TENANCY TRIBUNAL AT NORTH SHORE | TE TARAIPIUNARA RETIHANGA KI ŌKAHUKURA

APPLICANT AND RESPONDENT:	Barfoot & Thompson Blockhouse Bay As Agent For Kelly Dao & Wayne Zhu Landlord
RESPONDENTS AND APPLICANTS:	[The respondent/s] Tenants
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenants' name and identifying details.
2. The term of the fixed-term tenancy of [The tenants] at [Tenancy address suppressed] is reduced by the consent of both parties and now ends at 11:59pm on Monday 15 December 2025.
3. Barfoot & Thompson Blockhouse Bay As Agent For Kelly Dao & Wayne Zhu must pay [The tenants] $133.71 immediately, calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rent arrears to 15 December 2025	$3,650.00	
Carpet Cleaning: Break lease fee	$870.00	
Filing fee reimbursement	$28.00	
Compensation: Mould and moisture report		$288.00
Compensation: Failure to maintain- leaks and mould-27 November 2025 and 15 December 2025 at 80% rent rebate		$1,501.71
Compensation: Failure to maintain- leaks and mould-1 October 2025 and 26 November 2025 at 50% rent rebate		$2,920.00
Filing fee reimbursement	$28.00	
Total award	**$4,576.00**	**$4,709.71**
Net award		$133.71
Bond		$2,920.00
Total payable by Landlord to Tenant		**$133.71**

4. The Bond Centre is to pay the bond of $2,920.00 ([Bond number suppressed]) to [The tenants] immediately.

5. The landlord confirmed it will not be seeking any cleaning costs or other vacated damage costs at the end of this tenancy.

Reasons:

1. Both parties attended the hearing. [The female tenant} attended the hearing on behalf of both tenants and confirmed she had [the male tenant's] consent to act on his behalf.
2. The landlord has applied for rent arrears, compensation, and reimbursement of the filing fee following the end of the tenancy.
3. The tenants applied for compensation, general damages, exemplary damages, refund of the bond and reimbursement of the filing fee following the end of the tenancy.

RELEVANT LEGAL CONSIDERATIONS

4. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA").
5. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.
6. 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.
7. 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.
8. 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.

9. In summary, I do not need to be completely certain, but I need to be more certain than uncertain. In deciding any claim, I must consider all the evidence presented (including oral evidence during the hearing). I must weigh this

evidence to decide what is more likely. If any claim is not established to the balance of probability, it must be dismissed.

10. The Tribunal has reviewed and considered all evidence, though not all is specifically referenced in this decision.

LANDLORD CLAIMS

How much is owed for rent?

11. The tenancy ended on 15 December 2025. The landlord provided rent records which prove the amount owing at the end of the tenancy.

TENANTS CLAIMS

Has the landlord breached its section 45(1)(b), (bb) and (c) obligations to the tenant?

12. The tenants claim that the landlord has breached its obligations under section 45(1)(b), (bb) and (c) of the Residential Tenancies Act 1986 ("RTA").

13. Under section 45(1)(b) of the RTA, the landlord has an obligation to investigate and repair a defect brought to its attention, within a timeframe that is reasonable in the circumstances. In *Collins v Professionals Hutt City Ltd*, the Wellington District Court held "what that time is depends not only on the gravity of the problem but also on the objective evidence of the attempts made by the landlord to investigate, and put right, whatever the problem might be".[1]

14. There is an obligation to repair, even if the tenant has notice of the state of repair of the premises when entering a tenancy agreement.

15. A tenant may give a landlord 14 days' notice to remedy a breach of the RTA and/or any relevant enactment in relation to buildings, health and safety, but should do so in good faith and to remedy a real and significant breach[2]. However, notice from the tenant is not required if the landlord knew of the need to repair [3] or the need for repair was apparent from observation[4].

