TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] Tenant
RESPONDENT:	Bk Property Management Limited T/A: The Agency Lizzie Te Rongopatai Landlord
TENANCY ADDRESS:	Unit/Flat 2, 32 Wairere Road, Gisborne, Gisborne 4010

ORDER

1. Bk Property Management Limited T/A: The Agency Lizzie Te Rongopatai must pay [The tenant/s] $2,310.71 immediately, as set out in the table below.
2. The landlord must carry out the following work to the premises, which must be completed by 19 May 2026.
    a. Renew the septic tank system, or otherwise fully remediate to [The tenant/s] satisfaction, the backfilling and bubbling-back problem with the toilet.
3. As an alternative to compliance with Order 2, the landlord must pay the tenant $50,000.00 immediately.
4. If the landlord fails to comply with either Order 2 or 3 above, then the tenant may undertake the work and charge the landlord the costs of this work up to $50,000.00. These costs may be set off against rent payable.
5. The landlord must carry out the following work to the premises, which must be completed by 21 April 2026.
    a. Replace the portion of pathway that has been cut away at the back of the premises.
    b. Repair or replace the broken bathroom heater.
    c. Repair or replace the washing machine.

6. As an alternative to compliance with Order 5, the landlord must pay the tenant $4,500.00 immediately.
7. If the landlord fails to comply with either Order 5 or 6 above, then the tenant may undertake the work and charge the landlord the costs of this work up to $4,500.00. These costs may be set off against rent payable.

Description	**Landlord**	**Tenant**
Rent arrears to 26 March 2026	$929.29	
Compensation: toilet unreliable		$1,440.00
Exemplary damages: failure to maintain (toilet and path)		$1,800.00
Total award	**$929.29**	**$3,240.00**
Net award		$2,310.71
Total payable by Landlord to Tenant		**$2,310.71**

Reasons:

1. Both parties attended the hearing.
2. The landlord has applied for rent arrears and reimbursement of the filing fee.
3. The tenant claims the landlord has failed to maintain the premises, breached his quiet enjoyment of the premises, incorrectly charged for power usage, over-charged for rent and discriminated against him.
4. A case conference for this hearing was held on 26 January 2026. The tenant said claims raised in the case conference hearing other than those above are not being pursued.
5. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations. One of these standards is that it is for the party bringing the application to establish their claims on the balance of probabilities. That means the party bringing the claim must establish that what they are claiming is more likely than not. This is referred to as the burden of proof. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.
6. 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.
7. If the claim is not established to the balance of probability, it must be dismissed.

The landlord's claims

How much is owed for rent?

8. The tenancy began on 29 August 2022 and is still current. At the start of the tenancy the rent was $485.00 per week. The following rent increases and decreases have been notified by the landlord:
    a. 7 September 2023 Rent increase to $520.00 per week,
    b. 2 September 2024 Rent increase to $550.00 per week,
    c. 11 October 2024 Rent decrease to $480.00 per week,
    d. 10 October 2025 Rent increase to $530.00 per week.
9. The tenant does not dispute that the correct rent increase notices have been served.
10. The tenant has refused to pay the most recent rent increase (10 October 2025) because he says he has heard from other tenants in the same block of units they are paying different amounts of rent to him, and they have different arrangements with the landlord regarding the payment of rent and electricity. He believes there should be parity between the tenancies.
11. Under section 25 of the Residential Tenancies Act, 1986, the Tribunal can assess market rent (as opposed to parity), and if it determines the rent payable exceeds the market rent by a substantial amount, the Tribunal may make an order reducing the rent.
12. The tenant has not made a claim under this section, and the information provided today does not support such a claim. Market rent not parity is the statutory requirement. The Tribunal is not in a position to assess the market rent for this property.
13. This claim is not proved.
14. The landlord said because the tenant has not paid the rent increase since it began in October 2025, the tenant is now in rent arrears. The landlord has provided a rent summary which proves the amount of arrears as of today's date is $929.29.
15. The tenant must pay rent when it is due and payable under section 40(1)(a) of the RTA. I determine the tenant is in rent arrears.
16. This claim and the amount ordered are proved.

