

TENANCY TRIBUNAL AT Auckland

APPLICANT: Rent Real Estate Limited
Landlord

RESPONDENT: Christopher Robin Staub
Tenant

TENANCY ADDRESS: 10 Lister Street, Point Chevalier, Auckland 1022

ORDER

1. Christopher Robin Staub to pay Rent Real Estate Limited \$3,880.43 from the bond, calculated as shown in the table below.
2. The Bond Centre is to pay the bond of \$4,200.00 (3015384-005) immediately apportioned as follows:

Rent Real Estate Limited:	\$3,880.43
Christopher Robin Staub:	\$319.57

Description	Landlord	Tenant
Rent to 21 September 2019	\$246.43	
Cleaning	\$300.00	
Rubbish removal	\$685.00	
Lock/key replacement	\$220.60	
Meth testing	\$1,051.46	
Exemplary damages	\$1,000.00	
Meth cleaning	\$356.50	
Filing fee reimbursement	\$20.44	
Total award	\$3,880.43	
Bond	\$3,880.43	\$319.57

Reasons:

1. The landlord has applied for rent arrears, outgoings, compensation and exemplary damages following the end of the tenancy on 21 September 2019.
2. The landlord attended the hearing on 30 January 2020.

Rent

3. The landlord has claimed rent of \$246.43 to the end of the tenancy. The claim is supported by a rent summary. I award the rent claimed.

Water

4. The sum of \$121.38 was claimed for water charges for the period from 5 September to 1 October 2019. Mr Russell told me that a new tenant moved in on 24 September 2019 and no reading was taken when Mr Staub moved out.
5. It is not possible to apportion the water charges for consumption between Mr Staub and the new tenant, as required by section 39 of the Residential Tenancies Act 1986. I decline to award the water charges claimed.

Cleaning

6. Cleaning was claimed in the sum of \$661.25. I was told that there was a smell of beer, the toilet was dirty, there were marks on the walls of bedrooms 3 and 4, and the carpet in the sleep out was filthy. On the whole, however, the interior of the property seems to have been left in a reasonably clean condition, judging from the photographs in the 23 September 2019 inspection report.
7. I award \$300.00 for cleaning the toilet and for carpet cleaning.

Rubbish

8. The landlord claimed \$595.00 for rubbish removal. There were items of furniture and other belongings left behind by Mr Staub at the end of the tenancy in bedroom 4. There were large concrete pads left outside which I was told had been used for sound insulation (see further below).
9. Outside there were bottle tops and smashed glass and more were found subsequently during a garden clear up by Jim's Mowing (\$90.00). Black cans, bottles, bottle caps and cigarettes are visible in the 23 September 2019 inspection report.
10. I award \$685.00 in total for rubbish removal and the garden tidy up.

Locks

11. The keys were not returned at the end of the tenancy. New keys had to be cut at a cost of \$170.00 and the garage remotes replaced at a cost of \$50.60, a total award of \$220.60.

Methamphetamine testing

12. Section 40(2)(b) of the Act requires that the tenant must not use the premises, or permit the premises to be used, for any unlawful purpose. It is an offence under the Misuse of Drugs Act 1975 to use any controlled drug, or to knowingly permit any premises to be used for the purpose of consuming controlled drugs (sections 7 and 12).
13. Therefore, methamphetamine use at residential premises is a breach of section 40(2)(b) and is an unlawful act for which exemplary damages may be awarded.

The landlord conducted methamphetamine testing at the property due to the frequency of loud and drunken parties during the tenancy which were the subject of separate Tribunal proceedings in *Rent Real Estate Ltd v Staub* [2019] NZTT Auckland 4200383. In an order dated 9 August 2019, the adjudicator referred to "...parties involving very loud music, revving cars, and drunken party-goers...at least three nights per week every week for durations of up to twelve hours at a time, and lasting through the night until dawn or longer...".

