[2026] NZTT 5438457

TENANCY TRIBUNAL AT GISBORNE | TE TARAIPIUNARA RETIHANGA KI TŪRANGANUI-A-KIWA

APPLICANT: Samantha Durston

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: 1 River Road, Matawhero, Gisborne 4071

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenant's name and identifying details.
2. [The tenant/s] is to pay Samantha Durston $1,827.05 from the bond, calculated as shown in table below.
3. The Bond Centre is to pay the bond of $2,000.00 ([Bond number suppressed]) immediately apportioned as follows:

Samantha Durston: $1,827.05

[The tenant/s]: $172.95

Description	**Landlord**	**Tenant**
Rent arrears to 28.1.2026	$1,300.00	
Cleaning	$100.00	
Door replacement	$94.05	
Gas refill - by consent	$155.00	
Repairs: hole in bedroom wall - by consent	$150.00	
Filing fee reimbursement	$28.00	
Total award	**$1,827.05**	
Bond	$1,827.05	$172.95

4. All other claims are dismissed.

Reasons:

1. Ms Durston, the landlord, along with her support person, Mrs Durston, and [The tenant/s], along with [The tenant's support person], all attended the hearing in-person on 27 May 2026.
2. The landlord has applied for rent arrears, outgoings, compensation, refund of the bond and reimbursement of the filing fee.
3. The parties agreed the tenancy ended on 1 February 2026.

Burden of proof and evidence

4. The applicant must prove their claims on a balance of probabilities, that is that it is more likely than not that something occurred. This is the burden of proof.
5. The issue of evidence at Tenancy Tribunal hearings was considered by the District Court in *Kaipo v Clarke & McCarthy (DC) TT233/02*. Judge Mather stated:

   "…[the applicant] needs to be reminded that like anyone who brings an application before a Tribunal or a 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."
6. Where parties dispute an issue, each party must provide additional supporting evidence of their position.

How much is owing in rent?

7. The landlord claims rent arrears of $1,300.00 up to 28 January 2026, just short of the end of the tenancy and provided a rent summary proving this amount.
8. The tenant said the landlord told her not to bother paying the last 2 weeks of rent as she had paid 2 weeks' rent in advance.
9. The landlord said the 2 weeks' rent paid by the tenant in advance was accounted for at the start of the rent summary and that the tenant had missed some rent payments after that, which is why she was claiming $1,300.00 in rent arrears.
10. The tenant said she was sure she had not missed any rent payments but acknowledged she did not have any evidence to confirm this.
11. As the tenant was aware that rent arrears were in dispute, given they are claimed in the application and that no agreement was reached prior to the hearing about this claim, the tenant could have provided evidence to contradict the landlord's rent summary, if need be, but did not. In the absence of any evidence to the contrary, the landlord has shown that the tenant owes $1,300.00 in rent arrears up to 28 January 2026. I note the landlord has not claimed the full amount of rent arrears that would have been owing up to the end of the tenancy on 1 February 2026, as she confirmed during the hearing.

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

12. 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.

Cleaning

13. The landlord said the tenant did not leave the premises reasonably clean and tidy and did not remove all rubbish. The landlord provided some photographs that she said were taken on 1 February 2026, the end of the tenancy, as well as an invoice for $1,835.00 for cleaning the property at the end of the tenancy, which she claimed. The narrative on the invoice showed the cleaning work included a full clean of all parts of the property.
14. The landlord did not provide any photographs of the condition of the property at the start of the tenancy, however.
15. The tenant, during the hearing, provided photographs she said were also taken by her on 1 February 2026, the end of the tenancy, and said she left the property reasonably clean and tidy. The tenant pointed out that the photographs she took showed the overall condition of the property more accurately, as she

said the landlord's photographs were close-ups of certain smaller areas, which did not show the overall condition the property was left in.

16. The photographs provided by the tenant showed empty rooms, where the carpets appeared to have been vacuumed and the property looks generally reasonably clean and tidy overall. There were photographs of a mown lawn also from the tenant. The tenant's photograph of the laundry room showed it was not completely clean, but the tenant said it was in this same condition at the start of the tenancy. The tenant said, in answer to a question about how she would explain the dirt shown in the landlord's photographs in some areas, which was quite visible in those photographs, that she did her best, with her medical conditions, to leave the property reasonably clean and tidy but acknowledged she probably did not clean the 'crevices'.