The tenant's claims

Power usage

17. The tenant claims he is being over-charged for power usage.

18. The tenant said he only started being charged for power on 28 July 2023. He claims he is the only tenant of the four tenancies in the same block of flats who is paying for power. He says he has reached this conclusion having had conversations with the other tenants.
19. The landlord said there have been different arrangements with different tenants in the block at different times. However this tenant has only ever paid for the power used as calculated through the individual check-metre in the power box.
20. The tenant confirmed he has seen the four check-metres that relate to each of the four units, in the power box.
21. Both parties said that as of 10 October 2025, the tenant's rent increase to $530.00 included power use.
22. Under section 39(3) of the RTA the tenant is responsible for all outgoings in respect of the premises that are exclusively attributable to the tenant's occupation of the premises.
23. If a fixed amount is charged for rent and power together, the fact that the electricity charge varies on a weekly or monthly basis will mean the rent is also being varied on the same weekly or monthly basis, without any notice being given to the tenant. This would not be lawful.
24. However the tenant has not yet started paying the rent increase and therefore appears to have not paid for any power usage in this time.
25. I have not seen any information that supports the tenant's assertion that he is being over-charged for his power usage.
26. On the information before me today, I determine the tenant has not been charged for power beyond the provisions of section 39(3) of the RTA.
27. This claim is not proved.

Fail to maintain

28. [The tenant/s]claims the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986.
29. Under section 45, a landlord must provide and maintain the premises in a reasonable state of repair.
30. 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 Residential Tenancies Act 1986.
31. The tenant raised the following maintenance issues regarding his tenancy.
    a. Toilet and septic tank not functioning effectively,
    b. Path not reinstated after plumbing work carried out,

c. Blinds not installed,

d. Bathroom heater broken,

e. Washing machine faulty,

f. Rainwater catchment issues.

Toilet and septic tank

32. The tenant said that since the beginning of the tenancy the toilet has failed to flush effectively. He said he couldn't remember the first occasion it happened, but during the severe weather of February 2023 it was particularly bad. He said that when it rains heavily the toilet does not drain when flushed and instead it back-fills with water.

33. A second problem is that whenever the toilet in unit 1 is flushed, the toilet in his unit bubbles up with air and water. The tenant said that three times when he has been using the toilet, the bubbling up has caught him by surprise and water has touched his skin and he has had to shower.

34. The tenant said that between August 2024 and August 2025 the toilet back-filled three to five times.

35. The tenant said that on 25 August 2025 the toilet back-filled to the point of overflowing onto his toilet floor. The tenant produced a video of this happening. The tenant also produced numerous photographs of the toilet back-filling when flushed.

36. The tenant said he has notified the landlord numerous times by text and email, including four times in August 2023, twice in November 2023, several times in July 2024 and several times in August 2025. He said that each time the landlord responded by sending a plumber who undertook different work to address the problem including putting new tops on the septic tank and cleaning out the septic tank. None of the work has provided a lasting solution.

37. The landlord accepted there have been ongoing issues relating to the ineffectiveness of the toilet. The landlord said the owner has tried to address the problem, but installing a new septic system would probably be the only lasting solution, and this could cost $50,000.00.

38. I determine a toilet that does not flush its contents away is a breach of the landlord's obligation to maintain the premises in a reasonable standard under the RTA section 45. It is also a breach of the Housing Improvement Regulations 1947, clause 16 which says the following:

> **16**
>
> (2) In cases where no sewerage system is available the waste matter from every sanitary appliance shall be discharged by waste pipe or soil pipe, as the case may

> require, into an adequate drainage system connected to an adequate sewage tank or other adequate means of disposal.

39. When the toilet back-fills, and especially when it has overflowed, the premises become insanitary. As such this breach of the landlord's obligation to maintain the premises is at the most serious end of the scale.

40. The problem is intermittent and as such reduces the gravity of the breach. This may be why the landlord has decided against replacing the septic system.

