

**TENANCY TRIBUNAL AT Manukau**

APPLICANT: Barfoot & Thompson Limited  
Landlord

RESPONDENT: Angela Marie Lewis  
Tenant

TENANCY ADDRESS: 34 Glencalder Place, Wattle Downs, Auckland 2103

**ORDER**

1. Angela Marie Lewis must pay Barfoot & Thompson Limited \$14,825.29 by 5pm on Monday 24 August 2020, calculated as shown in the table below.

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Repairs	\$15,909.27	
Water to end of tenancy	\$160.85	
Filing fee reimbursement	\$20.44	
<b>Total award</b>	<b>\$16,090.56</b>	
Bond	\$1,265.27	
<b>Total payable by Tenant to Landlord</b>	<b>\$14,825.29</b>	

**Reasons:**

1. The parties entered into a residential tenancy agreement for the property from 7 August 2015. The weekly rent was \$600.00. The tenant vacated on 27 November 2019.
2. On 3 February 2020, the landlord applied to the Tribunal for outgoings, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy. The claim totalled \$42,407.82.

3. The tenant applied to the Tribunal on 25 March 2020 for compensation for stress and anxiety. It became clear during discussion that the tenant's application was really by way of rebuttal of the landlord's claim and did not disclose a separate cause of action.
4. Both parties attended the hearing on 7 August 2020.

*How much is owed for water?*

5. The landlord provided water invoices which prove the amount owing at the end of the tenancy. The tenant, Ms Lewis, accepted that water charges of \$160.85 are payable for September to November 2019.

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

6. 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.
7. The landlord claimed \$495.00 to rekey the locks and for a garage remote. Ms O'Connor, for the landlord, was unsure about the reasons why a locksmith was required as she was not the property manager at the end of the tenancy. Ms Lewis explained that she changed the front door lock because the property was burgled. She gave all the old keys back to the property manager. She said the garage remote had never worked and she gave this to the property manager to fix. Email correspondence in June 2017 supports her evidence that the garage remote was given to the property manager for repair.
8. The invoice provided to support the amount claimed for locks shows that the front door had to be rekeyed and a lock was supplied for the ranch slider door. Ms Lewis said it had not been possible to lock the ranch slider since the start of the tenancy. She said the property manager did not fix and return the garage remote.
9. I award the cost of replacing the front door locks and disallow the other locksmith costs. Ms Lewis should have required the landlord to replace the locks after the burglary and should not have done so herself. The landlord was justified in replacing the front door locks to ensure the property was reasonably secure for the next tenants. The invoice is not sufficiently itemised, so I allow \$100.00 for the front door.

*Law relating to responsibility for damage*

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 (section 41 of the Residential Tenancies Act 1986 (the Act)).

11. Where the damage is careless, and occurs after 27 August 2019, the tenant's liability is limited. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.
12. 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 (section 49B(3)(a) of the Act).
13. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (section 49B(3)(b)). Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it was not insured against the damage.
14. 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 (section 49B(1)).
15. 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 (*Guo v Korck* [2019] NZHC 1541).

*Is the tenant responsible for the damage to the premises?*

16. The property was damaged during the tenancy. There was damage to the walls in the lounge, entry, hallway, dining room, toilet, laundry, garage and bedrooms. Ms Lewis said the walls were in good condition apart from wear and tear, but in my view most of the damage is more than fair wear and tear.
17. The landlord submitted that the damage was caused intentionally, but this was a long tenancy. Ms Lewis had primary-school age children living with her and they seem to have been responsible for quite a lot of the damage. I am satisfied that the damage to the walls was caused carelessly and that Ms Lewis is responsible pursuant to section 41.
18. There was damage to doors and door jambs where the tenant had installed door-bolts. Section 42 of the Act provides that tenants must not make any alteration to premises without the prior written consent of the landlord. The tenant damaged the property when making alterations without permission. I find that this damage was caused intentionally.
19. There was also damage to several window-frames, where holes had been drilled to install safety chains. I understood Ms Lewis' concern to be that the children could climb through the windows. The tenant should have obtained written permission to make these alterations from the landlord. I find that this damage was intentional.

