[2026] NZTT 5460229

TENANCY TRIBUNAL AT NEW PLYMOUTH | TE TARAIPIUNARA RETIHANGA KI NGĀMOTU

APPLICANT: Maureen Jean Hills, Ashley Hills

Landlord

RESPONDENT: K-lee Torrey

Tenant

TENANCY ADDRESS: 27 Stoke Street, Westown, New Plymouth 4310

ORDER

1. K-lee Torrey to pay Maureen Jean Hills and Ashley Hills $308.00 from the bond, calculated as shown in table below.
2. The Bond Centre is to pay the bond of $900.00 (BN-17065797) immediately apportioned as follows:

Maureen Jean Hills and Ashley Hills:	$308.00
K-lee Torrey:	$592.00

Description	**Landlord**	**Tenant**
Repairs: Holes in walls	$180.00	
Repairs: Garage door damage	$100.00	
Filing fee reimbursement	$28.00	
Total award	**$308.00**	
Bond	$308.00	$592.00

3. The landlord's application for rent arrears, damage to the carpet, damage to door handles, damage by writing on the walls and damage to the front door and damage to doors other than the garage door is dismissed.

Reasons:

1. Only the landlord attended the hearing. I am satisfied the tenant has been served and so the hearing proceeded in her absence.
2. This hearing followed an earlier hearing on 19 May 2026 in which I adjourned this matter to allow the tenant time to be correctly served and for the landlord to provide a full rent summary.
3. The parties agreed at the earlier hearing that the tenancy began on 8 August 2017 and ended on 27 February 2026. It was therefore a lengthy tenancy.
4. The landlord set out their application in the earlier hearing as follows and these are the issues I must decide today:

   a. Rent arrears of $4,455

   b. Damage in the sum of $6,000 being the insurance excess for:

      i. Damage to holes and writing on walls

      ii. Damage to door handles

      iii. Damage to carpet

      iv. Damage to doors (holes)

      v. Damage to the front door

Civil burden of proof

5. As explained at the hearing the applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities.
6. That includes a requirement that the party bringing the claim (the applicant landlord here), 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. It is the applicant that must prove their case.
7. 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.

Rent arrears

8. The landlord applied for rent arrears.

9. The landlord provided a handwritten rent record in support of the claim. However, as explained at the hearing I do not consider the rent summary sufficient to establish the debt claimed.

10. The record does not begin at the commencement of the tenancy. It also appears that the landlord has used their bank statements as the starting point rather than first identifying the rent that was due under the tenancy agreement on a week-by-week basis and then reconciling those amounts falling due against the payments that were received.

11. As a result, there is a mismatch between the rental periods and the amounts said to be payable and paid. This difficulty extends to the rent increases said to have occurred during the tenancy. Given date errors and the way the summary was compiled it was far from clear whether, for example, the first rent increase was supposed to take place on 5 or 8 January 2021 (or indeed any another date). The landlord has not produced any records of rent increase notices and, given the lack of conciseness in the rent summary provided and in the oral evidence, I cannot be satisfied as to the correct dates on which any rent increases took effect. The calculations appear to have been based on the dates the tenant began making higher payments, rather than on any date set out in a notice of increase. The landlord suggested no documentation was available and when asked if they needed more time to locate it, they said they could not.

12. I also note that a secondary rent summary was provided for just part of the tenancy. I am told the Rent Shop managed the property in this period. However, that rent summary does not match the landlord's rent summary for the same period. This also gives rise to concerns about accuracy.

13. While such deficiencies might be regarded by the landlord as minor they are nevertheless deficiencies which mean that the evidential burden has not been met. A discrepancy at any stage impacts the final calculation. As explained at the hearing the Tribunal cannot guess how much rent is owed. It simply must be an amount that is proven. The deficiencies affect the calculation of the total rent payable over the whole course of the tenancy and, consequently, the calculation of any rent arrears.

14. On the evidence before me, I am unable to determine with sufficient confidence the true amount owed by the tenant. Accordingly, the landlord has not discharged the burden of proving this part of the claim, and it is dismissed.

15. I record here that as well as the landlord having time between the two hearings to produce an accurate rent summary, I also gave the landlord a considerable amount of time and detailed explanation about the issues in the hearing today. I also offered further time to complete the rent summary. The landlord considered

they could not do more than what had been produced already. I must decide the case based on the evidence before me.

