

TENANCY TRIBUNAL AT Auckland

APPLICANT: Vng Rentals Limited
Landlord

RESPONDENT: Boyu Lyu, Shiyu Xie and Taimen Xu
Tenant

TENANCY ADDRESS: Apartment 902/70 Anzac Avenue, Auckland Central,
Auckland 1010, Connect Apartments

ORDER

1. The landlord's claim for compensation for damage caused by water flooding is dismissed.

Reasons:

1. Ms Xing and Ms Zhou attended as the landlord's representatives. Mr Lyu and Xu also attended the hearing.
2. The landlord had applied for recovery of rent arrears, failure to pay water charges, compensation for damage caused to the premises and the adjoining premises, and recovery of the application fee.
3. The landlord's application was first heard on 1 October 2020 and an Order was issued, on that day, with respect to termination of the tenancy, payment of rent arrears, refund of the bond and reimbursement of the filing fee. The landlord's claim for damages was (i) dismissed in relation to a claim for damage to a neighbour's property, and (ii) adjourned in relation to a claim for damage to the landlord's property.
4. At today's hearing, the landlord's representatives sought to amend the application to apply for additional rent arrears (due to the tenants not leaving the premises on 1 October 2020 as ordered) and for further damage to the property. Given the significance of the new claims being made by the applicant landlord, the Tribunal

instructed the applicant to file a new application to give the tenants an opportunity to assess the claims and prepare their own evidence.

Claim for compensation for water damage

5. The landlord sought \$4,512.63 for damage caused to the landlord's property as a result of water leaking from a bathroom in the premises.
6. The applicant's case is that on or about 2 May 2020 the bathroom of the apartment flooded and the water from this flood also escaped beyond the unit and into the adjoining apartment.
7. As recorded in the prior Order (dated 1 October 2020), the landlord claimed that the tenants caused damage to the premises as well as the adjoining apartment as a result of blockage to a sink caused by human hair. It was alleged that the blocked sink resulted in flooding in the apartment and adjoining apartment causing damage to walls and carpets.
8. On or about 5 May 2020, the building manager engaged a contractor to attend to cleaning up the water and drying out the affected parts of the units.
9. In support of its claim, the applicant produced copies of invoices from the building manager and a carpet cleaning contractor, as well as photographs. Critically, for the reasons which follow, there was no evidence as to what actually caused the flood. There was **no** evidence from the building manager as to what he or she found on arriving at the unit on 2 May 2020 (i.e. "I arrived and found one of the taps had been left running" or similar) – the narration on the building manager's invoice simply refers to 'water leakage damage inspection during day off'. In an email to the tenants, dated 2 May 2002, the landlord's representative stated that "*According to the plumber's advice, it is highly like tenants' hair stopping the drain up, and which has even led to your neighbor unit 903's carpet gets wet*" (sic). Neither the plumber's actual invoice, nor his/her advice, were not submitted by the applicant.
10. The photographs submitted by the applicant do not assist as to what caused the flood. The contractors' invoices do not make any reference to the source or cause of the flood.
11. Evidence as to the cause of the flood is essential to the applicant's claim. 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 of the Residential Tenancies Act 1986 (the **Act**).
12. Production of invoices and photographs are not evidence of the cause of the damage, only of the consequences thereof.

13. On the limited evidence provided, the Tribunal finds that the applicant failed to prove that the flood was caused by any careless or intentional act of, or any breach of the Act by, the tenants. Accordingly, no order can be made against the tenants and the application must be dismissed.



C Beaumont
3 December 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.