TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Barfoot & Thompson Limited As Agent For Gabin Investments Ltd Landlord
RESPONDENT:	Jonathan Joe Samuela, Charles Anderson Tenant
TENANCY ADDRESS:	Unit/Flat Unit 2, 31 Evans Road, Glen Eden, Auckland 0602

ORDER

1. This order replaces the previous order released today due to an error in the rent arrears total, per High Court Rules 2016 11.10 ("slip rule")[1]. All other orders are unchanged.
2. Jonathan Joe Samuela and Charles Anderson must pay Barfoot & Thompson Limited As Agent For Gabin Investments Ltd $1,241.99 immediately, calculated as shown in table below.
3. The Bond Centre is to pay the bond of $2,680.00 (5404888-002) to Barfoot & Thompson Limited As Agent For Gabin Investments Ltd immediately.

Description	**Landlord**	**Tenant**
Rent arrears to 3 February 2026	$2,828.57	
Cleaning: Garage	$40.00	

[1] "Slip rule" - High Court Rules 2016 11.10 allows for the correction of accidental slip or omission. It states:
A judgment or order may be corrected by the court or the Registrar who made it, if it—
a. contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or
b. is drawn up so that it does not express what was decided and intended.

Loss of rent: break/reduced rent	$428.57
Break fees	$596.85
Filing fee reimbursement	$28.00
Total award	**$3,921.99**
Bond	$2,680.00
Total payable by Tenant to Landlord	**$1,241.99**

Reasons:

1. Both parties attended the hearing.
2. The landlord made an application for rent arrears, orally submitting and confirming it as $2,228.57. This was an error in confirmation as the rent summary provided later confirmed the amount as $2,828.57. I am satisfied the error was accidental and it is appropriate to correct the first order accordingly.
3. The landlord has applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
4. The tenants applied for a break in their fixed-term tenancy.
5. A new tenancy has now formed (as at 4 February 2026).
6. A party who brings a claim to the Tenancy Tribunal must prove on the balance of probabilities (more likely than not) that their version of events took place. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden of proof.

The tenant claim

Should the fixed-term tenancy be reduced?

7. The usual legal position with a fixed-term contract is that the term of the contract will be applied strictly, and it is only in limited circumstances that a court or tribunal will interfere with it. For residential tenancies, one of those circumstances is found in s 66 Residential Tenancies Act 1986, which allows for the reduction of fixed term tenancy agreements.
8. There is a high threshold to be met before the Tribunal will reduce the term. In particular the applicant will need to establish that:
    a. there has been a change in their circumstances
    b. the change was unforeseen
    c. the unforeseen change will result in severe hardship to the applicant if the tenancy is not reduced
    d. the severe hardship the applicant will suffer if the term is not reduced exceeds the hardship the other party will suffer if the term is reduced.

9. Section 66(2) provides that, if the Tribunal reduces the term of the tenancy, it may order the applicant to pay reasonable compensation to the other party for any loss or damage which results from the reduction of the term.

10. The Tribunal has held that it cannot reduce the term of a fixed-term tenancy on the application of one of several co-tenants (*Derbyshire v Mark & Maggies Property Company Ltd Wellington* [2013] NZTT 1477WN).

11. The weighing of relative hardship is a question of fact to be assessed objectively in each case.

12. In this instance, I do not consider the tenants have established grounds for a reduction to the fixed-term tenancy. The decision to enter into a further fixed term of twelve months in June 2025 was done in the shadow of their next-door mother and her deteriorating health and mobility. She had already been provided an emergency body alarm (in February 2025) in anticipation of what later ensued, being a fall that required a callout for assistance. Based on a medical assessment at the time Her condition did not mean her premises could not be returned to after her required hospitalisation,. The decision to relocate as a whanau to provide her with better care and more suitable living arrangements is understandable and to be commended.

13. However, the change cannot be considered as unforeseen. The hurdle facing such claims were discussed and the likely outcome here foreshadowed at the hearing.

14. The tenants acknowledged a desire for the security of the fixed-term for their own tenure.

15. The impost on the tenants of paying rent for a premises when of no or little beneficial use or occupation was very real and a situation the tenants would prefer to have avoided. That was well expressed and is understood.

16. Unfortunately, the obligations of the fixed-term tenancy were clearly stated and should have, or would have, been a factor considered by the tenants in deciding on any subsequent change. A positive was their purchase of a home at that time, rather than entering into a new tenancy.

17. I do not need to consider the relative hardship given the finding that the change in circumstances was reasonably foreseeable and no grounds for a reduction exist.

18. The application for a reduction in the fixed-term tenancy is dismissed. That leaves a rent liability to be addressed, along with other landlord claims.

The landlord claims

Is rent in arrears?

19. The landlord provided a rent summary that confirmed the rent liability ended 4 February 2026. At that date, the rent in arrears was confirmed as $2,228.57.
20. The rent summary accounting was not disputed by the tenant.
21. The rent in arrears is awarded.
22. The landlord also sought compensation for the loss of rent to the end of the fixed-term, as the rent was dropped by $20.00 a week to get a new tenancy established when it did. The total sought was $428.57. I am satisfied this is a loss to the landlord and should be compensated. I note the alternative was a possible extended period of rent liability that would have been a greater cost to the tenant than the sum sought here.

Did the tenant comply with their obligations at the end of the tenancy?

23. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986.
24. The tenants did leave the premises reasonable clean and tidy. The unresolved issue was the need to clean the internal garage. The landlord provided photos and an invoice for $128.38.
25. I accept the photos evidence the need for further cleaning but I have difficulty aligning the invoiced tasks and effort to the evidence. Having considered the evidence and submissions, I consider $40.00 reflects the proven need to sweep the floor and remove the cobwebs. This is awarded.

Is the tenant liable for break fee costs?

26. The landlord is entitled to seek recovery of reasonable costs incurred in a break of a fixed-term tenancy. The likely costs were itemised upfront and confirmed at the end. The costs featured caps that reduced the actual costs sought and the final claim for $596.85 is accepted and awarded.

Filing fee

27. Because Barfoot & Thompson Limited As Agent For Gabin Investments Ltd has wholly succeeded with the claim I must reimburse the filing fee.

M Brennan
28 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.