

TENANCY TRIBUNAL AT Waitakere

APPLICANT: Oaks Property Management Limited
Landlord

RESPONDENT: Binuraj Thakadiel Karunkaran, Pradeep Kumar, Jayasree Pradeep Kumar, Saroja Haputhanthrige Jayasinghe, Lalith Haputhanthrige Jayasinghe, Sunil Chacko
Tenant

TENANCY ADDRESS: 19 Golf Road, New Lynn, Auckland 0600

ORDER

1. Binuraj Thakadiel Karunkaran, Pradeep Kumar, Jayasree Pradeep Kumar, Saroja Haputhanthrige Jayasinghe, Lalith Haputhanthrige Jayasinghe, Sunil Chacko are to pay Oaks Property Management Limited the sum of \$100.00 immediately, calculated as shown in the table below:

Description	Landlord	Tenant
Garden tidy up and lawns	\$100.00	
Total award	\$100.00	
Total payable by Tenant to Landlord	\$100.00	

2. Oaks Property Management Limited's remaining claims are dismissed.

Reasons:

1. This is a reserved decision of a hearing held on 23 September 2019. Mr Yun attended the hearing for the landlord. The tenants, including Binuraj Thakadiel Karunkaran, Pradeep Kumar, Jayasree Pradeep Kumar, Lalith Haputhanthrige Jayasinghe, Sunil Chacko attended the hearing in person, and on behalf of Saroja Haputhanthrige Jayasinghe who was unable to attend.

2. The landlord has applied for rent arrears, compensation and reimbursement of the filing fee following the end of the tenancy.
3. In respect of each claim, the landlord (being the applicant) had the onus of proving each claim with evidence to the required standard ('on the balance of probabilities').

Rent arrears

4. The landlord states this was a fixed term tenancy starting on 7 July 2018 and ending on 6 January 2019. The landlord provided rent records which show rent arrears of \$200.00 owing at the end of the tenancy, being 6 January 2019.
5. The tenants do not accept that they vacated the tenancy in arrears. They say they advised their former property manager that they were vacating earlier and their last payment was made on 30 December 2018. The tenants showed txt message communication with the property manager at the time confirming this. They state that at no time were they then told by their property manager that they were required to continue paying rent to the end of the fixed term tenancy (being 6 January 2019). They note that their property manager only raised the issue of rent arrears when they were following up the non-lodgement of their bond after the tenancy had ended (see previous Tenancy Tribunal order application 4176221).
6. Mr Yun was at a disadvantage as he has no direct knowledge of the events leading up to the end of the tenancy and was simply presenting another employee's file.
7. I accept the tenants had been on a fixed term, and would normally be liable for rent until the end of the fixed term tenancy, being 6 January 2019. However, if the property manager had consented to their early departure and had not brought to their attention that they were required to pay rent to the end of the tenancy, the landlord is unable to pursue losses associated with the fixed term. Given the conflicting views and lack of corroborating evidence, I find this claim has not been proved to the required standard. This claim is therefore dismissed.

Cleaning, lawns and garden tidy up, rubbish removal, and installation of door handle/lock

8. 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.
9. In any claim for damages the landlord must prove that the damage occurred during the tenancy and was probably not caused by fair wear and tear. Further in regard to any allegation of negligent damage, the landlord must prove that it is not entitled to the benefit of any insurance for this loss. Once this has been established, in

order not to be liable for the cost of repairs, the tenant must prove that the damage was not caused by their careless or intentional acts or the actions of others at the property with their consent. See sections 40(2)(a), 40(4) and 41 Residential Tenancies Act 1986.

10. The landlord claims the tenants did not leave the premises reasonably clean and tidy (including the lawns and garden), and did not remove all rubbish. The landlord also claims the bedroom door handle was missing. Compensation was sought for cleaning (\$350.00), and garden and lawn tidy up, rubbish removal and installing the door handle and lock (\$845.25).
11. The landlord presented invoices from SDM Service Ltd and Kay & Sam Select Cleaning Services, the move-in property inspection report (including photographs) and the final property inspection report (including photographs), in support of their claim. The landlord noted that the move-in property inspection report showed the premises was in reasonably clean condition at the start. The final property inspection report showed mould on the ceilings that should have been cleaned (there were slit windows that the tenants had failed to use to ventilate the property), dirty window sills, a bedroom door handle which was missing, rubbish left around the premises and unkept garden and lawns.
12. The tenants dispute the claim. They contend that the move-in property inspection report and photographs presented by the landlord did not reflect the state of the property at the start. They argue the property was not in a reasonably clean state when it was handed to them. The tenants are adamant that they had undertaken extensive cleaning at the premises before vacating. The issue pointed out by the landlord with mould was not a cleaning issue but a maintenance issue. The issue with the window sills was also not a cleaning issue but general fair wear and tear given the age and condition of the premises. They state the rubbish identified by the landlord was there when they moved in and because of this they were unable to attend to the lawns and garden. They noted there were problems with all the door handles/locks at the start of the tenancy. They believe the handle in question had been removed by the property manager at the time.
13. The words 'reasonably clean and reasonably tidy condition' do not impose an absolute standard. This standard will vary according to the age and condition of the premises. There is no requirement that each and every individual item in the premises be left "reasonably" clean and tidy, only an overall obligation in relation to the tenancy premises. Also, a tenant generally should not be expected to keep the premises any cleaner and tidier than they were at the commencement of the tenancy.
14. I note the contradictory evidence of the parties regarding the issues raised by this claim. I further note the landlord has the burden of proof placed on them to prove their claim to the required standard.

15. The applicant faces a number of hurdles with its claim. Mr Yum was unable to give direct evidence about the condition of the property at the start as he was not property manager at the time. The move-in property inspection report relied on by the landlord was not signed by both parties. There were problems apparent noted in the photographs presented by the landlord which are more to do with general deterioration (ie. deterioration noted on the window sills) rather than cleaning. The landlord could not prove on the balance of probabilities (ie. more likely than not) that the mould was caused by the tenants' failure to ventilate (as required by the tenancy agreement), given the tenants' evidence that parts of the property was subject to dampness.
16. I accept the tenants had undertaken some cleaning. I acknowledge the tenants' submission that the age and condition of the property made effective cleaning in some areas difficult (such as the window sills and ceilings). Although clearly some matters needed addressing they appeared to be matters that are best addressed with a "commercial clean" rather than a tenants' effort. It is of course not unusual for a landlord to occasionally arrange a commercial clean, irrespective of the tenant's efforts, as part of normal property maintenance.
17. In the circumstances, I cannot be satisfied on the evidence, that the landlord has proven the tenants should be liable for the claim for cleaning. The claim for cleaning is therefore dismissed.
18. There is insufficient evidence to show the tenants had carelessly or negligently removed the door handle. The claim for the replacement of the door handle/lock is therefore dismissed.
19. Given the conflicting views and lack of corroborating evidence, I decline to award compensation for rubbish removal. I will allow \$100.00 towards the garden tidy up and lawns as I do not consider the tenants' efforts to meet their legal obligations was compromised to the extent suggested.
20. As Oaks Property Management Limited has not wholly or substantially succeeded with the claim, I decline to order the other party to reimburse the filing fee.



J Setefano
21 October 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**.

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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.