Damage

16. 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 Residential Tenancies Act 1986 (RTA).
17. 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.
18. 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.
19. 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.
20. 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.
21. 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.
22. As explained in the hearing, I must take into account betterment and depreciation where appropriate. 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, relevant factors are the age and condition of the items at the start of the tenancy and their likely useful lifespan.

Damage to holes and writing on walls

23. I am satisfied that the landlord has proven that the tenant damaged the walls causing a number of holes during the course of the tenancy. However, the landlord has only done so to a limited extent based on the photographs provided.

24. Photographs were limited to just three holes that can be clearly seen and a larger area where the damage is less easily identifiable but where I accept the landlord's position that it shows a large area where a poor patched job has been done. I have no reason to doubt the landlord's evidence that the damage was not there at the start of the tenancy. The holes are not of a kind whereby they might be easily missed, and the home was previously the landlord's mother's house.

25. I accept that the damage is more than fair wear and tear, and the tenant has not disproved liability for the damage. However, as stated above the landlord was only able to sufficiently prove the holes as pictured and so the award will be limited. I must now turn to the sum that the landlord seeks for this damage.

26. The difficulty for the landlord is that they have presented two larger invoices with some itemisation but not a complete breakdown. In other words, there is an overall sum for work done rather than a breakdown of the sums claimed for each item of work. That makes it very difficult for the Tribunal to assess the charges claimed or the costs associated with repair of the different items of claimed damage. Without any more detailed evidence, the Tribunal will have to make a generalised assessment of what appears to be fair compensation for damage proved to have been caused during the tenancy and which is more than fair wear and tear. As this is the landlord's claim to prove, any areas of doubt must favour the tenant.

27. I award the landlord $180 in respect of the repairs for these proven holes. This is a sum I consider to be reasonable given the damage and loss as proven.

28. There is also a claim for painting associated with wall damage but no allowance is made for this. I heard how decorating last occurred some 15 years ago. Any value attributable to the painting/decoration would therefore likely have been fully depreciated and no award would be warranted.

29. There was insufficient evidence to prove the claim in relation to writing on the walls so this part of the claim is dismissed. Any decoration cost incurred as a result of this claim would in any event have been dismissed in any event due to depreciation given the last time the property was decorated.

Carpet

30. The landlord says that the carpet was damaged in the living room, dining room and "kid's bedroom". They say the "parent's room" was more wear and tear. They have replaced the carpet throughout the whole house and claim for this.

31. The probative evidence was limited to two pictures of the said damage being before and after pictures of the lounge. The photographs were of such a quality so that it was not possible to make any assessment based on these photographs. The landlord's insurance has accepted a claim, but it lacked detail – for example no assessor report showing damage was filed. The insurance information filed records the damage as being "accidental".

32. I am satisfied that the landlord has proven that some damage occurred to carpet during the course of the tenancy. However, I decline to make an award. This is because I am not satisfied that the evidence sufficiently establishes that the damage was more than fair wear and tear. In any event, I heard that the carpet was new about three years before the tenant moved in and that was in 2017. The carpet is therefore well over 10 years old. Like decoration (considered above) carpet has a finite useful life and depreciates over time through ordinary wear and tear. By the end of its expected useful life, the asset has no remaining compensable value. On the evidence before me, I find it more likely than not that the carpet has exceeded its useful life and any value had been fully depreciated. Accordingly, no award is made for replacement.

33. The carpet claim is therefore dismissed.

Damage to door handles

34. The landlord says doorhandles were damaged. Insufficient evidence was provided to support this claim, and it is dismissed.

Damage to doors

35. The landlord says doors were damaged.

36. The landlord provided probative evidence in the form of before and after photographs to support a claim for damage done to a garage door. I accept the damage was done to the door during the course of the tenancy and that it is more than fair wear and tear. Again, the cost of the repair work here forms part of a larger invoice. I refer to the comments at paragraph 26 above in respect of the effect of this and do not repeat this here.

37. I award the landlord $100 in respect of this damage which is a sum I consider to be reasonable on the basis of the evidence before me.

38. The landlord says there was damage to 5 other doors. Insufficient evidence was provided to support this claim, and it is therefore dismissed.

Damage to the front door

39. The landlord did not pursue claim for damage to the front door. It is dismissed.

Filing fee and suppression

40. Because the landlord has had some success with the claim I have reimbursed the filing fee.

41. I do not make any suppression orders as the landlord has not been substantially successful in their application and see no other reason to award suppression of identifying details (see s95A RTA).

M Kemp
14 July 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.