20. The landlord said that wiring had been pulled out of the power point in the lounge. The landlord also claimed the cost of checking the wiring to ensure it was safe. Ms Lewis explained that she had an electrician install a TV on the wall and wired a playstation into a shelf in the kitchen through into the lounge.
21. The landlord's photographs showed wiring missing behind a power point and a hole in the corner of the ceiling in the kitchen above a cabinet. The tenant should have obtained written permission from the landlord to make these alterations. Given the changes to the wiring, and the seemingly unfinished nature of the work, I consider it was reasonable for the landlord to check the wiring for safety. I award these costs.
22. The landlord claimed the cost of re-fixing a smoke alarm. This was shown hanging from the ceiling in a plastic bag. Ms Lewis said the alarm was oversensitive and would go off when the kids had a shower and left the door open. While I appreciate the difficulty, the tenant deliberately damaged the smoke alarm and may also have rendered inoperative a "means of escape from fire", with potentially catastrophic consequences (see section 40(2)(ab)). I find that this damage was caused intentionally.
23. A towel rail was missing in the bathroom. Ms Lewis said this was pulled loose by her children, so she took it down. She said it was left in the property in working condition, but it would at least have required reinstallation. Ms Lewis is responsible for damage caused by people at the property with her permission if it would have been a breach if committed by her (section 41). I am satisfied the damage was caused carelessly.
24. The shower-door in the ensuite was missing at the end of the tenancy. Ms Lewis said her youngest child (aged 4) hit and broke the ensuite shower-door with a doll a few days before the end of the tenancy. The child hurt herself in doing so and went to A&E. While sympathetic to how this damage happened and the resultant injury, I find that the tenant is responsible for this carelessly caused damage through the operation of section 41.
25. The skirting in the hallway near the bathroom was water-damaged and the evidence indicates this was caused by a flood from the bathroom, damaging the gib. There was also water-damage to the bottom of a cabinet in the bathroom. Again, this was likely caused by water flooding out of the bath. This kind of damage would not occur with proper care and there was no evidence the property suffered from plumbing leaks (it was built in 2003 and Ms O'Connor said plumbers had checked). This damage was not covered by the house insurance, so the tenant's liability is limited to 4 week's rent (\$2,400.00). I have concerns about the quantum of the claim for vanity replacement but, in principle, the tenant is liable for the carelessly caused damage to the skirting and cabinet.
26. The landlord claimed for damage to the cat flap, which Ms O'Connor said had been glued or melted. Ms Lewis said the cat door was broken when she moved

in, and she did nothing to it. So far as I can tell from the photographs, the cat flap was undamaged at the start of the tenancy but looks to have been damaged in the way Ms O'Connor explained. Based on the nature of the damage, I find that the cat flap was damaged deliberately.

27. The metal frame of the garage door was bent at the end of the tenancy. The entry condition photographs show it was flush with the garage door at the start of the tenancy. I find that the garage door was damaged carelessly by the tenant or her visitors.
28. The landlord claimed the cost of reinstating metal framing in the roof cavity. The available photographs do not show any obvious damage. There was also a claim for rubbish removal from the roof cavity, but without a supporting photograph. I consider that these claims have not been proved.
29. The landlord claimed the cost of reinstating the ceiling insulation which had been moved. Ms Lewis said she moved some of the insulation aside so she could store boxes of clothes and Christmas decorations in the roof space. She also suggested that insulation assessors may have moved the insulation, but I would expect professional tradespeople to reinstall anything moved for any purpose. I find that this was intentionally caused damage for which the tenant is responsible.
30. There was some damage to the exterior of the property, including damage to the guttering, a gate off its hinges, paint on the patio, and two soffit vents either side of the garage. The inspection reports dated 1 May 2019 and 31 July 2019 reported the property manager's suspicions about cannabis use and Ms O'Connor said fans had been installed in the roof space and vented outside.
31. The ingoing property inspection report does not show the exterior condition of the property at the start of the tenancy, so in my view it is unclear whether the patio and guttering were damaged during the tenancy. There were no photographs showing the ventilation which was said to have been installed in the roof cavity, and it is unclear whether the soffit vents were part of the original construction (the consented plans were not presented).
32. There was a lack of cogent evidence to support the landlord's contention that there was a cannabis grow-room in the garage, beyond subjective comments about a strange smell and the tenant's behaviour in the May and July inspection reports. Admittedly the garage was full of the tenant's belongings, including a large bench and TV screen, which could have hidden something from view. However, there is insufficient evidence to make a finding of illegal activity which was denied strongly by Ms Lewis.
33. The tenant accepted that the gate was taken off its hinges to allow for furniture to be removed when she was vacating. This was not put back and I find that the tenant is responsible for the reinstallation cost.

