

**TENANCY TRIBUNAL AT NORTH SHORE**

APPLICANT: BAYLEYS REAL ESTATE LIMITED  
Landlord

RESPONDENT: Cedric Yvo Roland Roose  
Tenant

TENANCY ADDRESS: 158B East Coast Road, Forrest Hill, Auckland 0620

**ORDER**

1. BAYLEYS REAL ESTATE LIMITED must pay Cedric Yvo Roland Roose \$551.20 immediately, calculated as shown in table below:
2. The Bond Centre is to pay the bond of \$4,400.00 (6199923001) to Cedric Yvo Roland Roose immediately.

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Cost of materials to clear and grass back yard		\$530.76
Filing fee reimbursement		\$20.44
<b>Total award</b>		<b>\$551.20</b>
<b>Total payable by Landlord to Tenant</b>		<b>\$551.20</b>

3. The landlord's claim is dismissed.

**Reasons:**

1. The tenancy was a for fixed term from 17 February 2018 to 31 January 2019. The rent was \$1,100.00 a week. There is a bond of \$4,400.00 at the Bond Centre.
2. Landlord's claim: \$246.79  
The landlord seeks the cost of the hire of two gas bottles and the cost of an urgent delivery fee.

3. Mr Roose's evidence:  
There is nothing in the tenancy agreement that states that the gas bottles were full at the start of the tenancy. They ran out a couple of weeks into the tenancy. He set up his own account with the gas supplier. At the end of the tenancy he cancelled his account. The supplier has then removed its gas bottles.
4. The only clause in the tenancy agreement that refers to gas is Clause 14, which states that the tenant shall pay all electricity, gas and telephone charges. There is nothing further in relation to the supply of the gas. The bottles are owned by the supplier and it uplifted them at the end of the tenancy. The tenancy does not note whether the bottles were full when the tenancy started, nor any obligation on the tenant to fill them at the end of the tenancy.
5. It was reasonable for the tenant to cancel his contract with the gas supplier when the tenancy ended. I find no breach of any of the provisions of the Residential Tenancies Act 1986, (RTA), or the tenancy agreement by Mr Roose. The landlord's application is therefore dismissed.
6. Tenant's claim: \$530.76  
Mr Roose seeks the cost of materials purchased to clean up the backyard and plant it out in grass. He is not seeking compensation for his time. He had two dogs that are noted on the tenancy agreement and stated that they could not be outside while the backyard was in the condition it was.
7. The tenancy commenced on 17 February 2019, and Mr Roose started paying the rent from this date. The tenant was relocating from overseas and with the knowledge of the landlord did not move into the premises until 24 March 2019. Clause 3 of the tenancy agreement states:  
"The tenant(s) have 5 working days after the initial Property Condition Inspection has been completed to notify the Landlord of any additional existing property defects."  
Mr Roose emailed the landlord on 16 February:  
"Clause 3 – Can we request a special exemption that we can notify the landlord within 5 working days of our moving in date, 24 March, for any defects to the property?"  
The property manager replied: "That's fine."
8. When Mr Roose moved in on 24 March 2019 the lawn was bare soil in parts and full weeds in the other areas – photographs provided. He emailed the landlord saying the backyard was full of weeds and mud and not in the condition when they had their original inspection. The landlord replied on 27 March 2019: "It is the tenant's responsibility to maintain the garden after the tenancy starts."

9. Mr Roose then bought topsoil and lawn mix at a cost of \$530.76.
10. The landlord's assertion that the tenant is responsible for maintaining the garden after the tenancy starts is the normal legal position. However, in this case I am satisfied that Mr Roose negotiated an alteration to the tenancy agreement so that the condition of the premises was to be assessed on the date he moved in to the premises on 24 March 2019, not the date the tenancy commenced. It is clear on 24 March 2019 the backyard was bare soil in parts and overgrown with weeds in the other areas. When the landlord refused to do anything about it, Mr Roose cleared up the yard and planted the grass himself.
11. I find the backyard was not in a reasonably tidy condition when Mr Roose moved in. I find it reasonable that the landlord pays for the cost of materials to bring it into a tidy condition, bearing in mind Mr Roose was paying \$1,1000 a week in rent. The claim is allowed.
12. Because Cedric Roose has wholly succeeded with the claim I must reimburse the filing fee.



J Day  
13 June 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](http://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.