[2020] NZTT Manukau 4223050, 4220978

TENANCY TRIBUNAL AT Manukau

APPLICANT: Scott Kinnon

Tenant

RESPONDENT: Leon Chunyu

Landlord

TENANCY ADDRESS: Unit/Flat Flat 1, 16 Cambric Place, Botany Downs, Auckland 2010

ORDER

1. The Bond Centre is to split the bond of $1,440.00 (3751006-001) and make payment of the bond immediately, as follows:

   a) to pay the landlord Leon Chunyu the sum of $333.12

   b) to pay the tenant Scott Kinnon the sum of $1106.88

Description	**Landlord**	**Tenant**
Rent arrears to 1 September 2019 accepted	$297.00	
Water rates - accepted	$36.12	
Repairs: Door	$250.00	
Compensation: Breach of quiet enjoyment		$250.00
Total award	**$583.12**	**$250.00**
Net award	333.12	
Bond	333.12	$1,106.88

Reasons:

1. Both parties attended the hearing held on the 24 February 2020.I had reserved my decision.
2. On the 28 February 2020 the tenant called the Registry and advised that the landlord was asking him to settle the claim, but he did not wish to do so.
3. On the 10 March 2020 the Registry received an email from the landlord stating all matters had been settled but when the Registry rang the tenant he confirmed that the matters had not been settled.

The claims

4. The landlord has applied for rent arrears, water rates, compensation for damage to a door and compensation for repairs caused by flooding, which the landlord says that the tenant breached his obligations to report the damage to the landlord, carpet cleaning, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
5. The tenant accepts the landlord's claims for rent arrears, and water rates. The tenant accepts liability for damage done to the door, but disputes the amount claimed by the landlord.
6. The tenant disputes liability for the damage caused by flooding and says that as soon as he noticed the damage he reported it to the landlord.
7. The tenant has also claimed that the landlord breached that tenant's quiet enjoyment and that the landlord has failed to insulate the property.
8. The tenancy began on 20 November 2012 and ended on 1 September 2019.
9. The tenant accepts liability for the amount of rent and water owing as at 1 September 2019.

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

10. The parties both agree that a final inspection of the property was carried out by both the tenant and the landlord on the 31 August 2019. At that inspection the parties agreed to certain amounts being owed by the tenant to the landlord, and that the landlord would be entitled to a portion of the bond to cover those amounts. However, the landlord then sought to have the tenant pay for damage caused by a flood at the property. The parties then made claims to the Tribunal.

Carpet cleaning

11. The landlord claims that the tenant should pay for carpet cleaning. The landlord says that carpet cleaning was necessary due to the amount of pet hair and staining on the carpets.

12. The downstairs carpets were not new at the beginning of the tenancy, but the upstairs carpets were. The tenancy was seven years. The landlord says that he completed an inspection of the property 1-2 times a year. There are no inspection reports and at the vacate inspection the landlord did not take any photographs detailing the condition of the carpets.
13. The landlord must prove on the balance of probabilities, that carpet cleaning was necessary because of something that the tenant had done to the carpets.
14. The landlord has not proven that the carpet cleaning was necessary and therefore no award has been made for carpet cleaning.

Is the tenant responsible for the damage to the premises?

15. 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), 41 and 49B RTA.
16. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.

    <u>Damage to wall and floor due to water ingress</u>

17. The landlord claims that the tenant damaged the property by failing to notify the landlord of water damage to the property.
18. On or about the 27 August 2019 the tenant told the landlord via email that he had discovered water damage on a wall, and that due to a storm in Auckland the previous night, had noticed that water was leaking into the property.
19. The landlord inspected the property on 31 August and noticed that there was damage to the wall and floor where water had leaked into the property from the windows/ skylight. The landlord claims that the tenant did or should have known about the water damage before the 27 August 2019 and failed to notify the landlord of the damage.
20. The landlord last inspected the property on or about the January 2019, he says that he did not notice any damage at that time.
21. The tenant denies knowing or noticing any water damage until 27 August 2019 when he notified the landlord. The tenant says that he moved his bookcase to move out of the property and noticed the problem then.

22. Tenants have an obligation under s40 (1)(d) to notify the landlord as soon as possible after discovery of any damage to the property.

23. The evidence that I heard and the emails that I saw shows that the tenant notified the landlord as soon as he noticed the damage.

24. The landlord says that the person's who repaired the water leak say that the damage occurred over some time. The landlord did not make an insurance claim for the damage because the landlord was not insured for gradual deterioration which this damage would have been categorised as.

25. The Tribunal has previously found that landlords cannot be in breach of their obligation to repair and maintain if the defect is latent and unobservable (*Barfoot and Thompson v Casey DC Auckland CIV 2005-004-1762, 7 November 2007).* If that is the standard that is applied to landlord's obligation to repair, it must also be the standard for the tenant's obligation to notify the landlord of any damage.

26. The tenant's bookcase covered most if not all of any apparent damage.

27. The damage is from a leaking seal around the window/skylight cannot be said to be intentional damage.

28. The landlord has not proven on the balance of probabilities that the tenant damaged the property intentionally nor that the tenant failed in his obligation to notify the landlord about the damage as soon as he became aware of the damage.

