TENANCY TRIBUNAL AT WELLINGTON | TE TARAIPIUNARA RETIHANGA KI TE WHANGANUI-A-TARA

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Both the tenants' application and the landlord's counter claim are dismissed.

Reasons:

1. The background of this matter is as follows:
    a. The tenancy began on 7 May 2025, with an end date on 16 May 2026.
    b. The premises are a relatively new four-bedroom property, built in 2004.
    c. On 15 May 2025, the tenant notified the landlord of a number of issues, including:
        i. rubbish left by previous tenants;
        ii. damage to shower heads, the laundry cold water tap, a missing plug from a bathroom hand basin, and a "missing" shower curtain from the large-scale of our than the main bathroom;
        iii. staining in two out of three both toilet bowls;
        iv. faulty light fittings, and missing lightbulbs;
        v. "missing" RCD units;
        vi. a missing remote control unit for the wall mounted gas heater in the lounge;

vii. non-functional remotes for the garage door: alleged defects to the security alarm system;

viii. that the letterbox allowed mail to get wet;

ix. missing lounge curtains;

x. a bench window frame; and

xi. a faulty lock on the shed door, and an old nonworking washing machine was in the garden shed.

d. The landlord took steps to remedy or investigate these issues. I note that trades had attended within a week of the issues being notified.

e. On 12 June 2025, the mains pressure hot-water system failed. The landlord was advised of the issue and the unit was replaced on 17 June 2025[1].

f. Beyond the hot water issue in June a number of other alleged defects were raised with the landlord, including:

i. Doors into and out of the garage would on occasion blow open;

ii. the kitchen tap leaked; and

iii. the stove main isolation switch shorted out.

g. These issues were attended to and dealt with by the landlord in a reasonably swift period.

h. A property inspection was carried out on 18 June 2025. No issues were reported.

i. On 4 July 2025, the tenant issued a notice to remedy relating to a number of the issues referred to above.

j. On 21 and 31 July 2025, the tenant raised a number of other alleged defects, including:

i. that the TV aerial plug was not wired to the external area;

ii. that the dishwasher allegedly did not clean dishes;

iii. that an outside water tap leaked; and

iv. the light on the right side of the range hood stopped working.

k. The tap was repaired by the landlord, however, after investigation the landlord declined to take further steps for the other issues.[2]

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[1] I note that 12 June was a Thursday, therefore the replacement of the unit which is installed within the roof cavity occurred over a weekend.

[2] During hearing the landlord advised that the TV antenna sockets had been connected to the extent aerial shortly before.

l. On 5 August 2025, the tenant raised the non-functioning of the ensuite extractor fan with the landlord. On investigation it was discovered that the extract event quite cleaning and replacement. This was carried out on 10 September 2025.

m. On 1 September 2025, the tenant served the landlord with a notice to remedy, which included some 35 items. These were mostly matters referred to above.

n. On 2 September 2025, the landlord responded to the notice.

o. On 2 September 2025, the tenant alleged that the ducted gas central heating system was defective as it pumped cold air into the front bedroom this is discussed below.

p. On 4 September 2025, a property inspection was carried out. This noted minor alterations to the property for which the landlord's approval had not been sought and raised the issue that the tenant was running a fish breeding business including several large aquariums in the garage. Correspondence relating to the fish breeding business was exchanged and this is a point of dispute between the parties. The landlord also discovered that one of the smoke alarms had a wired power supply which been disconnected at some stage before the tenancy began. This is discussed below.

q. On 8 September 2025, the landlord issued a 14 day notice to remedy for the alterations referred to above.

r. On 16 September 2025, the tenant emailed the landlord, requesting confirmation that the owner was aware that the tenant was intending to use the tenancy to provide college homestay services and air B&B rental or similar.

s. On 17 September 2025, the landlord served a 14 day notice to remedy on the tenants, requiring that the fish that was set up in the aquarium and the garage were removed. On the same day the landlord emailed the tenant advising that there was no consent to subletting, or using the property is a homestay or air B&B.

t. On 19 September 2025, the tenant issued a 14 day notice to remedy relating to the lack of a remote control for the lounge gas heater.

u. On 29 September 2025, the landlord declined a request made three days earlier from the tenants to have a dog.

v. On date five, the tenant issued a 14 day notice to remedy with some 40? Issues

w. On 22 September 5 the landlord responded

2. The landlord has applied for termination of the tenancy for breach of the tenant's obligations. The tenant has applied for work orders, compensation, and exemplary damages for alleged breaches of the landlord's obligations.