16. There is also failure to repair if the repair is ineffective, non-complaint or unsafe[5].

17. Under section 45(1)(bb) of the RTA, a landlord must also comply with all the healthy homes standards.

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[1] *Collins v Professionals Hutt City Ltd* DC Wellington CIV-2009-085-1431, 24 February 2019 at [15].
[2] *Brough v Housing NZ Ltd* NZTT1848/1, 27 May 202 at [13].
[3] *Berghan v Ponsonby Property Management Ltd trading as L J Hooker* [2015] NZTT Manukau 2845 at [9]- [11].
[4] *Barfoot & Thompson Ltd v Casey* DC Auckland CIV-2005-004-1762, 7 November 2007 at [4].
[5] *Staife v Aegis Trust* [2016] NZTT Auckland 3314 at [31].

18. Section 45(1)(c) of the RTA requires a landlord to comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises.

19. Breaching any of these s45(1) obligations is an unlawful act for which exemplary damages may be awarded up to a total maximum of $7,200.00 for all s45(1) of the RTA breaches. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.

20. General damages may also be awarded in the form or rent reductions, water rates reductions or compensation for the stress, inconvenience and loss of amenity suffered by the tenants.

Failure to maintain

21. The tenants gave evidence the landlord failed to investigate and repair defects with the property brought to its attention, within a timeframe that is reasonable in all the circumstances.

Leaks/Mould/Dampness

22. The tenants claim that when their tenancy commenced on 22 April 2024, there was no sign of dampness and mould in the premise. The landlord confirmed the house had been freshly painted inside.

23. The first time the tenants' noticed mould was in the bathroom. This black mould appeared on the walls and ceilings and around the windows from the beginning of May 2025, as the weather became colder and wetter. The tenants initially thought this may be a ventilation issue and began to ventilate the house as much and as often as possible. This made the house colder or increased their heating bills as they had a new baby that needed the house to be warm but also dry.

24. The tenants also confirmed that as soon as there was evidence of mould in the bathroom they tried to clean this mould themselves as well as regularly ventilating the room to try to prevent the mould and dampness reoccurring. However, they say the mould issue became worse and worse over the winter months and by 1 October 2025, the dampness and mould issues had moved beyond the bathroom into the kitchen, lounge and hallway. Further, the male tenant was experiencing sinus and other respiratory issues all winter that he had not had before.

25. The tenants say they did not raise the issue with the landlord any earlier than 1 October 2025 as the landlord had refused to address other issues such as:

    a. The mixer on the shower being ineffective, as the shower and kitchen water ran very hot or very cold and the tenants could not get the water to run warm. This cause safety and comfort issues when the tenants and their

newborn child needed to bath as the water temperature was unpredictable; and

b. The old, fixed shower head was not flexible enough for the new mother and child to wash in the shower. The tenants asked the landlord to install a new handheld showerhead fitting and they refused as the old, fixed shower head worked and they were under no obligation to replace it. The tenants then asked if they could have a new handheld flexible shower fitting installed at their expense and were told they could but they would have to pay for the old fixed shower head to be reinstalled at the end of the tenancy. The landlord did not explain why the landlord would not accept the upgrade to the shower head and insisted that the sold one be reinstated at the end of the tenancy.

26. The tenants say the landlord was so unreasonable that they knew that if they raised the mould issue, they would more likely than not be blamed for not ventilating the house properly and that it was unlikely the issue would be addressed. As such, the tenants decided to give notice to the landlord requesting the fixed term tenancy be ended early due to the mould and dampness issues that were getting worse each week and not able to be managed by opening windows and door to ventilate the house regularly and using supermarket mould cleaning products to regularly wipe down the mouldy surfaces and to use hearing to try to dry the air out and keep the house warm and dry.

27. On 1 October 2025, the tenants raised the dampness and mould and other concerns and noted that this was why they wanted to end the fixed term lease earlier (in mid-December 2025) as the environment was not healthy for their 8-month-old baby.

28. The property manager and the tenants had a discussion about the tenants request to break the lease and the landlord agreed to the tenants moving out early but reiterated that the tenants would have to pay the break lease fee and the rent up to the date new tenants moved in.

