

**TENANCY TRIBUNAL AT** Auckland

APPLICANT: Southbridge Trustee Limited  
Landlord

RESPONDENT: Tamara Ellie Cardon-Smith, Madison Cardon-Smith, Casey Cardon-Smith  
Tenant

TENANCY ADDRESS: 11 Hendry Avenue, Hillsborough, Auckland 1042

**ORDER**

1. Southbridge Trustee Limited must pay Tamara Ellie Cardon-Smith, Madison Cardon-Smith and Casey Cardon-Smith \$17,451.49 immediately, calculated as shown in table below:
2. The Bond Centre is to pay the bond of \$1,470.00 (5167365-011) to Tamara Ellie Cardon-Smith, Madison Cardon-Smith and Casey Cardon-Smith immediately.

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Rent arrears	\$420.00	
Water rates	\$89.95	
Compensation		\$15,000.00
Damaged property		\$1,941.00
Exemplary damages		\$1,000.00
Filing fee reimbursement		\$20.44
<b>Total award</b>	<b>\$509.95</b>	<b>\$17,961.44</b>
Net award		\$17,451.49
Bond		\$1,470.00
<b>Total payable by Landlord to Tenant</b>		<b>\$17,451.49</b>

## Reasons:

1. This dispute concerns the tenancy from April 2017 to July 2020. This order deals with the tenants application for failure to maintain the premises and the landlords application for rent and water arrears, which the tenant does not dispute.
2. Mr Fong appeared as Counsel for the landlord and Mrs Wroe appeared as Counsel for the tenant.
3. The tenant seeks compensation of \$22,650 (1/3 of the rent) because the premises was poorly maintained; \$1,941.00 for damage to personal property arising from the poor maintenance; 4 x \$4,000 exemplary damages also arising from the poor maintenance.

## What is the landlord's responsibility?

4. A landlord's responsibility is set out in s45 of the Residential Tenancies Act 1986.  
*s45 Landlord's responsibilities*  
*(1) The landlord shall—*  
*(a) provide the premises in a reasonable state of cleanliness; and*  
*(b) provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes;*
5. The responsibility is to 'provide and maintain' which requires the landlord to ensure that at the start of the tenancy the premises are in a reasonable condition and that during the tenancy it remains in a reasonable condition. A reasonably prudent landlord would inspect the premises before the tenancy and during the tenancy. The tenant says the premises was not in a reasonable condition at the start of the tenancy and was not maintained during the tenancy. The landlord disputes this.
6. I address both positions, in doing so I summarise those positions without repeating everything that was said in evidence.

## The tenants position

7. From the start of the tenancy there were problems with the power because not all power points or lights would work. Some would spark and caused damage to electric devices. For many months they had no lights in the kitchen. There were rats which they believe were present before the tenancy started and which chewed through wiring also damaging electrical devices.
8. The bathroom floor was rotten in parts and was only patched towards the end of the tenancy.
9. The ceilings were mouldy especially towards the external walls where the insulation was not complete.

10. The tap water was yellow and had particles of metal in it. They did not drink the water or use the shower until the pipes were replaced in February 2018 and the HWC replaced in August 2018, all after a 14-day notice was issued in January 2018.
11. Window latches were faulty, some of the wooden frames were rotten and some windows were painted shut and the work done to remedy this was poor.
12. The back-door handle did not work properly so they had to lock the door using a bolt lock which meant they could not get back into the house via that door. The door had a cat door which was screwed shut with a piece of broken wood which was temporarily fixed in July 2019 and properly fixed in November 2019.
13. There was a full-length gutter missing at the start of the tenancy which was not remedied till March 2020. Gutters were blocked and where gutters joined they leaked. Rain water flowed directly onto the ground.
14. The oven extractor fan was hanging dangerously but not fixed till August 2018.
15. The kitchen ceiling leaked into the fan and was not fixed till June 2020.
16. There were leaks in a bedroom ceiling and along the wall adjoining the laundry and toilet which was not fixed.
17. The property had no means of heating until a reconditioned heat pump was installed in July 2017 and then replaced with a new heat pump.
18. The faulty rangehood was not replaced till August 2018.
19. More was said than has been referred to above but the gist of the tenants complaint is that from the very beginning the property was not maintained and she told the landlords agents repeatedly, but her complaints were not recorded on the inspection reports and not acted on. It was only when she contacted tenancy services for advice and was told she could issue a 14-day notice to remedy that things started to happen, albeit very slowly.
20. The tenant suspects the landlords lack of interest in maintaining the property was one reason the agency was moved to a different Barfoot and Thompson office

### **The landlords response**

21. The landlord disputes it did not attend to any electrical issues in a timely manner. It says the electrical problem was traced to a circuit breaker and suggests the tenants overloaded power points.
22. The bathroom floor was fixed as soon as it was raised.
23. Immediately it was told there might be a rat problem it arranged for Rentokil to attend.
24. It arranged for a contractor to clean mould on the ceilings and says the tenant had to take some steps to avoid or clean mould.

