[2025] NZTT 5341895

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. The landlord is to pay the tenant $3914.02, as calculated below, immediately.

Description	Landlord	Tenant
Exemplary damages: HH - drafts		$720.00
Exemplary damages: HH - water ingress		$0.00
Exemplary damages: Failures to maintain		$1,440.00
Compensation: Costs to tenant		$1,726.02
Filing fee		$28.00
Total award		**$3,914.02**
Total payable by Landlord to Tenant		**$3,914.02**

Reasons:

1. Both parties attended the hearing.
2. The relevant background of this matter is:
    a. The tenancy started on 9 February 2024. At the outset of the lease the owner was managing the tenancy himself, however, later on the respondent landlord above was appointed as agent.
    b. On 1 June 2024, the tenant advised the owner that there was a leak in the master bedroom window and this had caused the gib beneath the window to crumble due to moisture ingress. The owner responded on the same

day advising that he would come around and apply silicone. The tenant says she also raised the problem of draughty windows at this point. I note texts from the owner saying that he would look into replacement window seals. Following this the tenant installed her own draft strips around windows and the bedrooms and lounge.

c. In October 2024, the tenant noticed mould on the bedroom wall in the master bedroom below the window.

d. In December 2024, there was correspondence between the owner and tenant about gate hinges which had rusted out. The owner fixed this issue. The tenant says she repeated her concerns about draughty windows when he visited.

e. On 29 May 2025, the tenant noticed water leaking in through the chapel ceiling above the kitchen sink. The owner was advised of the issue, and amongst his responses was a text "*okay thanks, it's done that before*". It eventuated that the leak came from the deterioration of the decramastic tiles. Later roof inspections show that the steel substrate has rusted out in places, leaving only the decramastic coating. The tenant says the owner told her that silicon repairs had been attempted in this area prior to the tenancy, which is backed up by the photos of the area. In short, the evidence shows that these issues cannot be remediated, and the house needs to be reroofed.

f. On 10 June 2025, the tenant heard a rodent scratching around inside the walls and the ceiling above the downstairs room used as a home office. The leak in the kitchen also occurred again. She advised the owner of both issues by text. The response was to put down bait for the rodents.

g. On 26 June 2025, the tenant raised the issue with the owner that the rodents were rats, as she found rat faeces under kitchen cabinets and a dead rat in the garden. She expressed concerns that the rats were getting into the kitchen and pantry area through gaps in joinery and walls.

h. On 5 July 2025, the tenant advised the owner that she wanted a rent reduction due to the expense of heating the tenancy and that the rent was high for the market. The owner responded that he was happy to have that discussion and asked if there were more leaks. The following day the tenant advised that the kitchen leak was still dripping, the owner responded that he would try a different roof repair product.

i. On 3 August 2025, the tenant sent the owner photos of the draughty windows. Later that day he agreed to a rent reduction of $20 to $590 a week. The owner also did maintenance work which included sealing cracks in linings and other gaps in the downstairs office and around kitchen cabinets to prevent rodents from entering, sealing the toilet window, and applying sealant to the roof ridge area above the kitchen.

j. On 8 August a healthy homes report was prepared for the tenant. This is discussed below.

k. On 13 August 2025, the tenant served a 14 day notice to remedy, which covered:

   i. the draughty windows on the east side of the home and the toilet window;

   ii. the water damaged wall lining in the master bedroom;

   iii. the cavities and gaps in the hot water cupboard in the kitchen which allowed rodents to enter; and

   iv. made other requests for repairs to the shower liner, textured ceiling, and roof issues

l. On 14 August 2025, the tenant texted the owner with concerns that the heat pump was not functioning properly. The owner responded that he was going to get this serviced and have the other issues raised in the 14 day notice looked at by trades people. He also visited the property on August 15 and examined the areas referred to in the notice. He proposed a plan for repairing the master bedroom wall, however, the tenant responded that she did not agree with the opening of the wall as she had concerns about the mould and the possible presence of asbestos.

m. On 19 August 2025, the tenant texted the owner advising that she wanted an air scrubber (a HEPA and carbon filter equipped yet cleaner which removes dust and mould spores), before the wall was opened.

