

TENANCY TRIBUNAL AT Taupo

APPLICANT: BY THE LAKE REALTY LIMITED and Ian & Christine Knobloch

Landlord

RESPONDENT: Frank Ketu

Tenant

TENANCY ADDRESS: 38 Te Rewha Street, Turangi 3334

ORDER

1. Frank Ketu to pay BY THE LAKE REALTY LIMITED and Ian & Christine Knobloch \$493.30 from the bond, calculated as shown in table below.
2. The Bond Centre is to pay the bond of \$500.00 (3339904-007) immediately apportioned as shown in table below.

Description	Landlord	Tenant
Rent arrears to 22 December 2018	\$192.86	
Repairs to walls & doors	\$280.00	
Filing fee reimbursement	\$20.44	
Total award	\$493.30	
Bond	\$493.30	\$6.70

Reasons:

1. The landlord attended the hearing. The tenant did not appear.
2. The landlord has applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.

How much is owed for rent?

3. The tenancy ended on 22 December 2018. The landlord provided rent records which prove the amount owing at the end of the tenancy.

Did the tenant comply with their obligations at the end of the tenancy?

4. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy, remove all rubbish, return all keys and security devices, and leave all chattels provided for their benefit. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986. The tenant must also replace standard light bulbs.
5. The landlord was unable to provide sufficient evidence to prove that the premises was not left in a reasonably clean and tidy state therefore this part of the claim is not proven.

Is the tenant responsible for the damage to the premises?

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. The High Court has held that the principle in *Osaki* applies to any insurance excess, and where the amount claimed is less than the excess and the landlord does not make an insurance claim. See *Linklater v Dickison and Others* [2017] NZHC 2813. The tenant is also protected where the amount of insurance cover is limited to a fixed sum. It is the fact of insurance, not the extent of it, which provides the protection.
9. 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.

10. The following damage was caused during the tenancy: cracked fireplace tiles, kitchen door off hinges, broken shelf, holes in walls & doors, marks on hallway wall. I find that the damage to the fireplace tiles, kitchen door, and broken shelf does not amount to intentional damage, so this part of the claim is not proven.
11. On balance, I am satisfied that the photographic evidence of damage to walls, doors, and hallway wall, points to intentional damage and I make an award of \$280.00 for the repairs.
12. The landlord withdrew claims for glass repairs and replacement gas bottle.
13. The amounts ordered are proved.
14. As BY THE LAKE REALTY LIMITED and Ian & Christine Knobloch has partly succeeded with the claim, the tenant must reimburse the filing fee.



A Macpherson
06 May 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.