41. This claim is proved. I determine the landlord has committed an unlawful act.

42. To have a toilet that functions even occasionally in this manner is unacceptable under New Zealand law. There isn't a dispute about the existence of the problem and there doesn't appear to be any dispute as to what causes the problem. It is agreed that the problem is due to an inadequate septic system, and this is exacerbated when the toilet is flushed in unit one and when it rains. To that extent, the problem is predictable, and it can be predicted that without a significant amount of work, the problem will continue. It may be possible that the problem could be managed with a high level of maintenance, but in the three and a half years of this tenancy, the landlord has shown they are not capable of doing this.

43. The only reasonable conclusion I can draw is that the problem must be urgently addressed by replacing the septic tank. Hence I have ordered the work to be done. I consider a reasonable timeframe to do this work is 42 days.

44. I consider general damages are appropriate for this breach. The tenant has suffered a considerable loss of amenity over a considerable timeframe. From 29 August 2022 until 26 March 2026 is three years and nine months, or 196 weeks. I am mindful that for the first part of the tenancy the landlord may not have known of the problem and may have legitimately tried a range of less severe remedies. Because of this I grant a grace period of 52 weeks. For 144 weeks the tenant has unreasonably had to endure a significant loss of amenity of a predictable, sanitary functioning toilet.

45. I award the tenant what I consider to be a nominal $10.00 weekly rent rebate for this period in compensation for this loss of amenity.

46. I consider exemplary damages are appropriate given the length of time involved in the breach and the seriousness of the breach. The landlord has to all intents and purposes failed to adequately address a serious problem for three years and nine months. Having to repeatedly complain to a landlord about the same issue is tiresome and erodes goodwill in a tenant/landlord relationship. Eventually a tenant whose legitimate concerns are not being addressed will lose motivation to seek enforcement of their legislated rights.

Path not reinstated after plumbing work carried out

47. The tenant claims that as part of the work previously carried out by the landlord on the septic tank, a two-and-a-half-foot section of the path that runs the length of the four units, at the back of the units was cut and pulled up. This has left a shallow two-and-a-half-foot trench approximately 20 centimetres deep. The tenant did not say when this happened.
48. The effect of the trench being in the place of where the path once was, is that the tenant says it is no longer possible to walk his rubbish bin down to the road without going onto the grass which can be sodden and slippery in wet weather. This trench is also a significant tripping hazard.
49. The tenant wants the problem fixed.
50. The landlord does not dispute the section of missing path and produced a photograph which clearly shows it.
51. I determine not reinstating the path is a failure by the landlord to maintain the premises in accordance with section 45 of the RTA.
52. The claim is proved. The landlord has committed an unlawful act.
53. I make an order for it to be done.
54. I consider exemplary damages are appropriate for this breach as the missing section of path has created a safety issue.

Blinds not installed

55. The tenant said when he took the tenancy there were no blinds in the kitchen and bathroom and this meant a neighbour could see into the kitchen area. The tenant has since installed blinds, but says this was the landlord's responsibility.
56. The landlord said the following:
    a. The tenant accepted the tenancy without blinds,
    b. They are not sure why the owner declined the request for blinds,
    c. The glass in the bathroom is frosted and this provides privacy for the tenant.
57. I determine that not providing curtains in every room is not in this case a breach of the RTA. It is not uncommon for utility areas to be without curtains or blinds. The tenant accepted the tenancy in this condition and I do not consider it would be reasonable for the Tribunal to require the landlord to install blinds or curtains in this case or to punish the landlord for not having installed them.
58. I determine the lack of blinds in the utility areas is not a breach of the landlord's obligation to maintain the premises.

59. This claim is not proved.

Bathroom heater broken

60. The tenant said about two weeks before the hearing, the heater in the bathroom stopped working and the landlord has refused to repair or replace it.
61. The landlord confirmed this is the case. The landlord said today that if it needed to be replaced, this could be arranged.
62. The heater was a fitting at the start of the tenancy. It is therefore a chattel that comes with the tenancy and the landlord is obligated to maintain it.
63. This claim is proved
64. I determine the landlord must repair or replace the heater. Because the heater has only recently stopped working, I do not consider this breach to be significant enough to warrant exemplary damages being awarded.