25. There was no mention in the entry report of a problem with the water and the pipes were replaced in February 2018 after the tenants 14-day notice.
26. The low-pressure water tank was replaced with a High-pressure tank in 2018 and it was not aware of any water pressure issues.
27. It disputes the window latches are a problem because its contractor attended to this.
28. It was not aware of a problem with the backdoor handle and the cat door was fixed in July 2019.
29. It was first aware of the missing gutters when the tenant issued their 14-day notice. It says the copper gutters may have been stolen.
30. It says the rangehood was replaced a month after it was aware of a problem.
31. The leaking kitchen ceiling was fixed in April 2017 and the bedroom ceiling in August 2018.
32. A heat pump was installed in August 2018.
33. The essence of the landlords response is that it attended to issues as and when they were raised and the tenant denied access to its contractor which delayed some of the work.
34. Having carefully considered all the evidence, even if not recorded above, I find the landlord has breached its responsibility to provide and maintain the premises in a reasonable state of repair, and that the breaches have had an effect on the tenants warranting compensation.
35. For instance, some guttering was missing at the start of the tenancy which was recorded in the entry report but not recorded in any inspection reports (of which there were 5 or 6) before the tenant issued the 14-day notice. There was a breach by not having the gutters at the start of the tenancy; a further breach by not acting on the entry report which noted the missing gutters; and further breaches during the subsequent inspections when not noticing the missing gutters. The tenant says this was raised with the agent but not recorded on the inspection reports. The landlord says that had the tenant raised this it would have been recorded.
36. The landlord says it was first aware when the tenant issued a 14-day notice in July 2018 and had missed noting the reference to the gutters in the entry report. However, even then the gutters were not installed till March 2020.
37. Similarly, the extractor fan was noted as hanging dangerously in the entry report, but this was not fixed till August 2018.
38. Also, the cat door was clearly not in is a reasonable condition at the start of the tenancy because it had a broken piece of wood screwed over it which was readily observable and fixable.

39. In making my finding I am doing so on the balance of probabilities. That is, that I am satisfied on having considered all the evidence that most likely some or all of the tenants version of events is more likely than the landlords version of events. It is possible to make a finding of certainty on some of the matters, for instance the missing gutters, but the findings on most of the issues is that the tenants version is most likely what happened, which is all I need to satisfy myself on.
40. Having found there were breaches by the landlord I must consider what compensation to award. The tenant seeks 1/3 of the rent and compensation for some damaged property. It is not as simple as determining the date at which a problem was remedied because of the multiple issues and different dates involved. Instead, I apply the discretion allowed to me and reach a total sum which I determine to be \$15,000.
41. In respect to the personal property which was damaged by rats or electrical surge I find the tenant should be compensated. I have seen photos of the chewed wiring and I am satisfied there was most likely an electrical problem, more than overloading a power point as the landlord suggested. I allow the claim for \$1,941.00 because I am satisfied this is the loss the tenant has suffered.

### **Exemplary damage**

42. The tenant seeks 4 exemplary damages of \$4,000 for breaches of s45.
43. The landlord argues that only 1 exemplary damages order can be made and refers to *Gardiner et al v Upland Bay Investments Ltd CIV-2014-085-13 NZHC 27 August 2014* in which Tompkins J had to determine the same issue. In that case the applicant was seeking separate awards in respect to each breach of building standards and safety requirements. Tompkins J found;  
*However, Schedule 1A [of the Act] is explicit, when setting the maximum amount awardable in relation to both s19 and s45 breaches, that the maximum applied to the breach of duties (plural), in the case of s19 and the landlord's failure to meet obligations (also plural) in respect of s45. The plural forms as adopted by the legislature in both instances indicate that the maximums are in respect to a global or total award for all breaches under the respect sections.*
44. I am satisfied I may consider only 1 exemplary damages award in total for all the breaches because they are all s45 breaches.
45. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.
46. Intention is not always easily proven. In the absence of an acknowledgement from the party that it intended to commit the act intention may be inferred from their actions.

47. When I consider some of the landlords actions I find that intention may be inferred. In particular, the breaches where the landlord provided the premises in an unreasonable state of repair i.e. the missing gutters, the dangerous extractor fan and the cat door, all of which were observable or known about before the tenancy started but not addressed.
48. Exemplary damages are not given lightly and rarely in full. I consider an award of \$1,000.00 is appropriate in this instance.
49. Because the tenants have wholly succeeded with the claim I must reimburse the filing fee.
50. Lastly, as already stated not everything raised at the hearing has been addressed in the order, but everything has been considered. My decision is based on what most likely happened, not on what did happen, because that is what the test is.



P McKinstry  
21 April 2021

## **Please read carefully:**

Visit [justice.govt.nz/tribunals/tenancy/rehearings-appeals](https://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](https://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](https://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](https://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.

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If you require further help or information regarding this matter, visit [tenancy.govt.nz/disputes/enforcing-decisions](https://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](https://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](https://tenancy.govt.nz/disputes/enforcing-decisions), pe fesootai mai le Tenancy Services i le numera 0800 836 262.