[2026] NZTT 5338563

TENANCY TRIBUNAL AT NORTH SHORE | TE TARAIPIUNARA RETIHANGA KI ŌKAHUKURA

APPLICANT:	Amira Samir Ahmed Ibrahim Salem Tenant
RESPONDENT:	Barfoot & Thompson Limited As Agent For Hannah Chew Mei Landlord
TENANCY ADDRESS:	Unit/Flat 8, 22 Maritime Terrace, Birkenhead, Auckland 0626

ORDER

1. The Tribunal declares that the tenant is liable for the flooding damage.

2. The Tenant's applications for compensation are dismissed.

3. The Bond Centre is to pay the bond of $2,180.00 (3190834-021) immediately apportioned as follows:

    a. $300.00 to be released to the landlord
    b. $1,880.00 to be released to the tenant.

REASONS

1. The Tribunal must consider an application filed by the tenant against the landlord. The tenant seeks a refund of the bond, and also orders in relation to flooding at the bathroom at the premises. The parties dispute who is liable for the flooding; the tenant seeks a declaration of non-liability and compensation for costs relating to the flooding.

2. Both parties appeared at the hearing today.

BACKGROUND

3. The tenancy agreement records the tenant as Amira Samir Ahmed Ibrahim Salem, and the landlord as Hannah Chew Mei, by way of a property manager, Barfoot & Thompson Limited.

4. The tenancy commenced on 16 December 2024.

5. On 9 July 2025 there was significant flooding in the bathroom when nobody was home.

6. The evidence is that a neighbour noted water coming from the dwelling and contacted the landlord. I have an email from the neighbour, Ms Lovell, dated 9 August 2025. Ms Lovell describes what happened on 9 July 2025. She left home at around 10:30 am, arriving back home at 1:30 pm. She needed to leave again. Ms Lovell states that she did not notice water was coming from the dwelling, until she returned home at 4:50 pm. In particular, water was coming from a second-floor bathroom overflow pipe, flowing onto the courtyard and down the pathway.

7. Ms Lovell states that at 4:58 pm she phoned the property manager, who arrived a short time later and then:

> I entered unit 8 along with the agent and her colleague.
>
> I saw that water was running out of a tap and that the bathroom sink outlet had been blocked by a plastic tubing.
>
> I observed the Barfoot agent turning the tap off and taking photos of the overflowing bathroom sink.

8. I also have an email from the property manager, Ms Che dated 10 July 2025. Ms Che states:

> Yesterday evening at 4:58 pm, your neighbour Linda called us to report that water was pouring from your upstairs overflow and from under the roof tiles, and said that there was a flood inside your unit. At 5:02 pm, I called you and received your permission to enter the property. My colleague Carol and I immediately went to the scene with the spare key.
>
> Upon entering the house, we found water all over the downstairs floor, leaking into the oven and benchtops, through the light fittings, and coming down the stairs. Upstairs, we found the vanity tap running and the sink plug inserted. We turned off the tap and removed the plug. There was water all over the upstairs floor and down the stairs. Your neighbour was with us the entire time.

9. That is also consistent with a later email from Ms Che dated 20 August 2026, where she records:

My colleague Caro and I were the first to attend the property after the incident was reported. Upon arrival, we found the upstairs bathroom tap running with the basin plug in place, which directly caused the water to accumulate and flood.

At the scene, we only carried out two actions:

1. turned off the tap; and

2. removed the basin plug to allow the water to drain. We also took photographs for our records.

The insurer reached the same conclusion as we did—that there were no issues with the tap or the plumbing and that the incident arose from negligence (i.e., a tap left running with the plug in the basin).

10. As indicated above, a claim was lodged by the owner or landlord, and the insurer accepted the claim for cover. The insurance excess was $300.00, and that is what the landlord now seeks from the tenant for the flooding damage.

11. Ultimately, the tenancy ended on 13 July 2025. Given the flooding in the tenancy, the landlord issued a notice terminating the premises on the grounds that it was uninhabitable.

12. The parties have been unable to agree on liability for the flooding. The tenant filed a claim seeking various orders around the flooding event, including a declaration of non-liability, and various compensation claims. The tenant also claims a breach of her quiet enjoyment.

TENANTS CLAIMS

13. The tenant seeks the following:

    a. Declaration of non-liability with respect to flooding damage.

    b. Full refund of the bond.

    c. Rent abatement for period tenancy was not habitable.

    d. Reimbursement of costs:

        i. Power to dry premises.
        ii. Flight change cost
        iii. Transport of furniture (both ways)

    e. Compensation for stress, disruption and loss of quiet enjoyment.

TENANTS CASE

14. The tenant's position is that she should not be liable for the flooding at the premises, on the basis that she did not leave the tap on.

15. The tenant states that the plug would normally sit on top of the sink.

16. The tenant notes that there was a delay in the water being noted, which argues against the overflow occurring in the morning.