Washing machine faulty

65. The tenant said that since the beginning of the tenancy the washing machine which came with the premises has been faulty to the extent that the cycle needs to be advanced manually whenever the washing machine is used.
66. The landlord said that today was the first time she had heard that the washing machine is faulty, and she agreed to have it looked at.
67. I determine the washing machine is a chattel the landlord has provided as part of the tenancy and the landlord must maintain it to a reasonable standard. This means to a fully functioning level. I accept the landlord's submission that they have not known about the faulty function.
68. It appears the washing machine can be nursed through a cycle and the tenant has chosen to do this rather than raise the issue with the landlord.
69. This claim is proved.
70. A tenant has an obligation under the RTA, section 40(1)(d) to notify the landlord as soon as possible after the discovery of any need for repairs. The tenant has not done this.
71. I determine the washing machine must be prepared, but I do not consider this breach sufficient to warrant exemplary damages being awarded.

Rainwater catchment issues

72. The tenant said that between February and April 2024, a neighbouring tenant had visited and said a dead cat had been found in the water tank. The tenant

said he did not see the dead cat in the water tank himself. The landlord then undertook some work on the water tank and during this time provided drinking water for the tenants from another source. The tenant said he believed water catchment systems needed to be signed off by the council every three years, and he wasn't sure if the landlord had done this or not.

73. The relationship between the tenant and the person who told him of the dead cat in the water tank has been a strained relationship, and I am not persuaded that the information was reliable.

74. I am not persuaded on the balance of probabilities the tenant has proved any breach of the RTA in this complaint.

75. 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) Residential Tenancies Act 1986.

76. I consider exemplary damages for failing to maintain the premises are appropriate for the breaches relating to the faulty toilet/septic system and failing to reinstate the missing section of path.

77. I have listed factors that I have considered as aggravating above. I consider the breaches such as they are to be serious but limited in scope. I also note that this is the first application this tenant has made against this landlord.

Breach of quiet enjoyment

78. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) Residential Tenancies Act 1986.

79. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See section 38(3) and Schedule 1A RTA.

80. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds,* CIV-2009-019-001524, DC Hamilton, 26 February 2010.

81. A tenant shall not cause or permit any interference with the reasonable peace, comfort, or privacy of any of the landlord's other tenants in the use of the premises occupied by those other tenants, see RTA section 40(2)(c). If a landlord knows a tenant is acting in breach of this section and does not take steps to prevent it continuing, the landlord may be found to be in breach of their obligation under the RTA section 38(2).

82. The tenant claims the other tenants at the same premises have interfered with his reasonable peace, comfort and privacy.

83. The tenant raised circumstances relating to four particular tenants as follows, listed in chronological order:

    a. Unit 4, August 2023 until sometime in 2024,

    b. Unit 3, 5 September 2023,

    c. Unit 1 (#1), April 2024 until September 2024,

    d. Unit 1 (#2), October 2024 until November 2025.

Unit 4

84. The tenant said that on 26 August 2023, the tenants in unit 4 had a party and played loud music from 5.00 pm until 2.00 am. The tenant made a complaint to the landlord on 28 August 2023.

85. The landlord said on 31 August 2023 a 14-day notice was served on the tenant regarding the noise.

86. The tenant said there were many other instances of these tenants having loud parties but he didn't raise any other occasions when he made a complaint to the landlord about them. He also said he believed these tenants had gang affiliations and he was fearful of them.

87. A tenant cannot be in breach of a residential tenancy agreement, or discriminated against, simply because they are affiliated to a gang in one way or another.

Unit 3

88. The tenant said that on 5 September 2023, the tenant in unit 3 left for work at 5.11am playing her car stereo very loud.

89. The tenant considers this was a breach of his quiet enjoyment.

90. The landlord said that a 14-day notice was served on the tenant in unit 3 about this incident. The tenant was told this must not happen again.

Unit 1 (#1)

91. The tenant said that on 6 June 2024 he witnessed the tenant in Unit 1 shouting at her baby for two hours. He considered this a breach of his quiet enjoyment. Similar events happened again on 2 July 2024 and 3 August 2024. He said the shouting was so loud and aggressive and persistent that he called the police out

of fear for the baby on 2 July 2024, and on 3 August 2024 he found himself shaking in fear. The tenant raised other complaints similar in nature.

