

TENANCY TRIBUNAL AT Christchurch

APPLICANT: Sam Newman
Landlord

RESPONDENT: Kieran Jie-Wei Cheng and Sean Lalor
Tenant

TENANCY ADDRESS: 50 Charnwood Crescent, Bishopdale, Christchurch 8051

ORDER

1. Kieran Jie-Wei Cheng must pay Sam Newman \$11,076.87 immediately, calculated as shown in the table below.
2. The landlord's application is otherwise dismissed.
3. The Bond Centre is to pay \$400 from the bond of \$800.00 (3108490-006) to Sam Newman immediately.
4. The Bond Centre is to pay \$400 from the bond of \$800.00 (3108490-006) to Sean Lalor immediately.
5. The tenant's application is dismissed.

	Landlord	Tenant
Description		
Rent arrears to 7 November 2020	\$2,241.43	
Lawn reinstatement and rubbish removal	\$4,350.00	
Modem	\$250.00	
Magnetic door stop	\$100.00	
Cleaning	\$125.00	
Tyre removal	\$100.00	
Lemon trees	\$60.00	

Gate bracket	\$150.00
Shovel handle	\$21.00
Chiropractic bed	\$4059.00
Filing fee reimbursement	\$20.44
Total award	\$11,476.87
Less bond	\$400.00
Total payable by Tenant to Landlord	\$11,076.87

Reasons:

1. The landlord attended the hearing in person. Mr Lalor attended by telephone. Mr Cheng did not attend.
2. Mr Cheng had permission to attend the previous hearing of the landlord's application on 23 November 2020 by telephone, but he did not answer his phone when he was called at the time of the hearing. The hearing was adjourned because Mr Cheng had filed a cross application and the Adjudicator decided that both applications should be heard together.
3. The adjudicator directed that Mr Cheng must attend the next hearing in person. On the morning of the adjourned hearing, Mr Cheng emailed the Tribunal requesting to attend by telephone citing security concerns. He had previously requested security for the hearing which had been approved.
4. I could see no good reason for allowing Mr Cheng attend by telephone and so I declined his request. He lives in Christchurch and he had made an application against the landlord. Even if he had genuine and reasonable concerns about his security, and it is not clear that he did, the court security arrangements are more than adequate to safeguard his security. The idea that someone should be unable to attend court out of fear for their safety is offensive to the court system.
5. Mr Cheng was informed that he should attend the hearing in person otherwise the hearing would proceed without him.
6. Because Mr Cheng did not attend the hearing, his application has been dismissed.
7. The landlord has applied for rent arrears, compensation, payment of the bond, and reimbursement of the filing fee following the end of the tenancy.
8. The landlord claims only against Mr Cheng not Mr Lalor. They signed separate tenancy agreements with the landlord and Mr Cheng's occupation of the premises preceded and went past Mr Lalor's occupation of them.
9. As well, the landlord agreed that Mr Lalor had paid his share of the rent to Mr Cheng who did not pass it on fully to the landlord. He also agreed that Mr Cheng alone was responsible for the damage to and the items missing from the premises.

10. Therefore, this order is made against Mr Cheng alone.
11. The landlord agreed that Mr Lalor's share of the bond should be paid to him.

How much is owed for rent?

12. The tenancy ended on 7 November 2020. The landlord provided rent records which prove the amount owing at the end of the tenancy as ordered.

The tenant's obligations at the end of the tenancy

13. 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's responsibility for the damage to the premises

14. 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.
15. 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.
16. 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.
17. 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.
18. 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.
19. 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.

Lawn

20. During the tenancy Mr Cheng damaged the large lawn by dumping shingle on it and by digging numerous holes in it and filling them with shingle. There is no rational explanation for doing so.
21. The only practical way of repairing the lawn is to strip off the lawn, cover the area with top soil and sow it with grass seed.

Gate Bracket and Shovel Handle

22. A bracket of the gate and a shovel handle were also damaged.

Cleaning

23. The premises were not left reasonably clean and tidy. The landlord had to spend time cleaning it and the award made is compensation for his time and materials.

Rubbish

24. There was also rubbish left at the premises which needs to be removed and dumped.

Chattels

25. The following chattels were missing from the premises at the end of the tenancy – an internet modem, a magnetic door stop, two lemon trees and a chiropractic bed.

Liability

26. I am satisfied that Mr Cheng is liable for the damage referred to above because it was caused by him intentionally.

Compensation

27. The sums awarded were proved by evidence from the landlord and Mr Lalor, photographs and estimates and other evidence of the prices of items missing or damaged.

Fish Equipment

28. I have dismissed the landlord's claims for missing items that relate to the landlord's fish tanks that were in the premises.
29. The fish tanks were the landlord's personal property and they were not chattels provided for the tenant's use. They were not therefore part of the tenancy and the loss of and damage to the items is a personal issue between the landlord

and Mr Cheng. The Tribunal does not have jurisdiction to adjudicate on such claims.

Timber Posts

30. Mr Cheng also used H5 treated posts belonging to the landlord to construct a compost bin. That has so damaged the posts that they cannot be used by the landlord for the intended purpose of constructing an outdoor table. For the same reasons given for the fish equipment this claim is also dismissed.

Flooring

31. Wooden flooring in the premises was damaged by scratching during the tenancy when articles left lying on the floor were moved over the floor when the door was opened and closed.
32. Having now seen photographs of the scratched flooring I regard the damage as minor and not beyond fair wear and tear. I therefore dismiss the claim.
33. Mr Cheng also threw spare flooring into the compost bin and thereby damaged it so that it cannot be used. For the same reasons given for the fish equipment that claim is also dismissed.

Travel Costs

34. The landlord claims the cost of travelling between his home and the premises. Such costs are not normally recoverable from a tenant because where the landlord lives in relation to the premises has nothing to do with the tenancy. I see no reason to make an exception in this case and so the claim is dismissed.

Filing Fee

35. The landlord has had substantial success and so I have awarded the landlord the filing fee.



R Armstrong
11 January 2021

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.