[2026] NZTT 5303779, 5290579

TENANCY TRIBUNAL AT PUKEKOHE | TE TARAIPIUNARA RETIHANGA KI PUKEKOHE

APPLICANT: Barfoot & Thompson Limited As Agent For Trevor Hindle

Landlord

RESPONDENT: Renee Kelly

Tenant

TENANCY ADDRESS: 106 Bluff Road, Pokeno, RD1, Pokeno 2471

ORDER

1. The landlord's application for rehearing is partially granted and the Order of 29 August 2025 is replaced with the following orders.
2. Barfoot & Thompson Limited As Agent For Trevor Hindle must pay Renee Kelly $272.73 immediately, calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rent arrears to 27 July 2025	$2,742.86	
Compensation: breach of quiet enjoyment		$500.00
Exemplary damages: harassment		$750.00
Compensation: cleaning to get rid of dog urine, to bring property to reasonably clean and tidy condition at start of tenancy		*$400.00*
Exemplary damages: issuance of retaliatory notice		*$2,500.00*
Compensation: hay purchase due to stoppage of grazing		$250.00
Power charges (minus daily fixed charge)	$129.41	
Cleaning: including carpet cleaning at the end of the tenancy	$420.00	
Repairs: lino replacement, limited to insurance excess	$500.00	
Fertilizing of land	$185.00	
Repairs: gate repair	$150.00	
Total award	**$4,127.27**	***$4,400.00***
Net award		$272.73
Bond		$3,200.00
Total payable by Landlord to Tenant		**$272.73**

3. The Bond Centre is to pay the bond of $3,200.00 (BN-00072570) to Renee Kelly immediately.

Reasons:

1. Both parties attended the hearing for me to consider the landlord's rehearing application.
2. The tenant had applied for compensation and exemplary damages for the landlord's breach of quiet enjoyment, failure to provide the premises in a reasonably clean and tidy condition and issuance of retaliatory notice.
3. The landlord had applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
4. On 29 August 2025 I issued my order on the parties' claims, awarding the tenant, inter alia:
    a. $740 for Compensation: cleaning to get rid of dog urine, to bring property to reasonably clean and tidy condition at start of tenancy; and
    b. $3,500 for Exemplary damages: issuance of retaliatory notice.
5. The landlord has filed an application for a rehearing against the above 2 orders which I have considered today.
6. The landlord's grounds for rehearing are that the award of damages and exemplary damages were based on incorrect information or a misinterpretation of the facts or evidence presented by the tenant and failure to consider the landlord's intention and broader context in giving the notice to vacate to the tenant as well as failure to correctly consider the quantum of exemplary damages that was appropriate and make an award in line with previous cases.
7. Section 105(1) Residential Tenancies Act 1986 provides that the Tribunal has the power to order a rehearing where "a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur".
8. Usually the party applying for the rehearing must show that something went wrong with the Tribunal's procedure, for example, that they did not receive notice of the hearing or they were not able to properly present their case. A rehearing may also be granted where there is new evidence that was not reasonably available at the first hearing, if it could have affected the outcome.
9. The District Court has held that if the Tribunal was simply wrong in its findings of fact, or its application of the law, this is not sufficient to establish a miscarriage of justice: a rehearing is not an alternative to an appeal. Furthermore, a rehearing will not be granted just because a party is unhappy with the decision, or to give them a second opportunity to present their case.

10. In *Wellington City Council v McMillan* [2003] DCR 50, Judge Tuohy considered the provision “a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur” to be strong words which set a high standard and most obviously apply to cases of procedural error or discovery of new evidence.

11. Those words however cannot cover a complaint that Tenancy Tribunal was merely mistaken or wrong in its findings of fact or application of law. Where the grounds relied on in application for rehearing are complaints about legal correctness of decision they should have been dealt with by way of appeal. No distinction can be made between errors of law that are grave enough to constitute a substantial miscarriage of justice and those which are not.

Has a substantial wrong or miscarriage of justice occurred?