n. On 27 August 2025, the landlord attended the property and did work on the shower, window seals, and blocked more gaps. Later that day the tenant texted complaining about the mess that had been left. Four days later she texted advising that she had had asthma and allergic reaction and had concerns about the mould in the master bedroom. She advised that the kitchen ceiling was dripping again. The owner's response was that HRV system would press dust and spills issue if used. There had been a previous incident where the tenant had indicated concerns about whether it was functioning properly, and the owner had not had it serviced.

o. On 2 September 2025, the landlord had wall linings and the wall cavity and the bedroom tested for asbestos and mould. Asbestos was not found, although I note that this area of the wall which is paint finished gib was unlikely to have contained asbestos[1]. However, this does not apply to other parts of the bedroom such as the stippled ceiling coating which is a possibles source of asbestos and was not tested. Testing for mould spores

[1] New Zealand manufactured gypsum board did not contain asbestos, even prior to asbestos being banned from use in the 1980s.

was, apparently, negative. I find this implausible, as I was not provided with a copy of the report, and photos of the area clearly show signs of mould and mildew on framing.

p. On 3 September 2025, the landlord took over management of the tenancy as the owner had gone overseas. Following this there was a series of correspondence relating to trades being organised to address the various issues, and the tenant expressing concern at the times and dates when trades were scheduling visits, if scheduled at all. A dispute also arose regarding whether or not the work in the bedroom could be done without the use of an air scrubber. On 21 October 2025 this resulted in the landlord instructing that an air scrubber was to be used while the builder was doing work in the bedroom. The landlord organised their own of the owner's report and a tradesman tended to check various issues remove rodent faeces where found, block holes including installing mesh to prevent rodent ingress, repair window seals and other work. The roof continued to leak.

q. A builder was employed to patch the roof above the kitchen and this work was carried out on or around 9 September 2025. In late September a glass maintenance firm refitted windows stays in the home office. In early October the heat pump and HRV system was serviced which identified that the heat pump while functional, was towards the end of its serviceable life.

r. On 8 October 2025, the landlord's builder inspected and carried out repairs to the roof identifying that the roof was rusty and had a large area flashing had rusted away and the only the decramastic coating remained.

s. On 23 October 2025, mould was discovered on the master bedroom ceiling. Later investigations showed that this was occurring due to wind lifting a barge flashing on the ceiling above this area.

t. On 6 November 2025, the tenant advised that water was entering kitchen cabinets. Items including a rice cooker had been damaged and were disposed of. An email dated from the previous day was received by the tenant giving 42 days notice of the end of the tenancy. The reason for termination given was that a member of the owners family was intending to move into the premises.

u. On 10 November 2025, the tenant provided her response to the landlord's healthy homes report. She expressed concerns that the dining and kitchen and lounge windows were still draughty.

v. On 12 November 2025, element roofing provided a report on the condition of the roof and gave a quote for a roofing.

w. On 14 November 2025, landlord advised that a second roofer had been engaged to inspect the roof.

x. On 21 November 2025, the owner attended and applied a plastic material to the leaking area of the roof. Shortly after this peeled off.

3. The tenant has brought this application alleging:

   a. failures to maintain the property;

   b. retaliatory notice;

   c. breaches of healthy homes standards, for draft stopping and moisture ingress; and

   d. that she has incurred damages in the form of loss of amenity due to being unable to use the master bedroom for nine weeks and costs relating to the failures to maintain, and early termination of the tenancy.

Failure to maintain

4. The tenant claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986 (RTA). Under section 45, a landlord must provide the premises in a reasonable state of cleanliness, provide and maintain the premises in a reasonable state of repair, and comply with any relevant enactment in relation to buildings, health and safety

5. Breaching any 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) and Schedule 1A RTA.

6. Considering the issues stated above I note that:

   a. Issues with the rats and rodents entering the premises, while unpleasant, are difficult to avoid in New Zealand particularly in areas near native bush. The tenancy is in a suburb with relatively mature planted trees and is approximately 200 m from a bush reserve. The landlord took reasonable steps; blocking holes, and installing poison baits, relatively promptly when the issues were raised.

   b. The issues with the toilet and shower which clearly were of concern to the tenant have not been shown to have caused any harm to the tenant, and were addressed in a relatively prompt manner.

   c. The issue with the roof leaking arose in May 2025, and the owner's response was that this had happened before. The steps taken to repair the issue were inadequate and this continued right up until the date on which the application is made. The issue was mostly concentrated at the apex of the roof above the kitchen. However, the state of the roof also led to the leaks into the master bedroom which occurred later on in the tenancy. The issue appears to arise every time it rains. Provision of a watertight home is a core part of a landlord's obligations. Water ingress not only damages the

structure of the home but puts the health of anyone living in that home at risk. I find the landlord has committed an unlawful act.

