought to increase the tenants rent from $710.00 to $760.00 per month.
17. The tenant did not agree to the rent increase and the tenancy ended on 20 November 2024.
18. On 21 November 2024, the landlord completed an end of tenancy exit inspection and four weeks later the bond was refunded to the tenant.
19. On 13 February 2025, the property was re-tenanted to a third party.
20. On 21 March 2025, the wastewater pipe connecting the washing machine to the laundry tub came loose, flooding the property and the fourth-floor communal hallway.

Landlord's claims

Is the tenant responsible for damage to the property?

21. The landlord seeks compensation of $2,266.65, the cost of remediating flood damage caused by the washing machine overflowing following the end of the tenancy. The landlord said the flood happened after the waste-water pipe which was connected into the laundry tub came loose. This claim relates to remediation of flood damage to the communal hallway only.
22. The landlord states the tenant is liable for the cost of the remediation work as she failed to comply with their agreement to have the washing machine professionally reinstalled at the end of the tenancy. The landlord's position is that the washing machine wastewater pipe would not have come loose, causing the flood, if the machine had been properly reinstalled.
23. A detailed invoice for the amount claimed was provided.
24. The tenant denies liability for the cost of remediating the flood damage. The tenant states:
    a. The tenant accepts that she forgot about her obligation to have the washing machine professionally reinstalled following the end of the tenancy. However, at no time was she reminded of this obligation by the landlord.
    b. The landlord never defined what they meant by a professional tradesperson.
    c. The washing machine was reinstalled by professional movers.
    d. The washing machine was present at the exit inspection and the landlord failed to raise any issues with its installation or general condition.
    e. The tenant had successfully used the washing machine, following its reinstallation, while preparing to vacate the property. This proved it had been properly reinstalled.

f. A new tenant moved into the property on 13 February 2025. As confirmed by the landlord, the new tenant had been using the washing machine without incident until the day of the flood.

25. The tenant's position is that the Tribunal cannot be satisfied she is liable for the cost of remediating the flood damage. The tenant submitted it was possible there was an intervening action, such as the current tenant bumping the wastewater pipe out of place, that caused the flood and resulting damage.

26. With any claim from a landlord for compensation for damage to the premises, the landlord must prove that damage 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. See sections 49B, 66K(2)(a), and 66L of the Act.

27. Where the damage is caused carelessly, and is covered the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent. See section 49B(3)(a) of the Act.

28. 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). See section 49B(3)(b) of the Act. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) of the Act.

29. 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 applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) of the Act.

30. The landlord seeks compensation from the tenant for flood damage occurring approximately four months after the end of the tenancy. The landlord's position is the flooding was a direct result of the tenant's failure to have the washing machine professionally reinstalled prior to the end of the tenancy. That failure resulted in the wastewater pipe coming loose, causing flood damage to the communal hall.

31. To award compensation the Tribunal must be satisfied, on the balance of probability, that the tenant is responsible for the damage.

32. Having heard from the parties the Tribunal finds the tenant breached her obligation to have the washing machine professionally reinstalled. However, on the facts, the Tribunal is not satisfied the tenant is responsible for the flood damage for the following reasons:

    a. The tenant vacated the property approximately four months prior to the flood.

b. The washing machine had been successfully used by the tenant immediately prior to the end of her tenancy.

c. The landlord, while not a qualified plumber, inspected the washing machine at the end of the tenancy and no issues were identified with its installation.

d. The landlord was satisfied the tenant had complied with all of her obligations under the tenancy and refunded the bond in full.

e. A new tenant moved into the property on 13 February 2025 and had been successfully using the washing machine for approximately five weeks before the flood occurred.

33. On that basis the Tribunal cannot be satisfied there has not been an intervening act, between the tenant moving out and the new tenant moving in, which caused the wastewater pipe to come loose, causing flood damage to the communal hallway. The applicant has not satisfied the Tribunal that it is more likely than not that the tenant is responsible for the flood damage and the claim is dismissed.

Tenant's claims

Is the landlord liable to pay general damages for emotional harm?

34. The tenant seeks compensation for stress and inconvenience arising out of the landlord's application to the Tribunal. The tenant said that she felt stressed and upset at being blamed for the flood damage particularly given the length of time that had elapsed between vacating the property and the flood occurring.

35. The tenant was also upset at the inference she had intentionally breached her obligation to have the washing machine professionally reinstalled. The tenant said that both parties appeared to have overlook this obligation and noted that at no time did the landlord explicitly remind her of the obligation or require her to evidence that it had been complied with.

36. Parties have a statutory right to file applications with the Tribunal to resolve disputes under the Act. The Tribunal is not satisfied the landlord filed their application in bad faith, to be vexatious or that in doing so the landlord's conduct amounted to an abuse of process. While the tenant may have felt stressed and upset about the landlord's application, the landlord was simply exercising their statutory right to seek a determination on liability for flood damage. On that basis the claim is dismissed.