12. Having considered the materials adduced in support of the rehearing application, and having heard from the parties’ today, I consider that the landlord has established sufficient grounds for partial rehearing for my earlier order dated 29 August 2025.

13. The landlord has produced evidence to indicate that my award of compensation of $740.00 in favour of the tenant was excessive and not properly justified.

14. However, my findings of liability against the landlord’s failure to provide the premises in a reasonable state of cleanliness under section 45(1) Residential Tenancies Act 1986 remain.

15. While the landlord has engaged a professional cleaner to clean the premises prior to the tenant moving in, the carpet still smelt of dog urine and despite the tenant emailing the landlord’s previous property manager about this, the property manager did not send someone over to check on the tenant’s complaint.

16. At the very least, the property manager should have called at the premises to check the veracity of the tenant’s complaint himself and provide some form of objective response to the tenant’s claim of carpet having reeked of animal urine within a week of the commencement of the tenancy.

17. I therefore continue to find that the landlord has failed to provide the premises in a reasonable state of cleanliness.

18. In allowing the tenant’s claim for damages in the form of cleaning costs incurred by the tenant at the start of the tenancy, I assessed the landlord’s own carpet cleaning costs incurred prior to and post tenancy.

19. I now consider that reasonable cleaning costs incurred by the tenant should be in the region of $300 to $500, rather than the tenant’s initial claim of having spent $740.

20. Only the amounts ordered are proved.

21. I therefore adjust my order in favour of the tenant for compensation to $400 only in respect of the landlord's failure to provide the premises in a reasonable state of cleanliness at the start of the tenancy.

22. I now address the landlord's submission that I have not correctly considered the quantum of exemplary damages that was appropriate and make an award in line with previous cases of the Tribunal.

23. I firstly note that I am not bound by other tribunal decisions. That said, it is in the public interest for tribunal decisions to be consistent with each other and there should be good reason for major departures from other cases where the facts are similar and the reasons for the other tribunal decisions are persuasive.

24. Adjudicator J Northwood acknowledged that she was "dealing with an unusual case" in [2025] NZTT 5291785. The Tribunal found that while the termination notice was retaliatory in legal terms, it does not reflect a deliberate or sustained disregard of the tenant's rights. Rather, it appears to be a case of "the last straw," where accumulated tension led the landlord to instruct the termination. Having weighed the relevant statutory factors, the adjudicator did not consider that exemplary damages are appropriate in that instance.

25. The landlord's decision in case TT5291785 to issue the termination notice appears to have been prompted by a culmination of factors rather than a calculated or targeted act of reprisal. In her 3 June 2025 email to the property manager, the landlord expressed a desire to end what she saw as a long-standing and difficult tenancy. The adjudicator found that the phrase "we all know what the cause is" suggests frustration more than malice.

26. In [2025] NZTT 5248152, 5104468, the awards of exemplary damages were to do with breaches of section 45 (maintenance obligations) rather than section 54 RTA. Accordingly, the adjudicator's decision in those cases are less relevant nor are they persuasive on me.

27. The landlord in [2025] NZTT 5158135 had offered to rescind the notice (found to be retaliatory) and let the tenants stay while repair/renovation work was being done, but the tenant gave their own notice. Adjudicator A Macpherson found the landlord has nevertheless committed an unlawful act and held that "after considering all the relevant factors at section 109(3) RTA, I find it just to award $1,000.00 exemplary damages." With respect, the learned adjudicator had not gone into further details on why she merely awarded $1,000 under the circumstances.

28. Having regard to the above cases, and to the extent that they are persuasive on me, I consider it just that my original award of exemplary damages is reduced to $2,500, from $3,500.

29. I acknowledge that my original award of $3,500 exemplary damages was on the high side, which was unjustified.

30. Only the amounts revised above are proved.

Conclusion

31. In the upshot, the landlord's application for rehearing is partially successful.

32. My previous order of 29 August 2025 is hereby amended as set out above.

J Tam
20 February 2026

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.