14. A preliminary methamphetamine report, based on testing performed on 23 September 2019, identified 5.40ug/100cm² of methamphetamine as an average over a 10-sample composite. Re-testing of the samples by the laboratory identified methamphetamine contamination of between 0.77 ug/100cm² and 20.66 ug/100cm² in different locations. The highest readings were in the external room door frame (9.29ug/100cm²) living room door (11.20ug/100cm²) and mezzanine door frame (20.66ug/100cm²). The report said that the "moderate" levels of methamphetamine and very low levels of amphetamine and ephedrine meant it was "highly unlikely" that manufacture of methamphetamine had occurred at the property, and these levels were much more likely to result from consumption.
15. There was no methamphetamine testing done before Mr Staub's tenancy. However, the new tenants emailed the property manager on 29 January 2020. They said they had discovered multiple small plastic bags during move-in, one of which contained small crystal-like substances. Later they had found empty plastic bags in the garden and house "...often with shards & remnants of crystal like substances". They also referred to a drawing in the basement of a pipe which they said was "...commonly used for smoking methamphetamine, graffiti saying 'can I get a gram', and the words P etc spray painted around the garage" (the 23 September 2019 inspection report showed a photograph of the graffiti).
16. An email dated 29 January 2020 was presented in evidence from a real estate agent who said he had sold the property in January 2019. The previous owners were described as a family of well-liked and longstanding Pt Chevalier residents. During the sale the property had always been presented to buyers in a clean and tidy condition. Mr Russell told me the vendors stayed as tenants

for 6 months and then there was a gap of 2-4 weeks before Mr Staub's tenancy started on 8 June 2019.

17. A social media post by Mr Staub dated 19 May 2019 with a heading "flatmates wanted" was presented. Mr Staub said: "I enjoy sending it more than your average person...Monday to Friday love a good blaze...and a lot of recovery sleep". I understand a "blaze" is a reference to marijuana. Later Mr Staub said: "High probability that social gatherings I've organised or am a part of will piss off neighbours. I have a lot of experience in dealing with this situation and will negotiate appropriately".
18. The evidence available from the methamphetamine-testing company was that there is limited research about how long methamphetamine residue remains on surfaces. Methamphetamine levels may gradually reduce over time and then remain steady at a particular level.
19. Mr Russell submitted that it was unlikely methamphetamine was present in the property prior to the tenancy, given the evidence that the vendors were long-standing members of the community with no previous issues. I agree that this information needs to be contrasted with the evidence relating to Mr Staub's use of the property, as discussed above. Given the lifestyle which Mr Staub has openly adopted, and the evidence of frequent and anti-social partying together with the methamphetamine results themselves (which appear indicative of frequent use of methamphetamine, based on the Gluckman report) I find on the balance of probabilities that the property was used, or permitted to be used, by Mr Staub during the tenancy for the unlawful purpose of use of a controlled drug. I award the costs claimed of \$1,051.46 for the methamphetamine testing.
20. I also award exemplary damages of \$1,000.00 for using or permitting the property to be used for an unlawful purpose. The levels of methamphetamine in some parts of the property are high (the Gluckman report considered that levels around 30ug/100cm² were strongly suggestive of manufacturing activity) and are close to or above levels associated with a risk to human health in several locations. Seven out of the 10 samples contained methamphetamine residue above the recommended level in the NZ Standard. The evidence suggests that Mr Staub positively embraced a lifestyle where illegal drug use could occur, and it is likely he facilitated use of the property for unlawful purposes. It is just to award the maximum amount of exemplary damages available, which in this case is still a relatively low sum.

Methamphetamine decontamination

21. In June 2017, Standards New Zealand published standard NZS 8510:2017 (the NZ Standard). This adopted a standard of 1.5ug/100cm² for high use areas, for both manufacture and use. In the foreword, it was said that methamphetamine production and use can contaminate properties and expose occupants, particularly young children, to potential health risks. A post-contamination level

of 1.5ug/100cm² or less was considered appropriate to minimize exposure risks, acknowledging “safety factors” already built into a risk assessment by Environmental Science and Research Ltd in October 2016.