17. The landlord's photographs show at least two different floor surfaces with lino where there were some piles of dirt left in the corner of the room, clearly visible and rather more than minor. Further, there was a photograph of a windowsill that was left with very visible black dirt tracks over most of it and one of some food left under the oven and other photographs of cobwebs around some pipes and in other rooms. Some of the photographs showed marks on several walls also, though it was unclear whether these were present or not at the start of the tenancy, as there were no entry photographs provided, so I do not consider these here.

18. Whilst the landlord has likely not proved the majority of the amount of their claim of $1,835.00, as the tenant appeared from her photographs to have left the property mostly reasonably clean and tidy, I find it reasonable to compensate the landlord for the very visible dirty areas shown in the landlord's photographs, as the tenant remains responsible for either cleaning these or arranging for others to do so at the end of the tenancy. Given the landlord's photographs of at least 2 floors left quite dirty, a very visibly dirty windowsill, some food left under the oven and some cobwebs in a few rooms, when the tenant acknowledged she did not get to do the 'crevices', I find a reasonable amount to clean these dirty areas shown in the landlord's photographs to be $100.00 and so award this to the landlord for cleaning at the end of the tenancy.

Garden work

19. The landlord said the tenant did not leave the gardens reasonably clean and tidy and that, on the last inspection before the end of the tenancy, she told the tenant to clear up the gardens. The landlord indicated she then saw that somebody had taken a weed whacker over the area in which she and her family had planted and maintained flowers and bushes, and had destroyed some of the plants, some of which were starting to grow back. The landlord provided a quote for $552.00, which she claimed, for rectifying and clearing the areas in

the front garden knocked down with the weed whacker and clearing the area allowing the plants to grow back and putting more soil into that area.

20. The tenant said the landlord had not provided any entry photographs of the condition of the garden at the start of the tenancy and that she did not recall there being flowers the landlord wished to retain. She said that, after the landlord asked her to clear up the garden, she hired a friend to clear the garden for her, and that he had done that to the best of his ability. The tenant maintained she had left the garden reasonably clean and tidy at the end of the tenancy and provided photographs of mown lawns.

21. As the landlord did not provide any entry photographs of the condition of the part of the front garden that she said the tenant had destroyed and altered, I cannot assess whether any further garden work was required to return that part of the garden to the condition it was at the start of the tenancy. The landlord has not provided additional supporting evidence to prove this claim and so I dismiss this claim.

Carpet cleaning

22. The landlord said she had to clean the carpets at the end of the tenancy and provided an invoice for $360.00, which she claimed. The landlord clarified this was for the carpets in bedrooms 1 and 3, which had been newly installed during the tenancy. The landlord indicated that they were stained at the end of the tenancy and the carpets smelled of dog strongly. The landlord provided a photograph of some small stains on a grey carpet, which she said was in bedroom 1.

23. There were no photographs provided of the condition of these carpets at the time they were installed in the two bedrooms, however. The landlord said they were installed at different times during the tenancy.

24. The tenant said the supposedly new carpet which had been installed in bedroom 1 had been stored in the open shed outside, which was covered in cobwebs, and which was dirty, that that carpet was already mouldy and smelling and stained when it was installed, and that the house generally had a musty smell anyway. The tenant said she kept her dog outside, after the landlord had asked her to do so.

25. The landlord confirmed the carpet, which she said was brand new, had been stored for a few months in the open shed. She said she was not aware of the condition inside of the shed, as she had not seen it.

26. From the evidence provided, which is one photograph of some small stains on one carpet, which the tenant said had been installed after being in the shed for some time, already mouldy and with stains, which the landlord’s evidence did

not contradict, I find the landlord has provided insufficient additional supporting evidence to prove this claim, and so dismiss this claim.

27. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

28. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the damage. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.

29. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.

30. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.

31. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.

32. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.

33. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.

34. The landlord said the following damage was caused during the tenancy:

Hole in wall repair

a. There was a hole in a bedroom wall, likely caused by a door handle. After some discussion, the parties agreed a consent order could be made for the tenant to pay the landlord $150.00 for this repair.

