[2026] NZTT 5440248

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	The Agency T/A Bronwyn Kay Agency Limited As Agents For Sue Renner Landlord
RESPONDENT:	Jonathan Samson Tenant
TENANCY ADDRESS:	1373 Matawai Road, Ormond, RD 1, Gisborne 4071

ORDER

1. Jonathan Samson must pay The Agency T/A Bronwyn Kay Agency Limited As Agents For Sue Renner $4,256.57 immediately, calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rent arrears to 8 July 2024	$4,228.57	
Filing fee reimbursement	$28.00	
Total award	**$4,256.57**	
Total payable by Tenant to Landlord	**$4,256.57**	

Reasons:

1. Both parties attended the hearing on 15 June 2026.
2. The tenancy ended on 8 July 2024. The landlord filed their application on 9 February 2026, almost two years later. The landlord seeks an order for rent arrears and reimbursement of the filing fee.

3. As the applicant, the landlord must prove their claim to the civil law standard of proof, on the balance of probabilities. This means that they 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.

4. As noted by the District Court in *Katipo 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 of 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.

5. I do not need to be completely certain, but I need to be more certain than uncertain. In deciding any particular claim, I must consider all the evidence presented (including oral evidence at the hearing). I must weigh this evidence to decide what is more likely.

How much does the tenant owe in rent arrears?

The law

7. A tenant must pay rent as and when it is due and payable under the tenancy agreement.[1]

8. Where a tenant fails to pay rent, section 49 of the Residential Tenancies Act 1986 (RTA) requires a landlord to take all reasonable steps to limit the loss arising from the tenant's breach.

9. In *Huang v Ashworth* [2024] NZDC 15726, the District Court discussed a landlord's duty to mitigate their loss in the context of rent arrears and held:

> [8] …[W]here the tenant fails to pay rent owing, there is an obligation on the landlord to mitigate the loss. This can be achieved by not allowing the arrears to continue to accrue, instead ending the tenancy and reletting the premises thereby preventing ongoing loss.
>
> …

[1] Residential Tenancies Act 1986, section 40(1)(a).

> [11] Of relevance is s 55(1)(a) of the Act, which contains the power for a landlord to end a tenancy where rent is more than 21 days in arrears…

10. The District Court held that the test of what is required by a landlord to mitigate their loss is a factual one that requires the Court or Tribunal to consider:

> (a) whether the landlord took all reasonable steps to mitigate its loss; and
>
> (b) more particularly, whether it acted reasonably having regard to all the circumstances of the case.

11. The case of *Huang v Ashworth* involved a tenancy that began in 2019 and ended on 3 January 2023. Throughout a significant period of the tenancy, the tenant did not pay the full amount of rent and was in arrears. As of March 2022, the tenant was 13 weeks in arrears. Rent arrears continued to increase until the tenancy ended on 3 January 2023. The landlord sought an order for $10,000.00 in rent arrears.

12. The landlord in *Huang v Ashworth* had engaged in ongoing discussion with the tenant about payment of the arrears. At different times, arrangements were put in place for the tenant to pay the arrears, but the tenant did not adhere for any significant period of time. The tenant made numerous promises to the landlord to pay the arrears and would sometimes “top up” their rental payment to reduce the arrears, but never for a sustained period of time. The landlord continued to allow the tenant more time to pay the arrears, rather than seeking eviction. The District Court found the landlord’s attempts to resolve the issue of rent arrears without resorting to eviction were reasonable, but only up to a point. At paragraph [18], the District Court held:

> [18]… Where a tenant repeatedly breaches promises to make up arrears and instead additional arrears are incurred there comes a point where it is being naïve or careless to your own interests to persist giving the tenant more time to pay. For that reason, I do not consider that the full arrears can be claimed. In other words I am satisfied on balance of probabilities that there was some failure to mitigate loss…”

13. The District Court considered a reduction of one third of the total rent arrears claimed to be a reasonable reflection of the landlord’s failure to mitigate their loss.

Analysis

14. The tenant claims that rent arrears accrued because the amount of rent charged was too high. They also claim that the property was in a poor condition

and that the property manager stole the tenant's cat. Further, they claim that the landlord has falsified documents and evidence. No evidence to support any of these claims was submitted by the tenant. The tenant has not filed a cross-application. For these reasons, I cannot consider these claims raised by the tenant as offsetting the rent arrears.

15. I now turn to consider whether the landlord acted reasonably to mitigate their loss.

16. By the end of the tenancy on 8 July 2024, the tenant owed $8,742.86 (102 days) in rent arrears. The bond was refunded to the landlord on 15 July 2024, leaving a total of $6,342.86.

17. Since late 2023, the tenant was in and out of rent arrears. They had not paid rent since 22 March 2024. The tenancy ended on 8 July 2024 after the tenant gave notice. The tenant did not pay rent for 15 weeks before the tenancy ended.

18. The landlord tried to deal with the issue of rent arrears themselves and did not make any applications to the Tribunal.

19. The tenant had previously managed to clear rent arrears totalling $1,800.00 on 29 December 2023 and $3,600.00 on 22 March 2024. Therefore, I find it was reasonable for the landlord to try to deal with the issue of rent arrears themselves, but only up to a certain point. By 9 May 2024, rent arrears were $3,600.00 and the tenant had not paid any rent for 5 weeks. It should have been obvious to the landlord at this point that the tenant was very unlikely to pay the arrears or rent moving forward. An application should have been made to the Tribunal to terminate the tenancy. Instead, the landlord allowed the tenancy to continue and rent arrears to accrue. The tenancy only ended when the tenant gave notice. By failing to take any action to end the tenancy, I find the landlord failed to act reasonably to mitigate their loss. There needs to be an adjustment to the total amount of rent arrears to reflect this.

20. I adopt the same approach taken by the District Court in *Huang v Ashcroft* and apply a reduction of one third to the total amount of rent arrears.

21. The landlord's claim for rent arrears is granted for $4,228.57.

Filing fee

22. Because Bronwyn Kay Agency Limited As Agent For Sue Renner has substantially succeeded with the claim I must reimburse the filing fee.

L Ryken
16 June 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.