

TENANCY TRIBUNAL AT Timaru

APPLICANT: Anthony James Brooking, Dani Hodges
Tenant

RESPONDENT: Colin Imrie
Landlord

TENANCY ADDRESS: 10 Harris Street, Pleasant Point, timaru 7903

ORDER

1. Anthony James Brooking and Dani Hodges must pay Colin Imrie \$3,694.89 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of \$1,360.00 (5295964-005) to Colin Imrie immediately.

Description	Landlord	Tenant
Compensation: Nominal damages - tenant goods		\$50.00
Lock/key replacement	\$250.00	
Replace smoke alarms	\$31.38	
Light bulbs	\$21.32	
Electrical fittings replacement/repair	\$150.00	
Sliding door bolt	\$6.97	
Repair driveway	\$602.08	
Meth testing	\$4,022.70	
Filing fee reimbursement	\$20.44	
Total award	\$5,104.89	\$50.00
Net award	\$5,054.89	
Bond	\$1,360.00	
Total payable by Tenant to Landlord	\$3,694.89	

Reasons:

1. Both parties attended the first part of the hearing. The landlord attended the second part of the hearing. The tenant contacted the Tribunal on the day of the second part of the hearing seeking to participate by private telephone, but I declined this as I considered that there had been reasonable opportunity to make arrangement for participation by teleconference.
2. This was a periodic tenancy, which began in July 2017 and ended in October 2019. During the tenancy the tenant started refurbishment work at the premises, in the expectation that the tenancy would continue long term. The landlord gave notice in early August 2019 for termination in early November 2019.
3. In early October the landlord sought information from the tenant about persons not known to the landlord at the premises. On 9 October the tenant informed the landlord he had already vacated on 7 October, and that the other persons were arranged to do clean-up work. The landlord arranged with the other persons at the premises that they could remain a further couple of days.
4. The landlord travelled to the premises on 22 October. He found the premises vacated, but damaged and not in tidy condition.
5. Each party seeks orders for compensation and for exemplary damages.

Tenant application

6. The tenant seeks compensation for a car body and tyres disposed of by the landlord, for refurbishment work carried out at the premises during the tenancy, and for an alarm system installed during the tenancy and left at the premises.

Car body and tyres

7. Where goods are left at the premises after the end of the tenancy, the landlord must make all reasonable efforts to contact the tenant and agree with the tenant on a period within which the tenant is to collect the goods (see section 62 Residential Tenancies Act 1986 – “RTA”).
8. It is common ground that a car body and tyres were left at the premises at the end of the tenancy.
9. The landlord did no contact the tenant about the car body or tyres. The landlord states he has disposed of the car body to a scrap metal merchant, and acknowledges disposal of tyres from the property after the tenancy.
10. The landlord is therefore in breach.
11. The tenant claims compensation of \$3500 in respect of the car body and \$700 in respect of tyres.

12. The tenant had departed from the premises some time before the end of the tenancy and instructed associates to clean up. It appears it was left to them to deal with items at the premises such as the car body and tyres.
13. The tenant has provided a document indicating the car body was purchased for \$3500, but I note that the seller appears to have been an associated of the tenant. I am not satisfied that this transaction establishes a market value for the car body. The tenant states that by the end of the tenancy some components had been removed and sold from the body, and its value therefore reduced from the time of purchase. It appears that the dismantling work had been carried out by the tenant's associates, and there was no evidence about the actual state of the car body at the end of the tenancy. There is no dispute that its value as scrap would have been negligible.
14. The tenant acknowledged that associates removed tyres from the property at the end of the tenancy. It is not clear how many were left after the end of the tenancy. There is no evidence of ownership such as any proof of purchase, or of value.
15. I am therefore not satisfied that the tenant has proved any loss in this matter, and I decline to order compensation. The landlord is to pay nominal damages of \$50.00 in respect of the breach.

Refurbishment work and alarm system

16. The tenant claims \$800 in respect of refurbishment work and \$3500 in respect of the alarm system.
17. A tenant must not carry out any renovation, or affix any fixtures, except in accordance with the tenancy agreement or by written arrangement. Any fixtures affixed by the tenant to the premises but not removed by the tenant at the end of the tenancy become the property of the landlord (See section 42 RTA).
18. The parties had discussed and agreed about the tenant doing work on the premises, in particular redecorating, on the basis that any work undertaken was to be at the tenant's expense. The tenant had an expectation that their occupation would be long term, and it appears that the tenant started refurbishment on this basis. However, the written tenancy agreement provides that the tenancy was periodic, and I am satisfied that the tenant went ahead with work at their own risk.
19. There was no arrangement with the landlord for installation of the alarm system. It was left on the premises at the end of the tenancy. The alarm system therefore became the property of the landlord at the end of the tenancy.
20. I find in respect of the refurbishment work and the alarm system that the landlord is not in breach, and the application for compensation is dismissed.