29. The landlord confirmed it advertised the property immediately and brought one potential new tenant to look at the house, after which, it says the tenants refused to allow any further potential tenants to view the property. After a month, the landlord stated it withdrew the house from the rental market because of the tenants' refusal to allow viewings or access for its mould removal specialists to investigate and clean the mould.

30. The tenants say they objected to the mould specialist cleaning the mould with commercial chemicals because they were concerned about the potential impact of those chemicals on them and their baby and they also worried that cleaning the mould without addressing the underlying cause would have them exposed to chemicals unnecessarily as the mould would be back in a short period of

time. They asked the landlord to wait until they moved out in mid-December 2025 have the mould and dampness issue fully investigated and remediated so as not to increase their risk of harm to their health further.

31. The tenants also paid for a mould and moisture investigation and comprehensive report to be undertaken by Contaminated Site Solutions. This report confirmed the limitations of its investigation and report as:

    a. The visual mould and moisture report was conducted at 1191 New North Road, Mount Albert following reports by the tenants of mould contamination and moisture issues at the property that they wanted investigated and identified.

    b. Visual moisture and mould inspections can assist in determining where mould and/or fungi are present in the indoor environment, but will only give information about the area/s visible and accessible.

    c. Hidden fungal growth will not be detected this way. To establish the extent of the health risks to occupants from any potential fungal growth, the spore-trapping non-culturable sampling method can be used. This can be employed to sample the air quality and determine the types and levels of spores in the indoor environment.

    d. No sampling and subsequent laboratory analysis of any mould visually identified was undertaken.

32. Contaminated Site Solutions summary of findings are:

    a. Mould was observed inside the property. Extensive mould growth in both the lounge and bathroom areas. Mould is visible on the skirting boards, blinds, wall linings, and ceiling linings.

    b. There appear to be two separate issues: the mould in the lounge could be caused by a roof leak, a leaking water pipe in the roof space, or another source of moisture. In the bathroom, the mould is likely due to a leak from the shower. In the lounge, water marks are also present on the wall lining. Moisture testing in all affected areas including hallway side and kitchen shows saturation, indicating that mould is likely present and abundant behind the wall linings.

    c. Due to the extensive mould contamination and the high moisture levels in building materials, the indoor environment poses a serious health risk. Exposure to mould spores can cause respiratory issues, allergic reactions, and other health problems, particularly for children, the elderly, or anyone with pre-existing respiratory conditions. It is not safe to remain inside the property until the issues have been fixed, and proper mould remediation and moisture control measures have been carried out.

33. Contaminated Site Solutions reported recommendations are as follows:

a. Due to the presence of mould growth in windows frames, surrounds, affected walls and wall linings, ceilings and skirting boards in the lounge, hallway, bathroom and kitchen and the likelihood of mould growth in other areas of the property, these areas should be isolated before any remediation work is undertaken (such as decontamination of affected window frames, surrounds, affected walls and ceilings and removal and disposal of affected wall linings, skirting boards in the lounge, hallway, bathroom and kitchen);

b. Any person in the property who may be immune compromised, chemically sensitive, are elderly, or young, should not be present in the property;

c. Mould removal and remediation should be undertaken by an accredited contractor with the appropriate equipment and specialised training to minimise any secondary damage or cross contamination that could occur during the remediation works;

d. Mould remediation should not be undertaken by builders or other untrained tradesperson due to the significant risk it poses to their health and safety and the high risk of cross contamination if critical containment control measures are not put in place;

e. Use of dehumidifiers to combat humidity in the air;

f. Continuation of regular ventilation of the home; and

g. Installation of double-glazed windows and a home ventilation system.

34. The landlord confirmed its property manager conducted a property inspection on 13 October 2025 and states the premise had visible mould in the bathroom only on that day. The landlord also confirmed it had been there for a property inspection on 10 July 2025 and there was no mould issue raised or evident. The property manager has not submitted any entry or 10 July or 13 October 2025 property inspection reports or photographs in the landlord's defence.

