

**TENANCY TRIBUNAL AT** Waitakere

APPLICANT: Brett Micheal Williams  
Tenant

RESPONDENT: Housing New Zealand Corporation  
Landlord

TENANCY ADDRESS: Flat 2, 82 Pooks Road, Ranui, Auckland 0612

**ORDER**

1. The application is dismissed.

**Reasons:**

1. Both parties attended the hearing on 29 July 2019.
2. Mr Williams has made an application seeking the refund of all rent paid by him from 12 November 2012 up to the end of his tenancy at this address in December 2018. This is a claim of more than \$26,000.00.
3. Mr Williams says that he should be compensated in this way because his landlord, Housing New Zealand Corporation (“HNZ”) failed in its duty to provide safe and healthy housing for him and his son and caused him loss and inconvenience by requiring him to vacate the premises at short notice. He says that he is not responsible for methamphetamine, amphetamine, ephedrine, and pseudoephedrine residue (“the drug residues”) that were detected at the premises when it was tested in October 2018.

*Factual background*

4. The below factual background is either agreed by both Mr Williams and HNZ, or I find it to be proven by evidence provided for the hearing:-

- a. The tenancy ran for approximately 6 years (from November 2012 to December 2018);
- b. The premises were not tested for methamphetamine prior to the tenancy beginning (as this was not common practice or policy at the time);
- c. The NZ police attended the premises with a search warrant on 1 August 2018. A report provided by the police to HNZ says that items used in the manufacture of methamphetamine were found in the garage and kitchen, and testing of swabs taken from the kitchen and laundry confirm methamphetamine manufacture in the kitchen;
- d. HNZ arranged for its own methamphetamine testing of the premises to be undertaken by "Drug Free NZ", an accredited inspection body. Mr Williams consented to this and the testing was done on 18 October 2018;
- e. The results of the above testing are contained in a report to HNZ dated 25 October 2018. The levels of methamphetamine residue detected were very high; the report calls them "extreme". The highest reading was 1621.80 micrograms per 100cm<sup>2</sup> (kitchen ceiling), three other readings were in the hundreds at 237.66 (kitchen above stove), 173.02 and 300.31 (lounge ceiling and door), 405.58 (laundry ceiling). Ten of the remaining eleven readings were over 15mcg (ranging from 91.59 (laundry door) to 15.38 (bathroom ceiling fan). The only reading under 15mcg was of 10.44 on the ceiling of bedroom 2. The report also gave positive readings for amphetamine, ephedrine, and pseudoephedrine with the highest results in the kitchen, lounge, and laundry;
- f. The report from Drug Free NZ also said: "some suspicious items were found [in the premises] linking to drug use or manufacture within the property" (page 2) and "The contamination found in this house were at the very highest levels so far tested and likely indicate that methamphetamine has been manufactured on site." (page 3);
- g. HNZ then gave Mr Williams 7 days' written notice (dated 23 November 2018) to terminate the tenancy on the grounds that the premises were uninhabitable (pursuant to section 59A RTA). The notice recommended that he vacate the premises as soon as possible and no later than 3 December 2018;
- h. Mr Williams and his son did vacate the premises in December 2018 (the exact date was not clear);
- i. Mr Williams was rehoused in another HNZ house in early February 2019;
- j. Mr Williams then applied for and was paid compensation (of around \$6,900.00) by HNZ pursuant to a policy at the time of compensating tenants who had lost belongings or moved from HNZ properties because of methamphetamine contamination but who had not been charged by police.

5. A landlord has a legal obligation under section 45 of the Residential Tenancies Act 1986 (RTA) to:-
  - a. Provide premises in a reasonable state of cleanliness, (ss(1)(a)), and
  - b. Comply with all requirements in respect of buildings, health and safety under any enactment, ss(1)(c).
6. The party who makes an application is required to establish the claim to the civil law standard of proof, on the balance of probabilities. This means that Mr Williams has the task of satisfying the Tribunal that Housing NZ has failed in its obligations under the RTA or breached its contract with him (the tenancy agreement) and that he has suffered loss for which he should be compensated.
7. I find that Mr Williams has failed in this task. The evidence of methamphetamine manufacture taking place at or around the time of the police search and the NZ Drug Free testing is strong (suspicious items found, very high drug residue readings of both methamphetamine and the precursor substances used for its manufacture). This points to any contamination being caused by Mr Williams or someone at the premises with his consent. Mr Williams denies that the police found items used for methamphetamine manufacture at the premises however he had no corroboration of this. In these circumstances, I prefer the written report from the police.
8. I consider that once HNZ had obtained the very high drug residue results, it had an obligation to require Mr Williams and his son to leave the premises. The NZ Drug Free report recommended also this.
9. Mr Williams pointed out that the letter that HNZ sent him when it paid him compensation for loss of belongings and moving costs included an apology for its actions. This suggested that HNZ was at fault. I accept that the wording of the letter is confusing. I see no fault on the landlord's part. I accept the explanation from HNZ representatives at the hearing that the wording of the letter was from a standardised template used at the time and is no longer in use.
10. Mr Williams has not proven that HNZ has failed in its duty to provide clean and safe premises nor that it has breached its contract with him. His application for compensation is dismissed.



N Maplesden  
10 September 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.