Should the tenancy be terminated?

3. The tenant has breached their obligations by making alterations to the tenancy without the consent of the landlord – attaching a clothesline to the wall inside the garage using screws and screwing an attachment to the bathroom wall through grout and has operated a business – tropical fish breeding, when the tenancy agreement allows only a single pet, a parrot.

4. The landlord served a 14-day notice on the tenant and the tenant did not remedy the breach within the required period.

5. The Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate. See section 56(1) Residential Tenancies Act 1986. The concept has been considered in cases such as *Terangi v Housing New Zealand Ltd*.[3] in that case the tenant has allowed her daughter to deal methamphetamine from her tenancy. Judge Walker found that the nature of the breach, which involved supplying a drug found apparent by many in the local community was a breach incapable of remedy. This shows that the threshold for considering that a breach is not capable of remedy is high.

6. Where the breach is capable of remedy the landlord must first serve a notice on the tenant requiring them to remedy the breach within at least 14 days and establish that the tenant has failed to do so. This has been done in this case.

7. In this case the breaches are patently capable of remedy. However, the tenant is refusing to undo the alterations or stop the fish-breeding activity. The breaches are minor; alterations of a type which tenants commonly make to premises, and the use of the premises for an activity which is comparable in impact with an allowed activity keeping pets. Terminating a tenancy in such circumstances would be inequitable and disproportionate. I decline to terminate.

Failure to maintain

8. The tenant claims that the landlord did not maintain the property by failure to address the issues the tenant raised, which are listed above.

9. Under section 45(1)(a) - (ca) Residential Tenancies Act 1986, the landlord has an obligation to provide and maintain certain standards and to comply with applicable requirements.

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[3] *Terangi v Housing New Zealand Ltd* DC Porirua, CIV 2010-091-000110, 28 June 2010

10. Where the Tribunal finds the landlord has failed to comply with any of these obligations, it may make an order for the landlord to carry out the work. See section 78(1)(e) Residential Tenancies Act 1986.

11. The tenants' alleged defects are too numerous to list. However, the majority lack merit. Where there have been genuine issues, such as the rubbish, showerheads issue, light bulbs, garage door remotes, and the hot water system, the landlord has attended to the issues in a timely fashion. Where work has been necessary, this has been carried out in a reasonable manner allowing for tradesmen's availability. Issues such as the letterbox, TV aerial plug, dishwasher, a minor leak from an exterior tap, and the range hood light, are at most minor nuisances which are in no way breaches of the landlord's obligations.

12. The issues of particular concern to the tenant which merit some discussions are:

    a. The staining in the toilets. The tenant alleges that these are unsanitary and dangerous. However, the landlord has produced written statements from two plumbers, one of whom has personally examined the issue, which set out that the issue is a buildup of calcification or a similar mineral, it is no indication of cleanliness. This is not an issue which the landlord is required to rectify.

    b. The draft issues. The tenant alleges a number of areas where drafts have occurred. These include; at windows in the lounge, at the vent grills in the kitchen, and bathroom, and from gaps in light fittings:

        i. The healthy homes report found that the windows were not allowing any drafts, but a broken clip on the sliding door in the lounge was allowing a draft. However, a specialist tradesman was brought in as soon as it was discovered, and parts are awaited. This is not a breach of the landlord's obligation to keep the property in a reasonable state of repair. The sliding door issue is discussed below is an alleged healthy home breach.

        ii. The vent grills were not found to be sources of drafts in the healthy homes report. I do note that completely preventing all possible drafts from an externally vented ventilation system, would negate its ability to do its job. This is not a breach of the landlord's obligations.

        iii. The tenant has raised issues relating to the slots cut in the back of the inset light fittings which are designed to vent excess heat from incandescent bulbs. These vent into the ceiling cavity, which in a house of this age will be sealed from external drafts by the house is weatherproofing envelope of either eco-ply, or sealed building wrap. These were not found to be a source of drafts in the healthy homes report. This is not a breach of the landlord's obligations.