35. The property manager and the tenants had communications via WeChat on 25 October 2025 that prove the landlord intended to send a contractor called Clear Mould to undertake the chemical cleaning of the visible mould but there was no indication that it had turned its mind to investigating the cause of the dampness and mould issues. The WeChat messages also prove the property manager was unclear about what Clear Mould had been engaged to do and when the female tenant tells the landlord she is worried about the clear mould activity harming her baby, and if baby gets sick will seek compensation, the landlord planned not to do anything further until the tenants move out.

36. The landlord did not offer the tenants a rent rebate for the sub-optimal conditions they were living in until the issue could be investigated and resolved. Nor did they offer the tenants a contribution to the additional power they used

trying to heat a damp and mouldy home. Further, there was no offer of a commercial dehumidifier to try to reduce the moisture in the house.

37. The tenants then paid for a mould and moisture investigation to be undertaken on 27 November 2025. This report proves there was significant moisture and mould in the main living areas of the premise and the bathroom. The landlord could have had this investigation undertaken soon after 1 October 2025 when it was first made aware of the extent of the mould and dampness, but it do not engage anyone to investigate the cause.

38. I am satisfied the tenants first made the landlord aware of the dampness and mould issues on 1 October 2025 and the landlord did not take reasonable steps in a reasonable timeframe in all the circumstances and that the tenants have proven there was a significant mould and moisture problem with the premise. The report contains a comprehensive report of the state of the property on 27 November 2025 and photographs that show water damage to the vanity, mould on skirting boards, venetian blinds, windows, window frames, walls and ceilings

39. I find the landlord failed to investigate and remediate the dampness and mould issue in a reasonable time frame in all the circumstances and that the tenants should receive a 50% rent rebate of $365 per week for the period of 8 weeks (1 October 2025 to 26 November 2025) they has suffered the loss of amenity, stress and inconvenience of not living in a damp and mouldy premise that affected the male tenants health and put the health of the female tenant and baby at risk, being a rent rebate of $2,920.00. Additionally, after the mould and moisture report, the contractor advised the tenants to leave the premise immediately due to the health risks. They did so immediately and have had their belonging packed and moved out today. Therefore, I find in all the circumstances that the tenants should also receive an 80% rent rebate of $584.00 per week for the period of 2 weeks and 4 days (27 November 2025 to 15 December 2025) they were unable to inhabit the premise but did use it to store their belongings, being a rent rebate of $1,501.71.

40. I also award the tenants reimbursement of the $288.00 they paid for the moisture and mould report to prove the extent of the leak, dampness and mould problems with the premise.

41. I do not find that this breach was an intentional unlawful act for which exemplary damages should be awarded.

Failure to meet buildings, health, and safety under any enactment so far as they apply to the premise

42. The tenants says the landlord failed to meet its obligations under s45(1)(c) of the RTA as the premise did not meet regulation 15 of the Housing Improvement

Regulations 1947 (HIR) which states that every house must be free from dampness.

43. The tenants have proven the house had high moisture readings, was damp and mouldy. Therefore, I am satisfied that the landlord was in breach of this obligation. However, the tenants have been compensated for this breach under the failure to maintain head of claim above and I do not consider the evidence to have proved on the balance of probabilities the breach was an intentional unlawful act for which exemplary damages should be awarded.

Failure to meet healthy homes standards

44. The tenants claims that the landlord has breached its obligations under section 45(1)(bb) of the RTA which requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS).

45. Compliance dates for the HHS vary depending on the tenancy:

    a. For private rentals

        i. If the tenancy commenced between 1 July 2021 and before 28 August 2022, the rental must comply within 90 days of the commencement of any new or renewed tenancy; or

        ii. If the tenancy commenced between 28 August 2022 but before 3 March 2025, the rental must comply within 120 days of the commencement of any new or renewed tenancy.

        iii. All private rentals must comply by 1 July 2025.

    b. All boarding houses must comply by 1 July 2021.

    c. All houses rented by Kāinga Ora and registered Community Housing Providers must comply by 1 July 2024.

46. The tenancy commenced on 22 April 2025. Therefore, the landlord to comply with all of the healthy homes' standards, by 1 July 2025.

