TENANCY TRIBUNAL AT Wellington

APPLICANT / RESPONDENT:	RENTAL MANAGERS 2016 LIMITED Landlord
APPLICANT / RESPONDENT:	Renee McCarthy, Mark McKee Tenants
TENANCY ADDRESS:	8 Sandhurst Way, Crofton Downs, Wellington 6035

ORDER

1. Renee McCarthy and Mark McKee to pay RENTAL MANAGERS 2016 LIMITED $368.28 from the bond, calculated as shown in table below.

Description	**Landlord**	**Tenant**
Rent arrears	$368.28	
Total award	**$368.28**	
Bond	-$368.28	$431.72

2. The Bond Centre is to pay the bond of $800.00 (3209481-018) immediately apportioned as follows:

RENTAL MANAGERS 2016 LIMITED:	$368.28
Renee McCarthy and Mark McKee:	$431.72

Reasons:

1. The Tribunal must consider applications filed by both the landlord and tenants at the end of the tenancy. I will consider each claim in turn.

Landlords claim

2. The landlord has claimed for rent arrears from the tenants. This is on the basis of two components, being $34.00 which had been missed following a rent increase in April 2017, and secondly ten days of rent arrears at the end of the tenancy.

3. At the hearing Ms McCarthy agreed that the $34.00 were due and should be awarded, and that amount will be ordered by consent.

4. The real area of dispute is the ten days of rent arrears. The tenants gave 21 days notice to vacate the premises, but left ten days early. The rent was only paid up to the date the tenants moved out. It is that residual 10 days of rent that the landlord is claiming.

5. The tenant's response is that the ten days of final rent payments should be excused (for reasons as I will discuss shortly), and secondly that the landlords calculation of the rent due was wrong.

Should the rent for the final ten days be excused?

6. The tenants position is that they should not be liable for the rent for the remaining ten days notice period, on the basis of issues with the property manager (landlord). In particular:

    a. Insufficient maintenance having been performed on the tenancy.

    b. The property manager failed to give proper notice for property inspections. In particular, the tenant states that when a property inspection was requested by the property manager, despite being requested to provide a time on the assigned day within a two hour window, no time would be given. It is accepted that on this occasion an inspection did not occur.

    c. When a time was arranged for a later date, the property manager was late. One of the tenants was at home. There was a contractor present, and the tenant asked the property manager to either wait outside, or come back another time. The property manager elected to wait outside. When the contractor had finished, the property manager was then invited in by the tenant, and invited to start the inspection in the garage, to which the property manager advised that was not necessary, because she had already completed the inspection of the garage.

    d. After giving notice, the property managers notified the tenants by text message that a viewing of the premises was being undertaken by the landlord for a prospective tenant at that time (at the time the text was sent).

7. In short, on the basis of the above events, the tenant submits they were justified to end the tenancy early, and should not be liable for the remaining ten days of rent.

8. I find the tenants claim has not been established for the following reasons.

9. While it would be possible for a breach to occur on the part of the landlord of such seriousness, to end the tenancy contract early, that is not the situation here.

10. In relation to maintenance, there are options available for the tenant which the tenants could have employed. In particular the tenant could have given the landlord a notice to undertake the work, and if that work was not done, then to have applied to the Tribunal for a work order to require the work to be carried out. In the absence of at least undertaking the process of a notice and work order application, it could not be reasonable for a tenant to summarily cancel the contract for maintenance of this variety. I note that there are statutory mechanisms to terminate a tenancy early if the premises become uninhabitable, but that is not the situation here.

11. In relation to the property inspections, I cannot see that the landlord has committed any breach. In relation to the first inspection request, I agree with the tenant that it would be reasonable to present a time frame for the inspection, such as within a two hour window. That is entirely reasonable, and while not a legal concept, would be simply polite. However again there is a remedy open to the tenant, which is to refuse consent to undertake the inspection. Ultimately consent was not provided and the inspection did not occur.

12. In relation to the second event, while the landlord was late, she knocked on the door and was advised by the tenant that she could wait or come back another time. The landlord elected to wait. There is no evidence before me that the landlord entered the garage, she states that she was able to view the inside of the garage from the carport where she was waiting, because the garage door was up. There is no evidence the landlord entered the premises without consent.

