

## ***Order of the Tenancy Tribunal***

*Residential Tenancies Act 1986*

*Office of the Tenancy Tribunal*

### **Tenancy Tribunal at Palmerston North**

#### **Tenancy Address**

41a Union Street, Foxton 4814

#### **Applicant**

Full Name

Tekoa Trust

Landlord

#### **Respondents**

Full Name

Amanda Stewart

Tenant

#### **Order of the Tribunal**

The Tribunal hereby orders:

1. Amanda Stewart's application is dismissed.

(Section 78(1)(i) Residential Tenancies Act 1986)

2. Amanda Stewart owes Tekoa Trust \$0.00 calculated as follows:

Rent Arrears to 25 February 2016	\$353.57
plus Costs to be paid to Landlord:	
Door repairs	\$50.00
Cleaning	\$140.00
minus Bond	\$543.57
<b>Amount payable by Tenant to Landlord</b>	<b>\$0.00</b>

(Sections 77(2)(k) and 78(1)(d) Residential Tenancies Act 1986)

3. The Bond Centre to pay the bond of \$1,100.00 (5624932-004) apportioned as follows:

Tekoa Trust	\$543.57
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Amanda Stewart

\$556.43

(Sections 22 and 127(4)(a) Residential Tenancies Act 1986)

**Reasons:**

1. Amanda Stewart rented a property from David and Cicille Russ who are trustees of the Tekoa Trust.
2. The tenancy has ended. Both parties seek orders.
3. Ms Stewart seeks to have her bond refunded to her, compensation of \$1,000 as she claims the property was not adequately maintained and the filing fee.
4. Ms Stewart did not attend the hearing so her application is dismissed.
5. The landlord seeks rent arrears, cleaning costs and damages.
6. The issues to be determined are:
  - a. What, if any, rent is owed?
  - b. Was the property left reasonably clean?
  - c. What, if any, damage is the tenant liable for?
  - d. Should any lost rental be awarded?

**a. What, if any, rent is owed?**

7. The tenancy commenced 4 August 2015. The rent was \$275 a week.
8. The tenancy was for a fixed term ending 23 February 2016. The tenant gave the requisite notice that the tenancy would not continue beyond the end of the fixed term. The tenancy, therefore, ended 23 February 2016.
9. A tenant who remains in occupation of the premises after the tenancy has terminated shall continue to be liable to pay rent until such time as the tenant ceases to occupy the premises (s.60(1) of the Residential Tenancies Act 1986 ("RTA")).
10. The tenant moved out 21 February 2016.
11. I find that there was agreement that the tenancy would continue until 25 February 2016 but not beyond this date for the following reasons:
  - Text messages show that the tenant asked for the inspection to occur after she arranged for the builder to fit a door.
  - The tenant text on 25 February to state that the keys were in "Union st".
  - The tenant states in her application dated 26 February 2016 that the tenancy has ended and she seeks to have her bond refunded.
  - The tenant stated in a text that she did not agree to continue paying rent.
  - Agreeing to have carpets cleaned does not amount to an agreement to continue to pay rent.
12. The amount of rent owing to 25 February 2016 is \$353.57.

**b. Was the property left reasonably clean?**

13. The Tribunal finds that the curtains smelt. Compensation of \$140 being 7 hours labour at the rate of \$20 an hour is awarded for this.

**c. What, if any, damage is the tenant liable for?**

14. Landlords must first establish that damage has occurred during the tenancy.
15. The onus then shifts to the tenants who must prove that the damage was not due to a deliberate or careless act done by them or their guests.
16. If the tenants cannot prove that the damage was not caused carelessly or deliberately by them or their guests that is not the end of the matter. The Court of Appeal decision *Holler & Rouse v Osaki* [2016] NZCA 130 provides that tenants are immune from a claim made by a landlord where the rental property suffers loss or damage caused intentionally or carelessly by the tenant or the tenant's guest to the extent provided in ss 268 and 269 of the Property Law Act 2007 ("PLA").
17. This means that tenants will be immune where:
- a. the damage was caused by fire, flood, explosion, lightening, storm, earthquake or volcanic activity the tenant will not be liable, whether or not the landlord is insured (s 269(1)(a) PLA); or
  - b. the damage was caused by the occurrence of any other peril which the landlord is insured for, or has agreed with the tenant to be insured for (s 268(1)(b) PLA).
18. This immunity applies unless the landlord is able to establish on the evidence that the damage was:
- a. intentional (s 269(3)(a) PLA); or
  - b. constitutes an imprisonable offence (s 269(3)(b) PLA); or
  - c. any insurance money that would have been recoverable is not recoverable because of the tenant or their guests act or omission (s 269(3)(c) PLA).
19. The agreement provided that no dogs were allowed on the property. The tenant breached that agreement. The text messages however refer to "cat pee". Regardless I am satisfied that the carpet has been damaged during the tenancy by animal urine and is due to more than fair wear and tear.
20. The landlord is insured for such damage.
21. While I accept that the tenant has intentionally breached the agreement by allowing a dogs onto the property the landlord has not established that the tenant intended to damage the carpet. Nor has the landlord proven the tenants actions amount to an imprisonable offence or that insurance is irrecoverable because of the tenant's acts or omissions.
22. A door was damaged during the tenancy. I accept that as there were three holes nearer the top of the door about the size of a fist. The tenant told the landlord her partner had caused the damage. On the nature and extent of the damage I find that the landlord has proven that the damage was more likely than not intentional.
23. Compensation of \$50, the amount sought, is awarded in compensation.

**d. Should any lost rental be awarded?**

24. The landlord seeks rent to 11 March 2016 and claims that a prospective tenant could not rent the property because of the damage. While I accept that the landlord lost a prospective tenant Ms Stewart is immune from liability for the damage to the carpet so cannot be liable for any loss associated with delays in having the damage remedied.
25. No costs are awarded.