

TENANCY TRIBUNAL AT Remote Location

APPLICANT: Braziers Limited
Landlord

RESPONDENT: Kevin Guttman, Charlotte Delia Clare Radley
Tenant

TENANCY ADDRESS: Unit/Flat Flat 2, 155 Holly Road, St Albans, Christchurch
8014

ORDER

1. Kevin Guttman and Charlotte Delia Clare Radley are to pay Braziers Limited \$105.80 from the bond, calculated as shown in table below.

Description	Landlord	Tenant
Window cleaning	\$36.80	
Garden work	\$69.00	
Total award	\$105.80	
Bond	\$105.80	\$1,050.20

2. The Bond Centre is to pay the bond of \$1,156.00 (6016599-003) immediately apportioned as follows:

Braziers Limited:	\$105.80
Kevin Guttman And Charlotte Delia Clare Radley:	\$1,050.20

Reasons:

1. Both parties attended the hearing which was held by telephone due to Covid-19 restrictions.
2. The landlord has applied for compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.

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

3. The tenancy ended on 31 January 2020.
4. 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.
5. The landlord claims that the tenant did not leave the windows and a small area of the garden reasonably clean and tidy. The tenants disputed the claims. However, the photographs attached to the ingoing and outgoing property inspections reports establish the landlord's claims.
6. The landlord provided invoices in support of the claim. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

7. The landlord alleges that a patch of living room carpet was melted during the tenancy and claims the cost of replacement carpet to that room.
8. The invoice submitted by the landlord was for \$772.00 and refers to replacement carpet, underlay and naplock bars. I note the landlord's statement that only the carpet was replaced. However, the invoice was issued after the work was carried out and clearly includes other items. If those other items were not provided to the landlord, it could have obtained and submitted an amended invoice.
9. The tenants accepted that there was a slight surface melt to a small patch of carpet. They explained that an iron was accidentally knocked over and promptly picked up.
10. 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.
11. 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.

12. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA. In this case the tenant's maximum liability for careless damage is \$1,156.00 being 4 weeks rent.
13. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.
14. Tenants are liable for the cost of repairing damage that is intentional or which results from any activity at the premises that is an imprisonable offence. This applies to anything the tenant does and anything done by a person they are responsible for. See section 49B(1) RTA.
15. Damage is intentional where a person intends to cause damage and takes the necessary steps to achieve that purpose. Damage is also intentional where a person does something, or allows a situation to continue, knowing that damage is a certainty. See *Guo v Korck* [2019] NZHC 1541.
16. While the damage to the carpet is more than fair wear and tear, the tenant has disproved liability for the damage. I accept that the damage was accidental rather than careless or deliberate.
17. For completeness, I note that if the damage had been careless, I would have taken into account betterment and depreciation, including the age and condition of the carpet at the start of the tenancy and its likely useful lifespan. The photographs indicate that the carpet had some marks or staining at the start of the tenancy. I would also have taken account of the invoice including both underlay and naplock bas, neither of which would have been required to repair the damage.
18. As both parties have been partially successful, I have not awarded the filing fee.



R Morgan
20 May 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.