Exemplary damages

21. In seeking exemplary damages the tenant has raised concern that the landlord did not stick to an arrangement about a long term tenancy, and has also pointed to the following sections of the RTA: sections 29 (receipts for rent); 33 (seizure or disposal of tenant's goods); 38 (quiet enjoyment); 48 (unlawful entry); and 62 (goods left on premises at end of tenancy).
22. The Tribunal may make an order for exemplary damages where a party has committed an act of a type defined as an 'unlawful act' under the RTA (see section 109 and Schedule 1A RTA).
23. I find that the tenant's concern about the tenancy arrangement, and that any breach of section 62, do not give rise to any defined unlawful act.
24. Sections 29, 38 and 48 do provide for unlawful acts, but no evidence has been provided to substantiate any breach of those sections by the landlord.
25. Section 33 provides that a landlord commits an unlawful act if they seize or dispose of the tenant's goods as security for rent or for any other reason arising from the tenancy.
26. As already noted above the landlord disposed of some of the tenant's goods after the end of the tenancy. The disposal was unrelated to rent or any other reason arising from the tenancy, and I therefore find that no unlawful act has been established.
27. The tenant's application for exemplary damages is therefore dismissed.

Landlord application

28. The landlord initially sought compensation in respect of numerous issues. On consideration at the hearing, and after discussion of the Tribunal's expectations about substantiating evidence and calculation of loss taking into account depreciation, many compensation claims were withdrawn including those in respect of remediation of methamphetamine contamination, removal of a vice, grounds clean up and rubbish, toilet repair, painting, carpets and kitchen.
29. The landlord continued with claims for compensation in respect of methamphetamine testing, damage, missing chattels, change of locks and travel costs.
30. The tenant considers that most problems at the premises arose after the end of the tenancy, and arose from persons who the landlord authorised to be at the premises after the end of the tenancy. The tenant therefore considers they do not have any responsibility for most of the issues raised by the landlord.
31. I am satisfied however that the persons in question were associates of the tenant, and initially occupied the premises on the permission of the tenant given by the tenant during the tenancy. The tenant indicated to the landlord that the

tenant had instructed those other persons to clean up the premises after the departure of the tenant. I consider that the tenant therefore implied to the landlord that those persons had authority to act on the tenant's behalf. I find that the tenant is responsible to the landlord for the actions of the other occupants.

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

32. 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. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986. The tenant must also replace standard light bulbs.
33. The tenant did not return the keys.
34. At the end of the tenancy two smoke alarms, and lightbulbs, were missing.
35. The amounts ordered are proved.
36. The landlord has not provided evidence to substantiate loss or replacement of two gas bottles from the premises, and this aspect of the application is dismissed.

Is the tenant responsible for the damage to the premises?

37. 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.
38. 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.
39. 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.
40. 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.
41. 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.

42. 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.
43. The landlord has incurred cost for chimney cleaning and maintenance or repair of a fireplace. I am not satisfied that the landlord has established that the need for this work arose from other than wear and tear, and this part of the application is dismissed.
44. The following damage was caused during the tenancy: garage door opener switch and security lights removed; sliding door bolt damaged; driveway damaged by presence of many screws, nuts, bolts and glass fragments, and the premises contaminated with methamphetamine. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
45. The amounts ordered are established and are considered reasonable.
46. I am satisfied that relaying the shingle driveway was reasonable to remedy the extent of damage from car-breaking activities.
47. It was reasonable for the landlord to undertake methamphetamine testing at the premises, as Police had been concerned about activities at the premises to the extent that they had entered the premises with armed officers in attendance. On testing, significant contamination was found. Retesting was therefore required after decontamination, to establish that the premises were suitable for occupation.

Exemplary damages

48. In the application the landlord makes only a general reference to exemplary damages. I consider that the only issue with relevance is the use of the premises for unlawful purpose with regard to methamphetamine. To make such an order I must be satisfied that the unlawful act was intentional on the part of the tenant.
49. I note the tenant's submission that no such activity occurred while the tenant was present at the premises. I also note the high levels of contamination found on testing. I am not satisfied however that these levels sufficiently prove that contamination occurred over an extended time such that the tenant must have been present. There is no evidence of any instruction or permission given by the tenant to the other occupants to use the premises for any such unlawful purpose.

50. I consider it has not been established that the contamination of the premises arose from any intentional act by the tenant, and I decline to make any order for exemplary damages.
51. Because Colin Imrie has been partially successful with his claim I have reimbursed the filing fee.



J Talbot
01 October 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.