Door replacement

b. The door to bedroom 1 was replaced, for which the landlord claimed $627.00. The landlord provided a photograph of the wooden door, which showed holes in it. The tenant admitted the holes had been caused carelessly by her son, who hit it with a bat. The landlord said the insurance excess was $650.00, which was confirmed in the tenancy agreement.

c. The landlord initially provided a quote to replace and paint the door in the amount of $627.00. A later invoice for the door replacement came to $702.00, but the landlord wished to only claim $627.00 for the door replacement.

d. The tenant said she was not willing to pay the amount claimed, as the holes could have been bogged and the cost was too expensive. However, the tenant did not provide any alternative quotes for repairing or replacing this door, which might have been cheaper.

e. The landlord said that, when she discovered the holes in the door, she asked the builder whether it was cheaper to bog the holes or replace the door and that he told her it was cheaper to replace the door.

f. Given the evidence, confirmed by the tenant, that the holes in the bedroom door were caused by her son hitting it with a bat, I find this is likely careless damage on the tenant's part. As such, the tenant is liable for the repair or replacement cost, less any depreciation, bearing in mind the cap in section 49B RTA.

g. As there was no other evidence of other quotes or costs to repair or replace the door, I find the landlord's quoted cost of $627.00 to replace the door to be reasonable in the circumstances, before considering depreciation.

h. I have taken into account betterment and depreciation. The landlord should be returned to the position they would have been in had the tenant not breached their obligations, and should not be better or worse off. In calculating depreciation, I have taken into account the age and condition of the items at the start of the tenancy and their likely useful lifespan.

i. The landlord believed the bedroom door would be the same age as the house, which was built in 1964, therefore being around 62 years old.

j. Current depreciation guidelines estimate bedroom doors in a rental property will last around 30 years, which means the bedroom door likely had exceeded its lifespan. However, I accept that, had the door not been damaged, it still would likely have continued to have some use for a while longer. As such, I allow the landlord 15% of the cost claimed to replace the bedroom door, which was $627.00, which would bring the award to $94.05, which is less than the insurance excess and four week's rent equivalent, and which I find reasonable in the circumstances and given the evidence.

Painting walls

k. The landlord claimed the cost of painting the bedroom 1 wall which had been repaired behind the door, as well as for painting marks left on another wall in bedroom 1. The landlord's photograph of a paper strip across a white wall was provided as her proof of the hole in the wall. However, there was no hole shown in the photographs provided, only the paper strip. The parties have consented to the tenant paying the landlord $150.00 to repair this hole, dealt with above, which I think is a sufficient amount to also cover the paint cost of the repaired hole in the wall behind the door. Other than this, the landlord's photograph does not show any hole in the wall here in any event.

l. The landlord said they did not have any invoice for the $500.00 claim for this painting work. The tenant said the marks on the other wall in bedroom 1 amount to fair wear and tear. The landlord responded that, given the short tenancy, the marks on the wall went beyond fair wear and tear, though she acknowledged there would have been some wear and tear.

m. The photograph of some marks on a wall that was apparently in a bedroom is, in my view, on the borderline of being fair wear and tear. However, as the landlord has not provided any invoice for the amount claimed, the landlord is not able to prove the amount of this claim in any event. As such, I dismiss this claim.

35. The damage, as ordered above, is more than fair wear and tear, and the tenant has not disproved liability for the damage.

36. The amounts ordered are proved.

Filing fee

37. Because Samantha Durston has been partly successful with the claim I reimburse the filing fee.

Refund of the bond

38. The Bond Centre is to pay the bond of $2,000.00 ([Bond number suppressed]) immediately apportioned as follows:

Samantha Durston:	$1,633.00
[The tenant/s]:	$367.00

Suppression

39. The landlord did not request name suppression. The tenant requested name suppression. As the evidence showed the tenant has been experiencing multiple health issues and has young children, and as the tenant consented to two of the orders, I find the tenant's interests outweigh the public interest in publishing her name. Therefore, I order that the tenant's name and identifying details are not to be published. See section 95A(4) Residential Tenancies Act 1986.

C Price
27 May 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.