29. The landlord's claim for compensation for carpets and walls relating to the leak are therefore not proven

    <u>The door</u>

30. The landlord has claimed for damage done to the door. The tenant accepts that one of his flatmates intentionally damaged the door and then covered it up so that neither the tenant or the landlord noticed it until the final inspection. The tenant accepts liability for the door but says that the landlord is charging him too much. The tenant noted that there is two claims for delivery and transport of the new door.

31. I am satisfied that the tenant is liable for the cost and hanging of the door . The door replaces an older door. When making my award I have taken into account the lifespan of the door and the fact that but for the tenant's action the landlord would not have had to replace the door.

32. Having reviewed the invoices provided by the landlord, and taken into consideration the age of the door, I am satisfied the sum of $250.00 is appropriate award for the door.

    <u>Insulation</u>

33. Scott Kinnon claims that the landlord has breached the obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 by failing to insulate the

premises in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.

34. From 1 July 2019, all residential premises must be insulated to a minimum standard. Where the premises were insulated before 1 July 2016, the ceiling insulation must have an R-value of at least 1.9 (or 1.5 for houses of a brick or concrete block construction). The underfloor insulation must have an R-value of at least 0.9. The insulation must be in reasonable condition.

35. Where insulation is installed after 1 July 2016, the minimum R-value for ceiling insulation is 2.9 in Zones 1 and 2, and 3.3 for Zone 3 (Zone 3 covers the South Island and central North Island). The minimum R-value for underfloor insulation is 1.3.

36. There are exceptions to these requirements, for example, where it is not reasonably practicable, or where there is a habitable space above or below the ceiling or floor that would otherwise have to be insulated.

37. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of $4,000.00. See section 45 (1)(A) and Schedule 1A RTA.

38. The landlord told me that he believed that the property was insulated. The landlord did not have the property inspected to ensure that he was complying with the regulations, he simply thought it was insulated. There was a three-year lead in for compliance with insulation regulations. Landlords were expected to familiarise themselves with the requirements and ensure compliance. Simply saying that I thought it was compliant is not good enough. The landlord showed me pictures of the interior of the wall cavity whilst giving me evidence on the flooding damage. There does not appear to be any insulation in the wall or the floor cavity.

39. This is a two-storey house, the tenant says there is no insulation in the walls and in the floor between the first and second floors. There is no record of whether the insulation in the ceiling meets the required requirements.

40. The tenant did not have a report on the state of the insulation.

41. When a party makes a claim, it is up to that party to bring evidence to the Tribunal to show that the breach has occurred.

42. Whilst the landlord has failed to obtain a report on the state of the insulation, I am not satisfied that the landlord has committed a breach of the regulations. In other words, the tenant has not proven that the insulation is not compliant.

43. The tenant's claim is not proven.

<u>Breach of quiet enjoyment</u>

44. The tenant says that the landlord has breached the tenant's quiet enjoyment of the property and or that the landlord failed to give adequate notice when the landlord was coming to the property.

45. The landlord stored items in a room in the basement of the house. This basement room was accessible by its own door on the outside of the property.

46. The tenant says that the landlord was allowed to come onto the property to collect items, provided that he gave notice to the tenant of his intention to come onto the property and that the expectation was that this would be an infrequent rather than a frequent occurrence.

47. The tenant says that the especially near the end of the tenancy the landlord came more often than the tenant was notified.

48. The tenant believes that the landlord came to the property during the day without notification. He believed this to be the case because of the incident with the female flatmate which I have detailed below and because on another occasion he saw Mr Chandu in his car in the street when he had to come home unexpectedly one day.

49. There was one occasion that the tenant's female flatmate was in the downstairs shower, which is next to the basement storage room. The flatmate heard noises in the room and thought someone was in the house and was very frightened.

50. The flatmate then found out that it was the landlord in the storage room.

51. The landlord provided texts which showed he gave notice to the tenants on the 24 July 2018, 13 November 2018 at 8am asking to go to the property at 11am, Monday 1 July 2019 at 2,30pm asking to go at 4-5pm. The landlord also sent a text on the 13 August 2019 stating that he had tried to contact the tenant's flatmate Sarah.

52. The tenant says that he neither or his flatmate had received any notification on the day that the landlord was found at the property while the flatmate was in the shower.

53. The tenant had confronted the landlord about the breach. The tenant says the breach left his flatmate feeling vulnerable and upset in her home.

54. The tenant was away from the home a lot for work. His flatmates were often at the home by themselves.

55. The tenant is entitled to have quiet enjoyment of the premises without interruption by the landlord, and the landlord shall not cause any interference with the reasonable peace comfort or privacy of the tenant in the use of the premises. Section 38 (1) (2) RTA.

56. I am satisfied that the landlord has breached the quiet enjoyment of the tenant. However, I have only awarded the sum of $250.00 due to the following factors:

- The tenant did not issue a 14-day breach notice.
- To recognise that the breach made the flatmate and tenant feel vulnerable and that their privacy was violated.
- To recognise that landlords must give tenant's reasonable notice and of their intention to go onto the property and comply with the provisions of the RTA. The landlord is being paid rent for the property and the tenant is entitled to exclusive occupation of the property.
- That despite the tenant feeling aggrieved that there was no financial loss suffered by the tenant.

57. As neither party has been substantially successful in their claims, I have not awarded the filing fee to either of them.

T Prowse
25 March 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 fesootai mai le Tenancy Services i le numera 0800 836 262.