34. The landlord claimed for the cost of replacement blinds throughout the property, and for replacement carpet in the lounge, family room, hallway, and 4 bedrooms. Ms Lewis said the carpets were vacuumed before vacating and were in excellent condition, apart from a burn in the lounge caused by her children covering a heater, which fell over and burned the carpet. The carpets did not need replacing but had suffered from wear over time. Water paint was spilt on the lounge carpet by the children during packing to leave, which she said would have come out easily.
35. Mrs Lewis, the tenant's mother, gave evidence and said the property was left in good condition. When presented with the landlord's photographs of the carpet (taken on 28 November 2019) she expressed concern about discolouration in the photographs being caused by the lighting in the rooms. The condition of the carpet in the photographs did not accord with her recollection and they just needed an end of tenancy clean.
36. The ingoing inspection report shows the carpet in good condition in all rooms. At the end of the tenancy, the carpets in the bedrooms had staining and needed vacuuming but I am not satisfied they required replacement. Although insurance loss adjusters were involved, apparently there was no report from the assessor explaining why the carpet in these rooms was considered beyond repair.
37. The carpet in the lounge was very badly marked and burned as accepted by Ms Lewis. This is shown in the loss adjuster's photographs as well as those provided by the landlord. I accept that this carpet needed replacement. The family room carpet also had multiple stains. I do not accept that the damage was caused deliberately, in the context of a tenancy for over 4 years with children. In principle, however, the tenant is responsible for the cost of replacement of carelessly caused damage to the carpet in the lounge and family room. The damage is beyond fair wear and tear on any reasonable view.
38. Ms Lewis said her children took the weights off the bottoms of the blinds, so she took them down. The landlord's photographs showed the blinds in the lounge and family room in position but damaged. The damage to the blinds must have occurred on more than 1 occasion, and Ms Lewis had a responsibility to prevent her children from repeatedly causing damage through their deliberate actions. I find that she allowed a situation to continue, knowing that further damage to the blinds would result (*Guo v Korck*, above). I find that the blinds were damaged intentionally.

*What is the reasonable cost of repair?*

39. The property was insured with a standard excess of \$550.00. The landlord also had optional cover for intentional acts by the tenant with an additional excess of \$500.00. Insurers applied the excess to each area of damage, so for example the lounge attracted 3 excesses of \$1,050.00 for each wall damaged.

