

TENANCY TRIBUNAL AT Auckland

APPLICANT: Auckland Property Management

RESPONDENT: Prisoners Aid & Rehabilitation Society of The Auckland District

TENANCY ADDRESS: Flat 4A Oakridge Apartments, 81 Wakefield Street,
Auckland Central, Auckland 1010, Oakridge Apartments

ORDER

1. The application is dismissed.

Reasons:

1. Both parties attended the hearing.
2. The landlord has applied for compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
3. This has been a long-standing tenancy. Both parties reported a good relationship between landlord and tenant with no previous difficulties. It is acknowledged that both parties have suffered loss as the result of the circumstances giving rise to this claim.
4. The tenancy commenced on 6 October 2011 between Auckland Property Management and the tenants, Prisoners Aid & Rehabilitation Society of The Auckland District (PARS). The tenants had previously held a tenancy agreement with a former landlord on the same property since 2006. The tenants used the property to provide a supported accommodation service.
5. The applicant claimed \$12,653.15 for the cost of decontamination of the tenancy address and retesting following decontamination.

The law

6. 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), 40(4) and 41 RTA.
7. In *Holler and Rouse v Osaki* [2016] NZCA 130, the Court of Appeal ruled that provisions in the Property Law Act 2007 which relate to commercial tenancies also apply to residential tenancies. As a consequence, tenants are not required to pay for the cost of repairing damage in a number of circumstances, including where the damage is caused by fire or is of a kind covered by the landlord's insurance. There are exceptions to this general rule. For example, if the damage is intentional, the tenant is required to pay the cost of repairs.
8. 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 virtual certainty. See *Tekoa Trust v Stewart* [2016] NZDC 25578.
9. The applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities.

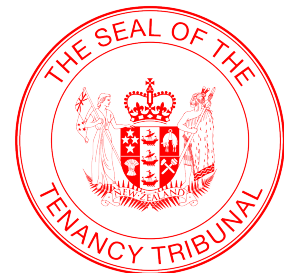
Is the tenant responsible for damage to the premises?

10. The applicant claimed that methamphetamine was consumed on the premises by a person or persons on the premises with the tenant's permission and that this use contaminated the property to such an extent that it was unable to be used for residential purposes without decontamination taking place.
11. In this case the damage claimed by the landlord is chemical damage. As this damage cannot be physically seen the Tribunal is informed by scientific evidence to establish whether there is damage, the extent of the damage, where it is located and what is required to remedy the damage.
12. The applicant advised that there was no methamphetamine base test done at the commencement of the tenancy in 2006. There was also no base test done when this current tenancy commenced in 2011. Methamphetamine manufacturing and use has been in the public eye for many years. Methamphetamine cases in the Tenancy Tribunal date back to before 2006. In the absence of a baseline test the Tribunal requires exceptional evidence before finding that the property was contaminated during the tenancy.
13. The tenancy ended when the occupant housed by PARS was recalled to prison for breach of parole. PARS had heard via the corrections officer that the breach of parole related to drug use and working without permission. PARS advised the

occupant did not have drug convictions. They contacted the Police who advised that they had no interest in the address.

14. The tenant arranged for an initial screening meth test to be carried out and gave the results to the landlord.
15. At the time of testing the standard being applied was the guideline released by Standards New Zealand, NZS 8510:2017 Testing and decontamination of methamphetamine-contaminated properties, which provides industry guidance on good practice methods in the testing and clean-up of methamphetamine contamination in houses. The standard adopts a single level of 1.5µg/100cm² (1.5 micrograms of methamphetamine per 100 square centimetres of surface sampled) that 'high use areas' of affected properties should be decontaminated to, regardless of whether the properties were involved in the production or use of methamphetamine.
16. There is no evidence or suggestion of methamphetamine manufacture in this case.
17. The applicant produced in evidence a copy of a report titled Standard Screening Assessment Report from Meth Solutions dated 24 October 2017. The applicant advised that this report was obtained by the tenant and a copy provided to the landlord. This report did not provide the results of individual samples taken and records that the level of meth residue detected via lab analysis was 16 micrograms of meth residue detected as a composite total of 5 surface wipes taken in the property. A note records that the level is a cumulative total of each composited sample.
18. The report records recommendations based on the lab analysis. These recommendations are: "We recommend the property remains vacant or should be vacated as soon as possible as a precautionary measure. A detailed Contaminated Site Inspection is the next step with discrete individual area by area samples".
19. The property was vacated, and the tenant continued to pay rent until March 2018 while an insurance claim was pursued by the landlord.
20. A detailed contaminated site inspection was not carried out.
21. The insurance claim was declined. I note that the insurance letter from NZI dated 12 April 2018 records "Notwithstanding the above, and while we appreciate that this unit was tenanted for the unit to have suffered physical loss or damage, the readings need to exceed the current ministry of health guidelines. As detailed previously this can be established by obtaining a detailed contamination site inspection report. This report takes discrete individual area by area samples and can identify the precursors to manufacture and will need to be obtained by the clients. This information has been requested on a number of occasions and has not been forthcoming."

22. The landlord proceeded with extensive decontamination treatment of the whole unit with the end result being a refurbished unit.
23. As the report from Meth Solutions only records a composite total it is not possible to know where damage occurred that was above the Ministry of Health Guidelines and what remediation was required. For example, it is possible that the reading in the bathroom was the only reading above the guideline standard. It is noted that the clearance test done by All Clear (dated 27 June 2018) following decontamination uses the individual sampling method and whilst all samples show safe levels the reading for the bathroom is over four times higher than any other sample.
24. As it is not possible to ascertain from the evidence presented where in the unit the meth levels were above the Ministry of Health guidelines it is not possible to ascertain what damage occurred and what remediation was required.
25. On the evidence presented I am not satisfied that the landlord has proved the claim to the required standard. Therefore the claim is dismissed.



G Guptill
3 April 2019

Please read carefully:

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

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

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.