

**TENANCY TRIBUNAL** - Hamilton | Kirikiriroa

APPLICANT: Sheila Leigh Ann Cloete  
Tenant

RESPONDENT: Phil Clarke  
Landlord

TENANCY ADDRESS: 91B Lake Crescent, Hamilton Lake, Hamilton 3204

**ORDER**

1. Sheila Leigh Ann Cloete to pay Phil Clarke \$695.00 from the bond, calculated as shown in table below.
2. Phil Clarke is to pay \$565.00 to Sheila Leigh Ann Cloete from the bond **immediately**.
3. The bond held by the landlord of \$1,260.00 is apportioned as follows:

Phil Clarke:	\$695.00
Sheila Leigh Ann Cloete:	\$565.00

Description	Landlord	Tenant
Rent arrears – two weeks	\$840.00	
Compensation: Mould/moisture in bedroom		\$80.00
Compensation: Mould/leak in hotwater cupboard		\$175.00
Filing fee reimbursement		\$20.44
Cleaning	\$110.00	
Carpet Cleaning	\$20.44	
<b>Total award</b>	<b>\$970.44</b>	<b>\$275.44</b>
Net award	\$695.00	
Bond	\$695.00	\$565.00

4. The remainder of the claims under both applications are dismissed.

## Reasons:

1. Both parties attended the hearing.
2. The tenant claimed refund of the bond, a determination of whether an agreement had been reached with the landlord that she could give two weeks' notice at the end of the tenancy, and compensation for moisture and mould in the premises.
3. The landlord sought compensation for end of tenancy cleaning and for inconvenience and time spent reinstating the Council rubbish and recycling services.
4. Both parties sought reimbursement of the filing fee.
5. The tenancy was a periodic tenancy that commenced on 30 April 2022.

### The tenant's claim

*Was there an agreement that the tenant could give two weeks' notice to end the tenancy? If not, does the tenant owe two weeks rent?*

6. On Saturday 15 July 2023 the tenant gave the landlord two weeks' notice terminating the tenancy. The landlord replied that four weeks' notice was standard "*but happy to try and fill the flat within that period if you are happy with that.*" The tenant interpreted the landlord's reply to mean that he agreed to her giving two weeks' notice to end the tenancy.
7. The landlord advertised the premises on the following Monday but did not find suitable replacement tenants until 26 July. The new tenancy did not start until 1 September as the new tenants had to give 4 weeks' notice to end their current tenancy.
8. The tenant had paid rent for two weeks under the notice she had given. The landlord sought rent for a further two weeks, on the basis he believed the tenant should have given four weeks' notice to end the tenancy. The tenant did not agree she was liable for the extra two weeks' rent.
9. The Residential Tenancies Act 1986 (RTA) requires tenants to give 4 weeks' notice in writing to the landlord to end a periodic tenancy (section 51(2B)). Parties to a tenancy may make agreements or arrangements that are inconsistent with the RTA where the landlord voluntarily waives their rights or powers conferred by the RTA (s 11(1) and (2)). Therefore an agreement could have been reached that the tenant only had to give two weeks' notice and not four weeks.
10. All discussion about the alleged agreement occurred by text message between the landlord and the tenant. I find wording of the landlord's response, as set out in paragraph 6 above, amounted to an agreement to accept two week's notice

conditional on the landlord finding replacement tenants who could move in before or at the end of the two weeks. I find this to be the reasonable interpretation of the landlord's reference to trying to "fill" the premises within the two weeks. As the landlord did not find tenants who could move in and "fill" the tenancy within that time frame, I find the tenant is liable to pay two extra weeks' rent as she was liable to give four weeks' notice to end the tenancy under the RTA.

*Did the landlord fail to meet his obligation to maintain the premises and comply with all legislative requirements? If so, is the tenant entitled to compensation?*

11. A landlord is required to provide and maintain the premises in a reasonable state of repair having regard to the age and character of the premises and the period the premises is likely to remain residential tenancy premises (s 45(1)(b), RTA). A landlord is also obliged to comply with all building, health and safety legislation (s 45(1)(c)). This includes the Housing Improvement Regulations 1947 requirement that every house is to be free from damp (regulation 15).
12. This requires a landlord to respond within a reasonable time to requests for repairs that arise from maintenance issues affecting the tenant's use of the property. If a landlord does not respond within a reasonable time, compensation is payable for any loss or inconvenience caused.
13. The tenant had mould and moisture issues in her bedroom and in the cupboard above the hot water cylinder. The tenant's application included a claim relating to moisture in the bathroom, but that was withdrawn at the hearing as the tenant was satisfied that the landlord had carried out repairs/maintenance within reasonable time.

*The bedroom:*

14. The tenant messaged the landlord on Wednesday 14 June 2023 that there was mould on the wall behind her bed and that the wall was wet with a "few drips on it". The wall is an external wall. The tenant sent the landlord a video and photos showing what the wall looked like. The landlord was away but said he would "catch up" on the weekend. At 3.30pm on the Sunday he messaged asking if could come and have a look, but the tenant was in Auckland. The landlord responded that he would "Catch up soon".
15. The tenant said the landlord arrived at the premises sometime around 5-10 July to look at the mould. He had not given any notice he was coming and she had cleaned the mould from the wall. The tenant did not agree to him entering the premises without having given her notice. She says she was "caught off guard" when he arrived and told him the mouldy and damp wall was "fine". The landlord did not look at the mould on the wall before the end of June.

