

TENANCY TRIBUNAL - Manukau

APPLICANT: Investment Portfolio Management Limited Partnership As
Agent For Francis Pangfei Lai

Landlord

RESPONDENT: Joanna Cathrine Penny Filipaina

Tenant

TENANCY ADDRESS: Unit/Flat 407B, 8 Lakewood Court, Manukau, Auckland
2104

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Joanna Cathrine Penny Filipaina must pay Investment Portfolio Management Limited Partnership as Agent for Francis Pangfei Lai \$7,661.83 immediately, calculated as shown in table below.

Description	Landlord	Tenant
Cleaning	\$69.00	
Repairs: Replacement toilet seat, shower hose and labour for installation	\$163.49	
Replace furnishings: Blind and installation	\$705.98	
Replace furnishings: Swivel chair, bedside table, console and round table	\$1,792.74	
Replace furnishings: TV	\$363.06	
Replace furnishings: Queen Mattress and Protector	\$466.12	
Lock/key replacement: Door locking apartment and alcove	\$586.95	
Repairs: Garage door- during tenancy	\$499.10	
Replace furnishings: Wardrobe shelving	\$161.90	
Replace furnishings: Bedhead	\$200.00	

Replace furnishings: washing machine and installation	\$733.98
Replace furnishings: Drier	\$780.52
Replace furnishings: Fridge	\$358.05
Replace furnishings: Stacker unit for washing machine and drier	\$128.00
Repairs: Plastering and painting	\$632.50
Filing fee reimbursement	\$20.44
Total award	\$7,661.83
Total payable by Tenant to Landlord	\$7,661.83

Reasons:

1. Ms Redman and Mr Desmond attended for the landlord. The tenant did not attend.
2. The landlord has applied for compensation for the following items that were missing or damaged at the end of the tenancy.
 - Repairs and Maintenance \$1276.50-walls, painting and plastering.
 - Cleaning and replacement toilet seat \$301.50
 - Curtain and blind replacement \$747.00
 - Replacement furniture as detailed in Soren Liv invoice \$2561.05
 - TV \$518.65
 - Queen mattress and mattress protector \$708.17
 - Repairs to garage door \$499.10
 - Repairs to the door locking system \$586.95
 - Replacement wardrobe shelving \$161.90
 - Replacement bedhead \$200.00
 - Replacement Tumble drier \$859.13
 - Replacement bar fridge \$377.39
 - Repairs and maintenance – being the shelving in the laundry \$128.75
 - Replacement washing machine \$841.75 plus installation.
 - Filing fee
 - Bond.

3. The tenancy ended on the 1 November 2021. The landlord did an exit inspection on the same day.

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

4. 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.
5. The tenant did some cleaning at the property but there was further cleaning needed to bring the property up to a reasonable standard. The tenant also left some rubbish at the property which needed to be removed. The landlord asked for \$120 plus GST for cleaning, but I have awarded half of this, as I do not consider that the time taken to clean the property or to remove the rubbish to be more than one and half hours.
6. The following chattels were missing at the end of the tenancy: The fridge, washing machine, drier, swivel chair, bedside table, console, round table, mattress, bedhead, TV, mattress protector, blind, wardrobe shelve, washer drier stacker and shower head.
7. The landlord had to replace the items. The tenant admitted in a text message to taking the furniture items and selling them on Facebook. The landlord has had to replace the items. The landlord provided me with invoices for the items and I have applied depreciation to those items.
8. I have also awarded installation and labour costs for the reinstatement of those items.
9. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

10. 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.
11. 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.

12. 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.
13. 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.
14. 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.
15. The following damage was caused during the tenancy:
 - Broken toilet seat
 - Holes in the walls from where something was affixed to the walls
 - Tagging/writing on the walls.
 - Scrap marks on the walls
 - Damage to the locking system to the door to the apartment and the alcove of the apartment.
 - Wardrobe Shelving was removed.
16. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
17. The amounts ordered are proved.
18. I have not awarded the landlord the full amount of the invoice for wall repairs as I consider that some of the wall repairs and painting was fair wear and tear.
19. I have taken into account betterment and depreciation. The property was new at the beginning of the tenancy. The landlord should be returned to the position they would have been in had the tenant not breached their obligations and should not be better or worse off. In calculating depreciation, I have taken into account the age and condition of the items at the start of the tenancy and their likely useful lifespan and have applied the Inland Revenue General Depreciation Rates – IR265 as at July 2021 for residential tenancy chattels.

20. Because Investment Portfolio Management Limited Partnership as Agent for Francis Pangfei Lai has substantially succeeded with the claim I have reimbursed the filing fee.



T Prowse
23 May 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 fesootai mai le Tenancy Services i le numera 0800 836 262.