[2026] NZTT 5489515

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Inspire Property Management Limited As Agent For Karen Anne Blennerhassett / Otium Enterprises Ltd Landlord
RESPONDENT:	Kornelis Aaron De Boer Tenant
TENANCY ADDRESS:	15D East Street, Pukekohe, Pukekohe 2120

ORDER

1. The application is struck out.

Reasons:

1. Both parties attended the hearing on 9 September 2026.
2. The tenancy began on 20 December 2024 and ended on 30 November 2025. The landlord claims the tenant is responsible for damaging the carpet in one of the bedrooms. The landlord seeks $500.00 to cover the insurance excess to replace the carpet. The tenant accepts the carpet was damaged during the tenancy when a candle fell over but claims the landlord's application should be struck out. This is because the tenant claims there has already been a previous Tribunal hearing where the landlord raised the issue of the carpet. The tenant claims they believed that all matters relating to this tenancy were now at an end.
3. The sole issue I must determine is whether the landlord's application should be struck out.

The law

4. Section 92A of the Residential Tenancies Act 1986 (RTA) states that the Tribunal may strike out a proceeding, in whole or in part, if satisfied that it:[1]

    a. Discloses no reasonable cause of action; or

    b. Is likely to prejudice or delay; or

    c. Is frivolous or vexatious; or

    d. Is otherwise an abuse of process.

5. Common examples of an abuse of process are:[2]

    a. Where a party seeks to reopen a dispute that has already been determined; or

    b. Where a party has failed to bring forward their whole case the first time and tries to reopen the same subject under a different heading.

6. In *Cosmos Holdings Limited v Bryce Seager Van Dyk and Ilana Seager Van Dyk* [2025] NZDC 18684, the District Court endorsed the case of *Henderson v Henderson* (1843) 3 Hare 100, when describing what amounts to an abuse of process. The District Court held:[3]

> [10] …The case of *Henderson v Henderson* explains the relevant principle of law deriving from the concept of res judicata or from the power of the court to prevent abuse of its process:
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> > …where a given matter becomes the subject of litigation in, and of adjudication by, a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward as part of the subject in contest, but which was not brought forward, only because they have, from negligence, inadvertence, or even accident omitted part of their case. The plea of res judicata applies except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce a judgement, but to every point which properly belonged to the subject of the litigation, and which the parties, exercising

[1] Residential Tenancies Act 1986, section 92A.
[2] *Craig v Stringer* [2020] NZCA 260 [26 June 2020] at [16] – [19].
[3] *Hendreson v Henderon* (1843) 3 Hare 100 at [114] – [115].

> reasonable diligence, might have brought forward at the time.
>
> [11] To put this in layperson's terms, absent special circumstances, a litigant gets one bit at the cherry in bringing their case, and when they do so, absent special circumstances, must bring all of the available arguments forward.

7. In the case of *Cosmos Holdings Limited v Bryce Seager Van Dyk and Ilana Seager Van Dyk,* the first Tribunal hearing involved a discussion about the circumstances in which the tenancy came to an end. The Tribunal ordered Cosmos Holdings Ltd to pay the Seagers exemplary damages for issuing an invalid and retaliatory termination notice. The Tribunal declined to order the Seagers to pay Cosmos Holdings Ltd compensation for stress and inconvenience. Cosmos Holdings Ltd appealed the Tribunal's decision. The District Court dismissed the appeal.

8. Cosmos Holdings Ltd then filed a second application with the Tribunal. In their second application, Cosmos Holdings Ltd alleged that the Seagers had engaged in discriminatory behaviour in breach of section 12 of the Residential Tenancies Act 1986 (RTA) and referred to the circumstances in which the tenancy came to an end. The Tribunal found the claim was not proven and dismissed it. Cosmos Holdings Ltd appealed the Tribunal's decision to the District Court.

9. The District Court held that the Tribunal should have struck out the application as an abuse of process, rather than dismissing it. The District Court held that the claim filed by Cosmos Holdings Ltd related to the events in the lead up to the end of the tenancy, which was the subject matter of the first Tribunal decision. The District Court stated:

> The appellants [Cosmos Holdings Ltd] do not get another bite at the cherry. To allow the appellants to revisit aspects of the first Tribunal decision is an abuse of the courts process. The appellants had the opportunity to bring that claim in the course of those initial proceedings but did not do so. As set out in *Henderson,* it does not matter whether that was through choice or inadvertence.

Analysis

10. The landlord filed their first application on 17 January 2026 seeking compensation for the following amounts:

    a. Carpet stain treatment: $160.00

    b. Wall repairs: $707.25

    c. Expenses reasonably incurred by the landlord: $1,974.91

d. Oven clean: $100.25

11. On 29 January 2026, the landlord amended their claim to include compensation for $500.00 to replace the carpet. The landlord also submitted a copy of a communication from their insurer granting the insurance claim and confirming the excess amount.

12. A hearing occurred on 15 April 2026. The issue of carpet replacement was discussed. The Tribunal issued an order that same day at 11:10am. It noted that the issue of carpet replacement could not be determined, because of a lack of evidence, namely an invoice for replacement of the carpet.[4]

13. On 15 April 2026 at 3:07pm, the landlord filed a new application for replacement of the carpet. They included the invoice to replace the carpet with their application.

14. The landlord's application for $500.00 to cover the insurance excess to replace the carpet is struck out on the basis it is an abuse of process. The Tribunal considered damage that occurred during the tenancy at the first hearing. The issue of replacing the carpet was specifically mentioned. The landlord failed to bring enough evidence to prove this claim at the first hearing. They do not get a second bite at the cherry.

15. There are no special circumstances to permit the landlord to bring the claim to replace the carpet a second time. The evidence to prove this claim was readily available at the first hearing. I say this because the invoice to replace the carpet is dated 24 February 2026, which pre-dates the date of the first hearing on 15 April 2026. Further, the landlord filed a copy of the invoice approximately 4 hours after the Tribunal released its decision.

16. The time for the landlord to submit the evidence to prove the claim for carpet replacement was at the first hearing. They did not do so. As set out in *Henderson,* it does not matter whether this was through choice, inadvertence or negligence. To allow the landlord to revisit this aspect of the first Tribunal decision is an abuse of process.

17. For all of these reasons, the landlord's claim for $500.00 to replace the carpet is struck out.

[4] *Inspire Real Estate Limited as agent for Karen Anne Blennerhassett/Otium Enterprises Ltd v Kornelis Aaron De Boer* [2026] NZTT 5427351 at [15] – [18].

Filing fee

18. The landlord has not been wholly or substantially successful with their claim. Therefore, I do not order the tenant to reimburse the filing fee.

L Ryken
14 September 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.