13. In relation to the viewing of the premises, the landlord states that they mistakenly sent a text message about a viewing that they wanted to undertake in two days time, but the mistake was to send the message showing that same date. The landlord advised the information was entered into the automated scheduling tool incorrectly, hence the wrong date on the text message being sent. The landlord confirmed that no viewing occurred on that day (the message was sent). I accept that this text message was sent in error, and again there was no unlawful entry of the premises.

14. While I can understand that some of the above matter on first glance may have appeared to be significant breaches of the landlords obligations, on looking at the facts they were not, and in fact I cannot see that the landlord has breached any strict requirement found in the Residential Tenancies Act 1986 (RTA), and therefore there could be no basis for immediate cancellation of the contract, with excusal of the last ten days of rent.

Was the arrears calculation correct?

15. The tenant gave notice to terminate the tenancy, that was received by the landlord electronically on 10 October 2018 at 9:50am. This means that the tenants would be liable for 21 days of rent commencing on 11 October 2019, ending at (in effect) 11:59pm on 31 October 2019.

16. The landlord has submitted a copy of a rent ledger which the landlord submits shows the rent arrears as of 31 October 2019 to be $405.71.

17. In response the tenant also provided a copy of what she submits shows the correct rent arrears situation as of 30 October 2018. That rent ledger takes the same format as the landlords rent ledger, and is entirely consistent with the 'model' rent ledger provided by the Tribunal. The tenants rent ledger shows rent arrears as of 30 October 2019, would be $297.14.

18. I asked the landlord if they had reviewed the tenants rent ledger, and if they disagreed with it. The landlord advised that they had received it, but had not considered it because they trust their own internal systems to be correct.

19. When a landlord presents a rent ledger in a rent arrears claim, there is a rebuttable presumption it will be correct, because the RTA requires that landlords keep business like records. That means the tenant can rebut the correctness of the landlord's records, and that is precisely what the tenant has done.

20. I consider that when the tenant produced an equally business-like rent ledger, then there was an onus on the landlord to at the very least consider why the amounts differed to their own, and they have not done so. That means that the tenants rent ledger has gone unchallenged, and I find it is to be accepted.

21. I accept that as of 30 October 2018 the rent arrears was in fact $297.14, but note that this was one day short, as the tenant was also liable for rent on 31 October 2019, and therefore I will add that extra day ($37.14), meaning the rent arrears should be accepted as $334.28.

22. Adding in the agreed $34.00 of the rent change difference agreed to by the tenant, that makes the total arrears due of $368.28.

Tenants claim

23. The tenant has claimed compensation for personal items that were stored in the garage, which the tenant submits went mouldy because of a water leak.

24. There is a dispute between the parties as to the precise nature of the water leak. Both parties agree that the water begins running down an external wall, but the tenant considers it leaks through a defect in the concrete block wall into the garage, whereas the landlord considers the water enters under the garage door.

25. I accept the tenants evidence that some of their personal items that were being stored in the garage became mouldy. However the problem the tenant faces, is that even if there was a defect with the garage allowing water to leak into the internal garage, she has not established that the leak in fact caused the mould to her belongings.

26. I agree with the landlord that there is no guarantee that a garage will be a dry space, such as the inside of the house should be. That is the nature of garages, where they are not required to be insulated, they have large external doors for cars to enter, and commonly cars are parked in the garage which will be wet. In this case the tenant confirmed that they would park their car in the garage.

27. In short, the tenant has not proven to the necessary degree of likelihood that the mould on the tenants items is more likely than not the result of any water leak, as opposed to moisture that may otherwise be expected in a non-leaking garage.

28. The tenants claim has not been established.

29. The bond is to be released as set out above.

30. I find that the overall the filing fees should be carried by each party. While the Tribunal could order the filing fee for the landlords claim, the landlord was only partially successful, and in light of the successful challenge of the rent ledger records, I conclude that it would not be reasonable to order payment of the filing fee in this case.

R Woodhouse
21 February 2019

Please read carefully:

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

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Rehearings:

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The ***only*** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

Right of Appeal:

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than $1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than $1,000.

There is a $200.00 filing fee payable at the time of filing the appeal.

Enforcement:

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to www.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.