

TENANCY TRIBUNAL AT Rotorua

APPLICANT: Corrina Andria Huirama Osborne
Tenant

RESPONDENT: Helen Rodgers, Wayne Burns
Landlord

TENANCY ADDRESS: Room 16, 963 Main Road, Murupara, RD 1, Murupara 3079,
Murupara Motor Camp

ORDER

1. Helen Rodgers and Wayne Burns must pay Corrina Andria Huirama Osborne \$195.44, calculated as shown in table below.

Description	Landlord	Tenant
Bond refund		\$175.00
Filing fee reimbursement		\$20.44
Total award		\$195.44
Total payable by Landlord to Tenant		\$195.44

Reasons:

1. Both parties attended the hearing.
2. Ms Osborne seeks refund of her bond and filing fee.
3. Ms Rodgers and Mr Burns dispute the claim.
4. Ms Osborne occupied a cabin in Murupara Motor Camp from 16 July 2018 to 19 December 2018. The motor camp was run by Ms Rodgers and Mr Burns as their business at that time.
5. As I indicated to the parties at the hearing, there is a preliminary issue as to whether the Tenancy Tribunal has jurisdiction to hear and determine the claim.

The Tenancy Tribunal must determine if the claim falls within its jurisdiction or if any exclusion under the Residential Tenancies Act 1986 (“the Act”) applies.

6. After hearing some preliminary evidence, I indicated to the parties that I am satisfied I have jurisdiction to hear the claim for the following reasons:
 - the cabin was intended for occupation by Ms Osborne as her place of residence and was therefore “residential premises”;
 - the agreement between the parties gave Ms Osborne the right to occupy that residential premises for \$125.00 per week with a bond paid of \$175.00 which created a “tenancy”;
 - The Act applies unless specifically excluded. The Act does not apply where a tenant occupies a cabin in a camping ground intended for human habitation for no longer than 50 days in any continuous term of occupancy (see section 5(1)(ta) of the Act). In this case, Ms Osborne occupied the cabin for 157 days (22 weeks, 3 days) so I find that the exemption does not apply.
7. In these circumstances, I was prepared to hear the claim on the bond from Ms Rodgers and Mr Burns (as landlords) even though they have not filed a cross application as they required to do under section 22B(2) of the Act. Section 85 provides that the Tribunal has the power to disregard legal technicalities where appropriate. Ms Rodgers and Mr Burns say they did not return the bond as Ms Osborne caused damage to her room; although they concede that \$50.00 “key bond” should have been refunded as the key was returned.

Should the bond be refunded to the tenant?

8. The bond is the tenant’s money and must be returned to her unless the landlord can prove their claim, on the balance of probabilities.
9. 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), 40(4) and 41 RTA.
10. In *Holler and Rouse v Osaki* [2016] NZCA 130, the Court of Appeal ruled that provisions in the Property Law Act 2007 which relate to commercial tenancies also apply to residential tenancies. As a consequence, tenants are not required to pay for the cost of repairing damage in a number of circumstances, including where the damage is caused by fire or is of a kind covered by the landlord’s insurance. There are exceptions to this general rule. For example, if the damage is intentional, the tenant is required to pay the cost of repairs.
11. The High Court has held that the principle in *Osaki* applies to any insurance excess, and where the amount claimed is less than the excess and the landlord does not make an insurance claim. See *Linklater v Dickison and Others* [2017] NZHC 2813. The tenant is also protected where the amount of insurance cover

is limited to a fixed sum. It is the fact of insurance, not the extent of it, which provides the protection.

12. 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 virtual certainty. See *Tekoa Trust v Stewart* [2016] NZDC 25578.
13. The landlords say that Ms Osbourne caused some water stain damage to the carpet in her room as she did not notify them of the leak from a radiator. The landlords did not offer any evidence to support their claim.
14. Ms Osbourne acknowledges that there was a leak from the radiator but denies she caused it, and that the leak caused damage to the carpet. Ms Osborne also says that she did let the landlord know about the flooding and this happened weeks before the end of the tenancy. Ms Osborne says that her room was left in an immaculate condition; particularly considering that she was only given 24-hours' notice to vacate and a trespass notice was issued against her.
15. As I explained at the hearing, it is not lawful to end a residential tenancy on 24-hours' notice; nor by issuing a trespass notice. However, I am satisfied that the landlords sought advice from police at that time and were not aware of their obligations under the Act as they did not consider this a residential tenancy. The landlords need to be aware that their former business practice was inconsistent with the parties' rights and obligations under the Act and if they continue in this line of work, they must review their practices in respect of a residential tenancy and the Act as opposed to a short-term holiday rental.
16. I find no evidence that the leak was caused by any deliberate or intentional actions of Ms Osborne; nor any evidence of damage to carpet caused by the water leak in any event.
17. I therefore find that Ms Osborne is entitled to a full refund of her bond.
18. As Ms Osborne has succeeded with the claim, Ms Rodgers and Mr Burns must reimburse the filing fee.



A Macpherson
09 January 2020

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.