7. 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 interests of the other party, and the public interest. See section 109(3) RTA.

8. Considering these requirements, I note that:

   a. The owner was aware of the issues before the tenancy began, and the state of the roof shows that a number of repairs had been attempted before. The attempts at repair during the tenancy all failed, the last of which failed within 24 hours. The evidence shows that the roof needs replacement, at a cost estimated to be $50,000. From these circumstances it may be implied that the landlord's motivation for not a roofing was cost.

   b. The effect of the unlawful act was that the tenant's home leaked into key areas - the kitchen and master bedroom, for a number of months during her tenancy.

   c. It was in the interests of the tenant to live in a dry, warm tenancy. She advised the landlord of her allergy to mould spores and provided a doctors certificate relating to this.

   d. It is in the public interest that tenants live in dry warm accommodation is the cost to the public health system of respiratory illness is significant.

9. Given the above and noting that the landlord has not appeared before the Tribunal before, did take steps to carry out repairs albeit inadequately, I consider that an exemplary damages of $1440 appropriate in this instance.

10. The tenant has also claimed costs in the form of materials she obtained in order to deal with the draught and water ingress issues.

Retaliatory notice

11. On 6 November 2025, the landlord gave the tenant a notice ending the tenancy on 17 December 2025. The tenant claims the notice is retaliatory.

12. 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) RTA.

13. 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 RTA.

14. The landlord has stated that the reasons for termination of the family numerous moving in. S 51(2) (a) RTA allows a landlord to terminate with 42 days notice where they can show that the premises will be used as a place of residence for a family member will move in within 90 days of the termination. The landlord advises that the owner's daughter will be moving in as she has been struggling to find a tenancy as she owns pets.

15. Retaliatory notice requires the tenant to prove that the notice meets the requirements of S 54 RTA. In this case there is an inference given the events leading up to the notice. For an inference of a fact to meet the evidentiary standard of the balance of probabilities it is necessary that the circumstances from which the inference is drawn show that fact was more likely to have arisen then not. In this case those inferences cannot overcome the landlord's statement relating to the owner's daughter. Therefore, on the facts retaliatory notice is not made out.

Healthy homes breaches

16. [The tenant/s]claims that the landlord has breached their obligations under section 45(1)(bb) of the RTA, which requires compliance with the Residential Tenancies (Healthy Homes Standards) 2019 (HHS). The relevant standards are the draught stopping, and moisture ingress standards.

17. Compliance dates for the HHS vary depending on the tenancy. For private rentals where the tenancy commenced between 28 August 2022 but before 3 March 2025, such as this one, the rental must comply within 120 days of the commencement of any new or renewed tenancy, or by 1 July 2025, whichever is earliest. This means that the tenancy needed to have complied on or by 8 June 2024.

18. 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. The HHS does provide exemptions in specific circumstances.

19. 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.

20. To the first of the draught stopping issue presented with two healthy homes reports which set out different conclusions on whether or not the windows meet the standard. Considering these reports, I note that;

    a. the tenant's healthy homes report inspector found that windows were unable to be fixed in place when opened, and found that there were gaps

of larger than 3 mm leading to significant drafts identified in windows on the east side of the property;

b. the landlord's healthy homes report inspector or found no gaps, and said that drafts were coming from the drain holes drilled into the channels at the base of the joinery to allow for condensation to drain; and

c. the tenant has provided photos showing Post-it notes affected by wind on the sides of window joinery approximately two thirds of the way up.

21. Considering these I cannot accept the landlord's healthy homes inspection. I am familiar with aluminium joinery. I find it implausible that the drain holes which are at most a few millimetres wide could cause drafts significant enough to affect Post-it notes some 50 to 60 cm away. I also note that when the drafts were raised with the owner, his response was to promise to address the window seals. I find that the joinery was non-compliant.