40. My approach to calculating quantum has been:
- (a) Where damage was caused carelessly, the tenant's liability is limited to the standard excess of \$550.00 as applied by insurers (being less than 4 weeks rent) (section 49B(3)(a));
  - (b) Where damage was caused intentionally, the tenant is liable for the reasonable cost of repair, notwithstanding the application of a \$1,050.00 excess by the insurer (section 49B(1)); and
  - (c) Whether the landlord must account to insurers for any recovery from the tenant in accordance with the law of subrogation does not affect the Tribunal's award.
41. I have concerns about the quantum of some of the landlord's claims. For example, the removal and replacement of the cat flap was claimed at \$222.00. A small patch to the toilet wall was claimed at \$806.37. The towel rail, which simply needed re-installing, was claimed at \$500.25. The vanity replacement was claimed at \$925.75, because the water-damaged cabinet could not be replaced separately from the vanity (Ms O'Connor said it was hard to match the vanity to a cabinet). The reasonable cost of repair of the visible damage would likely be much less.
42. Most of the wall damage appears relatively superficial (except for the wall in bedroom 4 which needed gib replacing) so that it is not always clear why plastering was needed in addition to sealing and painting. While the loss adjuster's costings have been made available, these may reflect the insurer's standard approach to pricing (or categories of costing) rather than the real cost of repair. For these reasons, I have applied a 15% discount to some claims as costed, where there is a concern about the amount claimed.
43. The property was built in 2003 and the damaged carpets, blinds and walls were the original furnishings. I accept that the carpet and blinds would have had some remaining useful life if the tenant had not damaged them. 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 considered the age and condition of the items at the start of the tenancy and their likely useful lifespan. I understood that the insurer's costings did not make allowance for depreciation. The amount claimed for replacement blinds was the only item which included a discount for depreciation (at 50%). I consider a significant discount for depreciation is warranted in respect of walls and ceilings that were 16 years old at the end of the tenancy.
44. The Tribunal must do its best to assess compensation on the evidence available, even where the exercise is speculative (*Phipps v Consolo* (District Court

Wellington, CIV-2009-085-232, 14 December 2009)). I have had to make a summary assessment of quantum in some instances.

45. A summary of the amounts awarded is set out below:

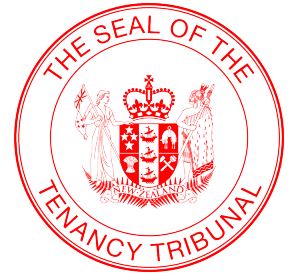
<b>Room</b>	<b>Item</b>	<b>Amount</b>	<b>Discount</b>	<b>Award</b>
Lounge	Walls (3)	\$2,609.10	80%	\$521.82
	Window	\$1,092.50	15%	\$928.63
	TV Cable	\$40.50	Nil	\$40.50
Family Room	Walls (2)	\$2,141.68	80%	\$428.34
	Skirting	\$299.00	15%	\$254.15
Entry	Door frame	\$221.60	15%	\$188.36
Hall	Walls (4)	\$3,639.98	80%	\$728.00
	Skirting	\$1,790.07	Nil	\$1,790.07
	Smoke alarm	\$207.00	Nil	\$207.00
Bathroom	Towel rail	\$500.25	15%	\$425.21
	Vanity	\$925.75		\$100.00
Toilet	Walls (1)	\$806.37	80%	\$161.27
Laundry	Door frame	\$384.51	15%	\$326.83
	Walls (2)	\$1,704.32	80%	\$340.86
	Cat flap	\$222.00	15%	\$188.70
Garage	Door	\$3,220.00	Nil	\$550.00
	Walls	\$2,673.91	80%	\$534.78
Roof	Insulation	\$207.00	Nil	\$207.00
Bed 4	Door frame	\$384.51	15%	\$326.83



	Walls (1)	\$812.10	Nil	\$550.00
	Window	\$977.50	15%	\$830.88
	Wardrobe door	\$548.02	80%	\$109.60
	Wardrobe wall	\$770.63	80%	\$154.13
Bed 3	Door frame	\$384.51	15%	\$326.83
	Walls (1)	\$808.50	80%	\$161.70
Bed 2	Door frame	\$384.51	15%	\$326.83
	Window	\$977.50	15%	\$830.88
	Walls (2)	\$1,786.47	80%	\$357.29
Bed 1	Shower door	\$862.50	Nil	\$550.00
	Walls (2)	\$829.42	80%	\$165.88
Exterior	Gate	\$322.00	15%	\$273.70
Electrical	Safety check	\$747.50	Nil	\$747.50
Carpet	Lounge	\$1,966.00	80%	\$393.20
	Family room	\$1,898.07	80%	\$379.61
	Hallway	\$1,610.46	80%	\$322.09
Blinds		\$1,544.00	30%	\$1,080.80
Locks		\$495.50	Nil	\$100.00

*Filing fee*

46. The landlord has been partly successful. It is appropriate to award the filing fee.



M Edison  
17 August 2020

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