Is the landlord liable to pay compensation for failing to provide the end of tenancy inspection report?

37. The tenant seeks compensation for failure by the landlord to provide her with a copy of the end of tenancy inspection report. The tenant said that the property

was returned to the landlord in a very clean and tidy condition and her bond was refunded in full. The tenant states that by refunding the bond and later filing their application with the Tribunal the landlord has made a false claim and had caused her stress.

38. There is no statutory obligation requiring landlords to provide tenants with end of tenancy inspection reports although it may be implied through the bond refunds process. In this case the tenant did not ask the landlord for a copy of the end of tenancy inspection report. The Tribunal understands the landlord had told the tenant they were satisfied with the condition of the property at the end of the tenancy to the tenant and it was on that basis the bond being refunded. The landlord's application to the Tribunal was not the result of mishandling of the bond. The Tribunal is not satisfied the landlord has breached any obligations under the Act or the tenancy agreement and the claim is dismissed.

Did the landlord or their agent harass the tenant amounting to a breach of the tenant's quiet enjoyment?

39. The tenant seeks compensation for breach of her quiet enjoyment stating she felt harassed by the landlord's cousin who lived in a neighbouring apartment.

40. The tenant stated the harassment relates to being observed and reported on by the neighbour while removing the landlord's washing machine and refrigerator from the property in October 2022.

41. The landlord denied harassing the tenant. The landlord said the information relating to the removal of chattels was passed on by the neighbour and was not actively sought. They went on to say that the tenant's neighbour has no relationship with the property managers and has not provided them with information about the tenant on an ongoing basis.

42. Section 38 of the Act confirms that the tenant "shall be entitled to have quiet enjoyment of the premises without interruption by the landlord", and further at subsection 2 that the landlord "shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant." The Act further confirms that contravention of subsection 2 in circumstances that amount to harassment of the tenant, is declared to be an unlawful act.

43. The term "harassment" is not defined in the Act. It is defined in section 3 of the Harassment Act 1997 which deals with harassment in the context of either a criminal charge or the making of a restraining order against a person. However, Judge Harland in *MacDonald v Dodds* (CIV-2009-019-1524, District Court Hamilton, 26 February 2010), considered that the dictionary definition of "harassment" was more appropriate in the context of section 38(3) of the Act, rather than the definition in the Harassment Act. The Court in that case adopted

the definition in the Oxford English Dictionary, which defines “harassment” as “to trouble, worry, or distress” or “to wear out, tire out or exhaust”. The Judge accepted that harassment indicates a particular pattern of behaviour directed towards another person.

44. In the Concise Oxford Dictionary “harass” is defined as “torment by subjecting to constant interference or intimidation”. Further assistance can be obtained from the definition in Black’s Law Dictionary where harassment is defined as:

> Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.

45. From these definitions, it seems that there must be evidence of some ongoing intentional actions directed at a specific person which causes distress to them. Therefore, a single act of interference with the tenant’s quiet enjoyment would be unlikely to amount to harassment. However, in *Whatiura v Shoulder* (Palmerston North TT 12/87, 16 March 1987) the Adjudicator noted that “although the term usually refers to repeated acts of some kind, I take the view that it can extend to a single act on one occasion of sufficient seriousness.”

46. In this case having heard from the parties and considering all of the evidence the Tribunal is not satisfied the neighbour was acting as an agent of the landlord or acted in such a way as to amount to harassment under the Act. The claim is dismissed.

Did the rent exceed the market value?

47. The tenant sought a market rent determination.

48. The tenant stated that the rent was increased from $650.00 per month in 2022 to $710.00 per month in 2023.

49. The tenant said that in 2024 the landlord sought to increase the rent from $710.00 to $760.00 per month. The rent increase did not include the use of a secure lock up located in the garage and the tenant claims the rent increase exceeded the market rent for similar properties (with use of the secure lock up) in the building.

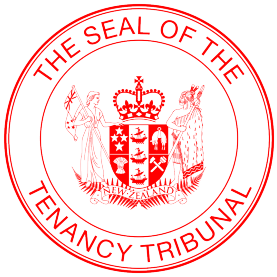
50. The Tribunal does not interfere with rents. It has no general discretion to do so. The only way rent can be reduced is if the tenant applies for a market rent determination under section 25 of the Act.

51. Section 25 of the Act has a strict time frame and states that a market rent determination must be made no later than three months after the fixed term tenancy started or after the last rent review.

52. The last rent increase for this property was in 2023. When the landlord indicated their intention to increase the rent in 2024 the tenant exercised their rights to decline to consent to the increase and vacated the property. The application for market rent determination is made out of time and the claim is dismissed.

Request for the Tribunal to dismiss the landlord's claims

53. The tenant invited the Tribunal to dismiss the landlord's claims. This was dealt with earlier in the decision.



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06 December 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.