22. Dr Professor Gluckman authored a report dated 29 May 2018 which concluded that methamphetamine levels exceeding the NZ Standard level of 1.5ug/100cm² “...should not be regarded as signaling a health risk”. The report said that exposure to methamphetamine levels below 15ug/100cm² would be unlikely to give rise to any adverse effects.
23. In *Full Circle Real Estate v Piper* [2019] NZDC 4947 the issue the District Court had to determine was the level of methamphetamine contamination that would present a risk to human health. Where there is a risk to human health from such contamination the property can be said to be damaged. The Court concluded (at paragraphs 33 and 36):

“The issue before the Tenancy Tribunal was whether to adopt NZS 8510:2017 or the Gluckman Report to determine whether the tenant had caused damage to the premises or permitted any other person to do so...

The Tenancy Tribunal was in a difficult position. The best state of knowledge of risk to human health from methamphetamine contamination available to the adjudicator was the Gluckman Report. It would have been bold for the adjudicator to have ignored that report in favour of the New Zealand Standard given that the Gluckman report represents the current scientific knowledge on the risk to human health from methamphetamine contamination in dwellings”.

24. The Tribunal has treated *Full Circle* as confirmation that the Gluckman report is to be applied rather than the NZ Standard (see for example, *Hibiscus Property Managers Limited v Shore* [2019] NZTT North Shore 4212942).
25. The landlord claimed \$977.50 for decontamination costs. The mezzanine level had the highest reading of methamphetamine. In the decontamination invoice this area corresponds to the “upstairs bedroom”.
26. I award \$310.00 plus GST (\$356.50) for decontamination of this area, which has methamphetamine above the Gluckman report level of 15ug/100cm². Because all the other rooms are below this level, I decline to award decontamination costs for the rest of the property.

Filing fee

27. The landlord has largely succeeded in the application and it is appropriate to award the filing fee.



M Edison
11 February 2020

Please read carefully:

Visit justice.govt.nz/tribunals/tenancy/rehearings-appeals for more information on rehearings and appeals.

Rehearings

You can apply for a rehearing if you believe that a substantial wrong or miscarriage of justice has happened. For example:

- you did not get the letter telling you the date of the hearing, **or**
- the adjudicator improperly admitted or rejected evidence, **or**
- new evidence, relating to the original application, has become available.

You must give reasons and evidence to support your application for a rehearing.

A rehearing will not be granted just because you disagree with the decision.

You must apply within five working days of the decision using the Application for Rehearing form: justice.govt.nz/assets/Documents/Forms/TT-Application-for-rehearing.pdf

Right of Appeal

Both the landlord and the tenant can file an appeal. You should file your appeal at the District Court where the original hearing took place. The cost for an appeal is \$200. You must apply within 10 working days after the decision is issued using this Appeal to the District Court form: justice.govt.nz/tribunals/tenancy/rehearings-appeals

Grounds for an appeal

You can appeal if you think the decision was wrong, but not because you don't like the decision. For some cases, there'll be no right to appeal. For example, you can't appeal:

- against an interim order
- a final order for the payment of less than \$1000
- a final order to undertake work worth less than \$1000.

Enforcement

Where the Tribunal made an order about money or property this is called a **civil debt**. The Ministry of Justice Collections Team can assist with enforcing civil debt. You can contact the collections team on **0800 233 222** or go to 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.

If you require further help or information regarding this matter, visit tenancy.govt.nz/disputes/enforcing-decisions or phone Tenancy Services on 0800 836 262.

Mēna ka hiahia koe ki ētahi atu awhina, kōrero ranei mo tēnei take, haere ki tenei ipurangi tenancy.govt.nz/disputes/enforcing-decisions, waea atu ki Ratonga Takirua ma runga 0800 836 262 ranei.

A manaomia nisi faamatalaga poo se fesoasoani, e uiga i lau mataupu, asiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesoatai mai le Tenancy Services i le numera 0800 836 262.