Moisture Ingress and Drainage

47. The tenants claim the landlord has failed to comply with the moisture ingress and drainage standard.

48. The moisture ingress and drainage standard requires that buildings comprising residential tenancies must have efficient systems to drain storm water, surface water and ground water, and that includes gutters, downpipes and drains. The Standard requires a ground moisture barrier when there is an enclosed subfloor space if it is reasonably practical to do so.

49. The HHS does provide exemptions in specific circumstances.

50. The tenant said that from the beginning of May 2025 there was an evidence problem with dampness and mould in the bathroom that the tenants tried to clean themselves and regularly ventilated the room to try to prevent the mould and dampness reoccurring. However, they say the mould issue became worse and worse over the winter months and by 1 October 2025, the dampness and mould issues had moved beyond the bathroom into the kitchen, lounge and hallway.

51. The property manager claimed that on 10 July 2025, there was no evidence of mould in the premise and no mould or dampness issues were raised with him at that time or prior to 1 October 2025. Additionally, the landlord claims it has a healthy homes assessment report that confirms the premise was 100% healthy homes compliant on 1 July 2025. It did not produce this report in evidence but I am satisfied that it did have this assessment completed after the house had been repainted and recarpeted just prior to the tenancy commencing.

52. In this case I have find that there is insufficient evidence to prove the landlord has committed an unlawful act by failing to ensure the premise met the moisture ingress and drainage standard by 1 July 2025.

53. For these reasons, I dismiss the tenants claim for exemplary damages for breach of the moisture ingress and drainage standard. This is a repair and maintenance issue.

Should the fixed term tenancy be reduced

54. The tenants has applied for reduction of the fixed-term tenancy due to end on 22 April 2026, due to them receiving confirmation, on 27 November 2025 from Contaminated Site Solutions in a comprehensive mould and moisture report, that the house had potential leak issues that had caused dampness and mould in the main living areas of the house. The report suspected roof leaks and bathroom leaks. Recently, the landlord has had contractors confirm there is a roof leak that is now being remediated. The landlord confirmed that no investigation of the bathroom for leaks has been conducted. .

55. As outlined in the repair and maintenance sections of this decision above, I am satisfied the landlord breached its obligations to have the source of the dampness and mould addressed in a reasonable timeframe in all the circumstances. However, I am not satisfied tenants meet the s66 test for the Tribunal reducing the fixed term early, despite the property has been proven to be damp and contaminated with black mould the tenants say have caused the male tenant respiratory health issues that arose during this tenancy and have been significantly alleviated since they moved out on 27 November 2025.

56. I also found above that the landlord has breached HIR Regulation 15, because it did not ensure the house was “free from dampness” as well as its s45(1)(b) of

the RTA obligations to “provide and maintain the premises in a reasonable state of repair”. I also find the that the breach is of such a nature or of such an extent that it would be inequitable to refuse to make an order terminating the tenancy.

57. The landlord’s representative agreed that the tenants will not be charged from today until a new tenant is found, as there will need to be some remedial work carried out before the property can be re-let and that may take some time. The tenants cannot justifiably be held accountable for the resulting delay in the property being re-tenanted.

58. Where the Tribunal reduces a fixed-term tenancy, it may order the tenant to pay the landlord reasonable compensation for any resulting loss. See section 66(2) Residential Tenancies Act 1986.

59. I award compensation of $870.00 to the landlord to cover its reasonable break lease costs, taking into account the reasons why the tenants felt they had no option but to end the tenancy early.

OTHER CLAIMS

Reimbursement of filing fee

60. Because Barfoot & Thompson Blockhouse Bay As Agent For Kelly Dao & Wayne Zhu has wholly succeeded with the claim I must reimburse the filing fee.

61. Because the tenants have substantially succeeded with their claims, I have reimbursed the filing fee.

Name Suppression

62. The tenants apply for non-publication of their names and identifying details.

63. The Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party’s name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party’s conduct or any other circumstances of the case.

64. The tenants have substantially succeeded in their proceedings. I do not consider publication is in the public interest or justified because of the tenants conduct or any other circumstances of the case.

65. Non-publication is ordered.

M Pollak
15 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.