17. The tenant's position is that any damage from the flood would fall within the category of being fair wear and tear.

LANDLORDS CASE

18. The landlord was represented at the hearing by Ms Che.

19. The landlord considers the tenant is liable for the damage as careless damage.

20. Ms Che advised that when she got to the premises on 9 July, she found that the tap was running heavily, and that she turned it off normally, and that stopped the water flow.

21. The landlord seeks $300.00 of the bond, being the excess paid, that being the extent of what the landlord considers the tenant owes for the damage.

22. I note at this juncture that the tenant confirmed at the hearing that if I found she was liable, that I should release the $300.00 of bond to the landlord, so that the disputes at this tenancy can be brought to an end.

RELEVANT LEGAL CONSIDERATIONS

23. The relevant law that applies is found in the Residential Tenancies Act 1986 ("RTA").

24. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.

25. That includes a requirement that the party bringing the claim (the tenant in this case), 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.

26. It is the applicant that must prove their case. 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.

ANALYSIS

27. Broadly, the tenant seeks orders in relation to two matters; one matter relates to the effect of the flooding, the other relates to a release of the bond.

Liability for flooding damage

28. The majority of the tenants' claims relate to the flooding at the premises, and those claims turn on the question of who is liable for the flooding, is it the landlord, or the tenant?

29. The RTA sets out specific provisions relating to damage in residential premises. Section 49B is headed "When tenant liable". That provision confirms that it is for the landlord to show that the damage occurred during the tenancy and is not caused by fair wear and tear, and once that is established, then the onus shifts to the tenant to prove the damage is not careless or intentional damage.

30. In this case, there is no dispute that the flooding occurred during the tenancy, but the tenant's view is that the damage was from fair wear and tear.

31. In my assessment, while it can be accepted that the fixtures and fittings in the bathroom were older, that at least $300.00 worth of damage must have been caused by the flooding. The bathroom appears to have been quite useable before the flooding, and did not require a full replacement. I am satisfied that the damage alleged by the landlord (that is $300.00 of damage) was caused by the flooding.

32. Accordingly, the onus then rests with the tenant to prove the damage (to the sum of $300.00) was not careless or intentional damage.

33. I will deal firstly with the question of whether the damage was intentional, and I find it was not. Intentional damage is damage that results from the tenant doing something knowing the damage would be a certainty (See the High Court decision of *Guo v Korck* [2019] NZHC 1541). That is not the case here, the landlord does not suggest that the tenant deliberately caused the flooding and resulting damage.

34. The real question is whether the damage was careless, and I find it was.

35. The best evidence I have available as to the cause of the flooding, is the description of what the property manager and neighbour found when they entered the premises not long after 5:00 pm on 9 July 2025. Both witnesses state that the tap was running and that Ms Che turned the tap off.

36. There is no evidence before me to support that there was some damage to the tap or the plumbing system. I agree with the landlord that the simple fact of turning off the tap suggests it is no more involved than a tap that was left open.

37. There is differing evidence about what was causing the sink not to drain, Ms Lovell states it was full of tubing, but the property manager says the plug was in the sink. In any event, the evidence suggests that the sink was blocked either by tubing or a plug. If either was the case, then it must be something that would be within the tenants control, that is the tenant could have removed the tubing, or removed the plug from the sink, therefore there is a nexus between either item blocking the drain, and the later flooding.

38. The tenant submits that there could have been an abnormal water flow or pressure. The tenant has presented no evidence supporting that, again noting the onus is on the tenant to prove the damage was not careless or intentional. Nevertheless, the tenant has not explained how such abnormal water flow or pressure would have caused water to come out of the tap, if the tap was closed.

39. The tenant further refers to the neighbour not noticing flooding until later in the afternoon. I agree that is Ms Lovell's evidence, but that is not evidence that there was no earlier flooding from the sink. It could be explained either by Ms Lovell not noticing the flooding or the flooding not reaching the point of it exiting the building.

40. The evidence accordingly points to the tenant being liable for the damage from the flooding.

41. Turning now to the compensation claims.

a. I cannot see any basis to order any rent refund, because there has been no breach of an obligation on the part of the landlord.

b. If there has been power used for drying the carpet, that would be a consequence of a breach by the tenant, so in a strict legal sense, the tenant would be liable for that cost.

c. There is no basis to reimburse flight changes, stress, disruption, loss of quiet enjoyment, or furniture transport, again, because those costs did not arise from a breach on the part of the landlord.

42. I find, therefore, that the tenant would be liable for the flooding damage to the extent of the bond - $300.00.

Bond refund

43. The landlord only considers that $300.00 of the bond should be paid to the landlord, and the remainder should be released back to the tenant.

44. The tenant confirmed that if I concluded she was liable for the flooding, that I should release the $300.00 to the landlord to bring this dispute to a close. That was sensible, and that is what I will do.

45. As above, I have ordered that $300.00 of the bond be paid to the landlord, and the remainder to be refunded to the tenant.

R Woodhouse
24 March 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.