92. The tenant said that he didn't make any complaints to the landlord about the tenant in unit 1 because on a prior occasion when he had complained about a tenant, the landlord had responded by shouting at him: "This is your lane, that is their lane. You stay in your lane." The tenant said he had felt intimidated by this response and had been reluctant to make complaints after this incident.

93. The landlord said she did not remember saying that to the tenant.

94. With regard to these complaints against this tenant at unit 1, the landlord has an obligation to act to prevent the tenant breaching another tenant's quiet enjoyment. They can only do this if they are aware of what is going on. In this case, the landlord was not aware of what was going on. Therefore I determine the landlord was not breaching their obligations under the RTA.

Unit 1 (#2)

95. The tenant said that in October 2024 a new tenant moved into unit 1 and he became fearful of her because he believed she was connected to a gang. He said because of this he didn't feel safe.

96. The landlord said that the tenant made a complaint to her and in response she promptly approved deadbolts to be fitted to his unit.

97. Towards the end of the tenancy there was a violent incident in which the ranch-slider glass was broken. The tenancy then ended in November 2025 after the landlord terminated the tenancy.

98. Despite the tenant's fearfulness, I do not find the landlord neglected to act in anyway such as to "allow" the tenant in unit one to continue breaching the tenant's quiet enjoyment. On the evidence presented to me in this hearing, the landlord responded appropriately to the situations as reported by the tenant.

99. As set out above, the tenant's claims of breach of quiet enjoyment are not against the landlord directly. The claims are against the other tenants who live in the same block of units as he did, and who had tenancy agreements with the same landlord. When I look at all of the complaints by the tenant, I see that there were a small number in 2023, (a party or parties and an incident of a stereo being played early one morning), and several in 2024 relating to tenants shouting at a baby, and being aggressive as well as being affiliated to a gang.

100. On the information I have heard today, I determine that whenever the landlord was aware of a problem, they responded appropriately to it, giving warnings to tenants and providing more security measures respectively, when required. A lot of the time the landlord was not made aware of a problem and therefore had no opportunity to act. It is possible the landlord could have acted in a stronger

manner. However to some degree this is a matter for the landlord, and I note they were managing multiple tenancies and the rights and obligations of many people. I have not included in this order every complaint the tenant raised. I have however considered everything the tenant said. I do not wish to minimise the tenant's experience of discomfort, but it is my view that the tenant's complaints are exacerbated by his fear of the neighbouring tenants' social connections, which of themselves are not a breach of this tenants quiet enjoyment.

101. I do not find the claim for breach of quiet enjoyment proved.

Discrimination

102. The tenant said he felt he had been discriminated against. He said other tenants didn't keep to the terms of their tenancy agreements and they received preferential treatment. He mentioned the other tenants being Māori and the landlord also being Māori. He also said that he has had to endure living amongst gangsters and he often felt fearful.

103. Discrimination in the RTA is covered by section 12 which includes the following:

> **12 Discrimination to be unlawful act**
>
> (1) Each of the following is hereby declared to be an unlawful act:
>
> (a) discrimination against any person in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement in contravention of the Human Rights Act 1993; and
>
> (b) the giving of an instruction or the stating of an intention in contravention of subsection (2).
>
> (2) A landlord shall not, in respect of the grant, continuance, extension, variation, termination, or renewal of a tenancy agreement,—
>
> (a) instruct any person to discriminate against any other person in contravention of the Human Rights Act 1993; or
>
> (b) state an intention (whether by advertisement or otherwise) to discriminate against any person in contravention of that Act.

104. Section 21 of the Human Rights Act, 1993 (the "HRA") sets out prohibited grounds of discrimination.

105. I did not hear any information from the tenant that persuaded me he had been discriminated against in terms of any of the categories set out in section 21 of the HRA in relation to the criteria set out in section 12 of the RTA.

106. Even if the tenant had proved on the balance of probabilities that different tenants have been treated differently, (which he has not done), this would not of itself be sufficient to prove discrimination for the purposes of the RTA.

107. This claim is not proved.

108. Because both parties have been successful to a significant degree with their claims, I let the filing fee costs lie where they fall.

C Lamdin
7 April 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.