c. The ducted central heating. The tenant alleges that the ducted central heating was faulty. However, the landlord had a specialist trade examine the system and it was found to be working properly. It appears that tenant had not understood the control system and the tradesmen explained it to them. This is not a breach of the landlord's obligations. The tenant has also raised an issue about the central heating vents letting in drafts. My understanding of the ducted gas heating is that it is not connected externally in any way, as the gas burner heats air from inside the house. I cannot accept that these vents are the source of drafts as they are not connected to the exterior of the tenancy. The tenant has raised issues about the central heating (and the heater discussed below) being listed as a chattel on the lease rather than as fixtures. He argues that this has been done in some way to avoid liability for failures to maintain and says that this raises issues of breach of good faith, negligence, and raises estoppel. There is no authority that leases are subject to duties of good faith.[4] It is unclear to me how any theoretical negligence issues could add to the landlord's existing obligations under the Residential Tenancies Act. Estoppel is a doctrine of law where a person is bound by prior representations, when another has acted on the treatment. It is unclear to me how any estoppel has arisen in this instance. Issues related to the ducted central heating are not breaches of the landlord's obligations.

d. The fixed gas heater in the lounge lacks a remote control. The landlord has declined to replace it. That tenant says this is a Health & Safety Code breach as there is no way to turn off the heater when it gets hot. The landlord says heater can be turned off manually and has provided evidence that the heater has a safety shut off. While it is a minor inconvenience to the tenant the absence of a remote is not a breach of the landlord's obligations.

e. Under section 45 a landlord must comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. At the inspection on 4 September 2025, it was discovered that one of the smoke alarms had been hardwired into a power source and at some stage this had been disconnected. The tenant says this is a breach of the landlord's obligations. However, the landlord has given evidence that there was a functional smoke alarm metres away, which was within 3 m of the bedrooms. Therefore, the requirements of the regulations had been met.

[4] In New Zealand, beyond certain specialised area of contracts such as insurance, the courts have declined to recognise duties of good faith as applying in contract.

Healthy breaches

13. The tenants[The tenant/s]claim that the landlord has breached obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 (RTA), which requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS). The tenant considers that the landlord has failed to comply with the HHS heating, and draft stopping standards.

14. The heating standard requires landlords to provide one or more 'qualifying heaters', with a capacity to heat the room to a required level. The heating standard defines what a qualifying heater would be and confirms that certain types of heaters are unacceptable heaters for the purpose of the HHS. The heating standard requires that heaters have a minimum heating capacity. An on-line calculator has been produced in order to determine what level of heating is required for any particular premises, and that can be found at https://www.tenancy.govt.nz/heating-tool/

15. The draught stopping standard requires that residential premises be free from unreasonable gaps and holes that are not an intentional part of the building, which allow draughts to arise.

16. Breaching either of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of $7,200.00. See section 45(1A).

17. With regard to the heating standard, the landlord has provided a healthy homes report which sets out that the two heating sources in the house: the ducted central heating, and the gas heater in the lounge exceed the requirements of the standard. The report shows that the house is compliant.

18. The tenant alleges that the landlord is in breach of the draft standard. The specifics are discussed at paragraph [13] b. above. The healthy homes report found that the ranchslider in the lounge was letting in a draft due to a broken catch.

19. I find the landlord has committed an unlawful act, albeit a technical breach.

20. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interest of the other party, and the public interest. See section 109(3) RTA.

21. Considering those factors, I have determined that there was no intention by the landlord relating to non-compliance. Is unclear when the catch broke and, as soon as the issue was identified, the landlord took steps to remedy the situation. The tenants' claim for damages is not made out.

Retaliatory notice

22. As part of the counterclaim the landlord has sought termination of the tenancy, as discussed above at paragraphs [4] to [8]. The tenant claims the notice is retaliatory.

23. For a notice to be declared retaliatory, the tenant must prove that in terminating the tenancy, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act, or by any complaint against the landlord. See section 54(1) Residential Tenancies Act 1986. Giving a termination notice which is declared to be retaliatory is an unlawful act for which exemplary damages may be awarded, up to a maximum of $6,500.00. See section 54(2), (3) and Schedule 1A Residential Tenancies Act 1986.

24. In this instance the landlord has not given notice of termination. Rather, the landlord has applied to the Tribunal for termination, a right which is established under the act. As no notice was given the retaliatory notice provisions cannot apply. This claim is dismissed.

C Boys
16 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.