

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]
Tenants

RESPONDENT: Buy West Property Management Ltd
Landlord

TENANCY ADDRESS: 13A McBreen Avenue, Northcote, Auckland 0627

ORDER

1. The Tribunal orders suppression of the Tenants' names and identifying details.
2. must pay
immediately, calculated as shown in the table below:

Description	Landlord	Tenant
Compensation: damage to food and belongings		\$350.00
Compensation: reduced use and enjoyment of premises		\$800.00
Filing fee reimbursement		\$20.44
Total award		\$1,170.44
Total payable by Landlord to Tenant		\$1,170.44

Reasons:

1. Both parties attended the hearing.

The Applications

2. These proceedings began with this application (4313935) by the tenants for compensation arising from claimed breaches of the landlord's obligations.
3. The landlord then filed a cross application (4314269) seeking compensation for rent arrears and water rates.

4. A case conference was held by teleconference and by consent an order was made on 6 December 2021 that the bond be paid out to the parties as specified in that order. That order finalised the landlord's claims.
5. Today's hearing was to consider the tenants' compensation claims which principally arise from problems with vermin infestation at the premises. The compensation claims are as follows:
 - Fly sprays, cleaners, mouse trap - \$100
 - Food and baby bottles wasted - \$500
 - Shoes 2 pairs, sandals - \$300
 - Couch - \$1400
 - Cables, buckets, jugs - \$200
 - Broken TV when try to eliminate the rats -\$500
 - Compensation for causing us all the troubles, sleepless nights and depression - \$2000

Total - \$5000

Background

6. The tenancy began on 20 August 2020. The entry inspection photographs appear to show the premises in a clean and tidy condition at that point and there is no real suggestion of any pre-existing problems.
7. Around 16 December 2020 the tenant raised with the property manager concerns about a cockroach infestation and with the hot water at the premises being too hot.
8. A reminder was sent to the property manager on 23 December.
9. On 12 January 2021 are the tenant again asked about it was being done about those issues. The tenants specifically noted their concern about rubbish at the front of the property and requested that it be removed.
10. On 21 January 2021 an electrician visited the premises to replace and test the hot water thermostat. On 11 February 2021 the landlord arranged a treatment for cockroaches at the property.
11. Mr [] says that in June 2021 he had a phone conversation with the property manager raising concerns about a rat infestation. He says that he then followed up with a phone call on 27 August and text on 28 August noting, "*...it's been 3 months that I have informed you about the rats in the house and you do inform me that you are going to talk to landlord but nothing happened.*"
12. The property manager says that the first he was informed about the rat problem was during the phone call on 27 August and that after inquires were made about the ability to have pest control I come to the property during what was

then covid lockdown, an urgent call out was made. Treatment for the rat infestation was undertaken on 9 September 2021.

13. Much of the hearing was spent hearing the parties' evidence and views as to the most likely cause of the vermin infestations. The tenants' position is that the rubbish referred to in the January e-mail, which comprises wooden bins outside their bedroom window full of garden prunings and garden waste, was the primary cause. The tenants say that after their concerns about that material being there was brought to the attention of the property manager, he indicated the owner was not prepared to meet the cost of having those bins removed.
14. The landlord says the bins were there to provide firewood for the upstairs flat which has an open fire, which these premises don't. The tenants' evidence though is that none of the material in those bins moved throughout the tenancy.
15. The landlord says that the vermin infestations are more likely to have resulted from uncleanliness inside the premises. The property manager's evidence is that during inspections of the premises he noted and brought to the tenants' attention concerns about the cleanliness of surfaces in the kitchen services and food residues being left on those surfaces. The tenants deny that any such issues were raised with them. I note that the tenants' flatmate gave evidence that he, not Ms [] as the property manager says, was present during the property manager's inspection and no concerns were noted. The tenants' evidence is that the inspection reports produced in evidence were not given to them.
16. Photographs taken during those inspections show some untidiness in the kitchen (the tenants say the vermin issues made them reluctant to use the cupboards) but do not seem to show any extreme level of uncleanliness. No notices were issued to the tenants about the cleanliness of the premises.

Findings

Hot water cylinder

17. The evidence suggests that the issue was brought to the property manager's attention during December 2020 and that the landlord arranged for an electrician to visit the premises and replace the thermostat in January 2021.
18. The tenants say that the work undertaken by the electrician did not fix the problem but there is no corroborating evidence confirming whether there was a flaw in what was quite a new cylinder. While the landlord may have been able to have the electrician visit with more urgency and without a reminder being needed I do not find evidence of a breach by the landlord of obligations owed or of loss caused to the tenants, sufficient to support an order for compensation.

19. I note that the landlord arranged for a healthy homes assessment to be carried out in November 202 without any such issues being noted.

Vermin

20. Neither party has produced at expert evidence assessing likely causes for the problems with vermin.
21. Dealing with cockroaches and other vermin is, to a degree, something that all home occupiers have to deal with. It is part of occupying and managing a home.
22. For that reason I make no award of compensation for the cost of usual steps taken by the tenants to manage pests, such as traps, sprays and cleaning products, which might be considered a standard part of household expenditure.
23. I am however satisfied that it is more likely than not that difficulties in controlling the cockroach population were worsened by the presence of the bins of decaying material outside the tenants' bedroom.
24. The same is true of the problem with rats. The photographs of the bins and their contents suggest what seems very obviously a "rat friendly" environment.
25. I accept the property manager's evidence that he genuinely has no recollection of the tenants' concern about a rat infestation being raised with him before 27 August 2021, despite the tenants' clear recollection that a conversation took place about the issue in June.
26. What is however clear is that the landlord was well aware of the tenants' concerns about the presence of the bins and their contents and had been asked to remove them.
27. The landlord had assumed that the vermin problem was caused by the tenants' actions and did nothing about those concerns.
28. I find it more likely than not, that the tenants' concerns about the presence of those bins, the material in them and their contributions to vermin problems, to be valid.
29. The bins located outside the tenant's bedroom windows, we're of no benefit to them. They were intended for the use of the upstairs tenants who had their own separate entry. Under the agreement, the landlord was responsible for maintaining the exterior of the premises.
30. I find that in failing to remove those bins at the tenants' reasonable request, the landlord breached its obligation to them.
31. The rat infestation and (to a lesser extent the cockroaches which were likely to have been present in some numbers anyway) had a significant impact on the

tenants' use and enjoyment of the premises and they should be compensated for that.

Compensation

32. The damage to the tenants' television caused by the tenants while chasing rats inside the premises is too remote from the landlord's breach to support a specific compensation claim.
33. There is no evidence showing the claimed damage to the tenant's couch or of the resulting loss. Those claims are declined.
34. I accept that loss as caused to the tenants from damage to food another consumables, clothing and bedding. In the absence of specific evidence of that loss I should only make a limited general compensatory award based on an assessment of what is reasonable, on the evidence available.
35. The tenants are also entitled to compensation for the impact of the issues on their use and enjoyment of the premises. I assess compensation equivalent to two weeks rent as appropriate to compensate the tenants.
36. It is not appropriate to separately award compensation for mental distress, over and above the compensation awarded for reduced use and enjoyment of the premises.
37. As the tenants have been successful with the application I must reimburse the filing fee.

B King
10 January 2022

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.