22. With regard to the water ingress, the tenant's healthy homes inspection founders was non-compliant as there was a faeces on the vapour barrier. With respect this is not a moisture ingress issue.

23. With regard to the draught stopping, I find [The landlord/s] committed an unlawful act.

24. 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.

25. Considering those factors, I have determined that window issue was reported to the landlord on number of occasions. It appears that there are maintenance issues relating to the window joinery. The motivation may be inferred to be the costs of remediating the joinery. The effect of the draughty nurse was it was difficult for the tenant to heat the home, an issue that she advised the owner of on several occasions. As above, it is in the interests of both the tenant and the public that she lives in a dry, warm, healthy environment.

26. In this instance I noticed the relatively low number of windows affected, and that the landlord did take some steps to address the issue. Taking this into account I consider it just to award exemplary damages of $720.

Compensation

27. The tenant has claimed compensation for various costume incurred. The rule of awarding damages in these types of situations is that where there has been a breach of an obligation under a contract and losses flowing from that breach are reasonably foreseeable having regard to the nature of the contract in the subject measure it costs may be awarded. Considering the costs claimed:

a. Loss of amenity for nine weeks due to being unable to use the master bedroom due to the mould issues coming from the leaky window, and later the leaky barge flashing, $900 rent abatement is claimed. While the work to address the deteriorating gib below the window was carried out in a period of two days, the issue of mould and the possibility that the mould affected stipple coated ceiling contained asbestos was present for this period. Therefore, the amount claimed is reasonable. $900 awarded.

b. The cost of the Healthy Homes Inspection report. This was reasonably incurred as the owner had been slow to address the roof and draught issues. $253 awarded.

c. The tenant has claimed for draught strips, gap filler and similar for the various windows and doors, and thermal window coverings to address the draughts in difficulties and heating the home. Noting the issues above these were reasonable foreseeable costs for breaches of the obligation to maintain where water ingress has become an ongoing problem. $239.31 is awarded. However, the following costs are declined:

    i. the washing wishing cleaner which I do not consider was reasonably connected to the issues;

    ii. the HEPA filter soft furnishing cleaner soft furnishing cleaner which is an item which she can continue to use elsewhere; and

    iii. the caulking gun which can also be used elsewhere.

d. The tenant has claimed that rental of an air scrubber from Chem-dry for three days. This is the period following on from when the bedroom repairs were carried. Given the long-term nature that the area had been damp evidenced by the deterioration of the gib board and wallpaper this was a reasonably foreseeable loss and is reasonable. $308.71 is awarded.

e. The tenant has claimed the costs of four additional laundry at $5 a load, and six additional dishwasher loads for dishes in moulding/wet cupboards at $3/load. Given that laundry and dishes are things which really require washing anyway I do not consider that these costs are reasonably connected to the landlord's breaches.

f. The tenants rice cooker was affected by high moisture levels in kitchen cabinets and had to be disposed of. This loss was reasonably foreseeable when considering the landlords breaches of the obligation to maintain the premises. $25 is awarded.

g. The tenant had claimed for her increased power usage for the airscrubber. However, no estimate for evidence of this loss was provided.

h. The tenant has claimed for her estimated moving costs and for the loss of plants which she believes will be affected by being moved in the middle of their growth season, all will be killed when removed from the garden. The

term of the lease was one year and while it had become periodic it is unusual for moving costs to be ordered as a tenancy will foreseeably come to an end. Moreover, I have not found that the landlords termination notice was a breach. Without a breach compensated damages cannot arise.

i. The tenant has claimed $1500 for her lost vacation and personal time, both in pursuing the claim and in the time taken to move. Her daily rate is $540.96. The aspect of this claim which relates to the costs of preparing for this litigation is not a cost which can be awarded. Legal costs are for costs actually incurred, and a person's professional day rate is not an appropriate measure to use. The cost of moving cannot be awarded as there was no breach, as above.

j. For completeness I note the tenant has claimed for the return of her bond. As the tenancy had not terminated when hearing occurred it would be inappropriate to consider this as any issues with the condition of the property on moveout had not yet arisen.

28. Because the tenant has substantially succeeded with the claim, I have reimbursed the filing fee.

C Boys
23 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.