16. The landlord maintains that the effort he made to look at the mould was sufficient, but that the tenant was not available and then did not let him in. He said he has owned the property for around 11 years without any mould or moisture on the wall prior to this. He queried whether the tenant had opened the windows and ventilated the room sufficiently.
17. I am satisfied by the tenant's evidence that she did ventilate the room sufficiently. The mould shown in her photographs is significant and is more than would be expected if the room, being a bedroom, was not ventilated by the tenant as it should be. No wall in a bedroom should have moisture, or drips of water on it.
18. The landlord failed to carry out any investigation of this issue before the tenancy ended. The landlord should have given 24 hours' notice, as required by section 48(1)(d), RTA to enter and investigate what was causing the mould and moisture. I find it would have been reasonable for the landlord or some person on his behalf to have investigated the cause of the issue at least 1 week after the tenant brought the issue to his attention. The landlord failed to meet his obligations under section 45 (1)(b)
19. However I am satisfied that the tenant in telling the landlord that she was cleaning the mould as it appeared and that it was "fine", gave the landlord the message that there little or nothing to be concerned about. I find the tenant's actions have had a significant impact on the landlord's response after 5-10 July when he went to the premises.
20. In awarding compensation, I have considered the period from a week after the tenant advised of the issue until around 5 July, erring on the earlier date the landlord may have gone to the premises. I find an award of \$80.00 is reasonable compensation for this period, for the inconvenience to the tenant cleaning off the mould and live in a bedroom that is damp.

*The cupboard above the Hot Water Cylinder:*

21. The tenant messaged the landlord on 24 November 2022 advising that she had found a leak in the cupboard above the hot water cylinder. The landlord responded that he was away but would come and look the following week. The tenant said she left a towel in the cupboard to check if the leak continued and that it was wet a week after she found the leak. The landlord made no contact with the tenant to come and look at the leak. The tenant did not contact the landlord back before the end of the tenancy but understood the problem had not been fixed and did not use the cupboard.
22. The landlord advised at the hearing that the leak was caused by the failure of a flashing on the roof around the overflow pipe for the hot water cylinder. He says he fixed the flashing within days of the tenant's message. The landlord had not

given notice to the tenant that he was going onto the roof to investigate/repair the problem and did not advise the tenant the problem had been fixed.

23. The photographs of the inside of the cupboard show the ceiling of the cupboard is exceptionally mouldy, to the extent that a hole has formed as a result of the gib being so mouldy. One wall of the cupboard is also very mouldy. The landlord advised that he has not yet replaced the gib in the ceiling or on the wall.
24. I accept the landlord's evidence that he repaired the leak. However the state of the cupboard is such that the cupboard should not be used by any tenant due to the amount of mould. An award of \$175.00 is made for loss of amenity. This consists of \$5.00/week from 10 December 2022, which is when the leak and lining of the cupboard should reasonably have been repaired, until the end of the tenancy (12 August 2023).

*The landlord's claim:*

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

25. 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) RTA.
26. The tenant did not leave the premises reasonably clean and tidy. The evidence (photographs) establishes that the oven was not left in a reasonably clean condition, and that the skirting boards needed wiping.
27. The photograph of the shower showed it was left in a was reasonably clean and tidy condition. As explained at the hearing the standard required under the RTA is not an absolute standard of cleanliness and does not mean that the premises will necessarily be ready for occupation by a new tenant straight away. It is to be expected that a landlord will spend some time on cleaning and maintenance work between tenancies.
28. The exterior back door needed cleaning however this is a landlord's responsibility unless it is proven that the tenant did some something which caused the need for cleaning, which has not been proven to be the case here.
29. The landlord has proven a loss related to cleaning. I am satisfied that the sum awarded is reasonable for the cleaning that was needed, as established by the landlord's evidence.

*Is the tenant liable to compensate the landlord for inconvenience and time spent in getting the rubbish and recycling collection by the Council reinstated?*

30. The tenant was given two notices by the Council that rubbish was wrongly put into recycling bins. The Council advised that if a third notice was given the

recycling and rubbish collection to the property would be suspended for 3 months. At the end of the tenancy a third notice was given as the tenant's flatmate put rubbish into a recycling bin and the Council suspended the rubbish/recycling service.

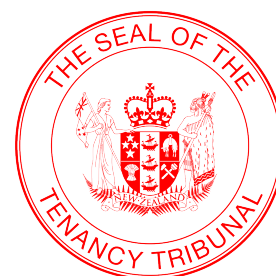
31. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.
32. The landlord claims compensation for the time spent and the inconvenience caused to arrange for the service to be reinstated for the new tenancy.
33. The Tribunal can award compensation where a party has breached the tenancy agreement or has breached provisions contained in the RTA and where the other party has suffered a loss because of that breach. In this instance the tenant's actions have not resulted in a breach of either the provisions of the RTA or any clause in the tenancy agreement.
34. While I appreciate the landlord's time has been taken to arrange reinstatement, no compensatory award can be made and this part of the claim is dismissed.

#### *The Bond*

35. The bond, which is the tenant's money, is apportioned as shown in the order above.
36. The landlord confirmed at the hearing that he had not forwarded the bond to the Bond Centre during the tenancy. The landlord is aware he has breached his obligation as a landlord to forward the bond to the Bond Centre. The tenant's application did not include a claim for this breach.

#### *Filing fee:*

37. As both parties have been substantially succeeded with their claim I have reimbursed the filing fee.



W Lang  
28 November 2023

## **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 fesootei mai le Tenancy Services i le numera 0800 836 262.