

**TENANCY TRIBUNAL AT** North Shore

APPLICANT/RESPONDENT: Faiq Al-Rufaie and Mayada Al-Rufaie As Trustees for  
The Murrays Bay Family Trust

Landlords

RESPONDENT/APPLICANT: Danielle Elise Van Andel

Tenant

TENANCY ADDRESS: 158A Sunset Road, Unsworth Heights, Auckland  
0632

**ORDER**

1. Faiq Al-Rufaie and Mayada Al-Rufaie As Trustees for The Murrays Bay Family Trust must pay Danielle Elise Van Andel \$2,485.72 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of \$1,650.00 (5944732-002) to Danielle Elise Van Andel immediately.

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Rent arrears to 7 June 2020	\$314.28	
Repair carpet	\$200.00	
Compensation for loss of amenity		\$3,000.00
<b>Total award</b>	<b>\$514.28</b>	<b>\$3,000.00</b>
Net award		\$2,485.72
Bond Centre to pay tenant		\$1,650.00
<b>Total payable by Landlord to Tenant</b>		<b>\$2,485.72</b>

**Reasons:**

1. The tenant attended the hearing in person, with assistance from Debbie Fenton. Faiq Al-Rufaie attended for the landlords.

2. The landlord has applied for rent arrears, compensation, and reimbursement of the filing fee, and payment out of the bond following the end of the tenancy.

*How much is owed for rent?*

3. The tenancy ended on 7 June 2020. Mr Al-Rufaie provided rent records which showed the amount owing at the end of the tenancy was \$314.28. That amount is for four days' rent being overlooked at the very end of the tenancy.
4. The tenant disputed there were arrears and produced some evidence of payments made at the beginning of the tenancy.
5. However, I am satisfied on the balance of probabilities that there were arrears in the amount stated.

*Missing fire alarm*

6. The landlords claim the tenant is responsible for a missing fire alarm in the master bedroom.
7. The tenant says there never was a fire alarm in the bedroom.
8. There are holes in the ceiling that indicate there was a fire alarm at some point in time. However, the landlords cannot point to any objective evidence such as photographs or an entry inspection report proving that the fire alarm was in the room when the tenancy began in early 2018.
9. It appears no proper entry inspection ever occurred, and no photographs were taken at that time.
10. The onus of proof to prove the fire alarm was present at the beginning of the tenancy is on the landlords to the level of the balance of probabilities. The landlords have not discharged the onus of proof.

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

11. 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 of the Residential Tenancies Act 1986 (RTA).
12. Where the damage is careless, and occurs after 27 August 2019, s 49B of the RTA applies. 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.

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: s 49B(1) of the 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 landlords maintain the following damage was caused during the tenancy: a section of rotted carpet; a cracked shower tray; a heated towel rail had detached from wall; and cupboard hinges had broken.
16. The tenant accepts she placed a small fridge on the carpet. It leaked, and the carpet was damaged. The landlord has claimed \$375.00 for replacing the damaged section. The carpet is however at least 7 years old and is threadbare in places. It is at the end of its useful life, so the amount should be reduced. The tenant consents to pay the landlord \$200.00 for the damage. That is an appropriate figure in the circumstances.
17. The shower tray was cracked. The tenant says it was already cracked at the beginning of the tenancy and she told the landlords about it, but the landlords did nothing. The landlords say, the tenant did not tell them about the issue early in the piece and produced an invoice stating the “damage was caused [sic] by misuse”. The photographs of the tray do not indicate misuse, they just show a crack. The tenant has spoken to a tradesman who claims the tray was aging and incorrectly installed.
18. I am satisfied on the balance of probabilities that the crack was either there at the start of the tenancy or resulted from ordinary use. One of the tenant’s son’s is a large person and his use may have exacerbated an existing crack or caused a crack to a worn part. There is no evidence the tenant caused the damage carelessly or intentionally.
19. The heated towel rail pulling away from the wall is likely to be due to fair wear and tear in my view. Similarly, the hinge failing in the kitchen cupboard has the appearance of being due to fair wear and tear. There is nothing to suggest the tenant was careless or intentionally damaged these items.
20. I have taken into account betterment and depreciation. 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.

*Landlords' obligation to provide and maintain premises in a reasonable state of repair*

21. Ms Van Andel claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986.
22. Under section 45, a landlord must provide and maintain the premises in a reasonable state of repair, comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016, and comply with any relevant enactment in relation to buildings, health and safety
23. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of \$4,000.00: s 45(1A) and Schedule 1A Residential Tenancies Act 1986. The tenant does not seek exemplary damages in this case, but does seek \$3,000.00 compensation.
24. The tenant says the house suffered from damp and mould from the outset of the tenancy, that it was infested with ants, that the landlords never supplied a heater, and that during the recently lockdown it took the landlord at least two weeks to replace a faulty oven.
25. The tenant says she and her children suffered a lot of ailments due to the cold and damp conditions. She claims that she and her grandparents told the landlords of the problems early in the piece.
26. Mr Al-Rufaie is adamant he was not told about the problems and that the house was properly maintained at all times. He says he took all the steps he could to replace the oven in a timely way, but was hampered in that by the Level 4 lockdown.
27. The tenant produced photographs, admittedly taken at the end of the tenancy, which showed extreme deterioration to wooden window joinery in the bathroom, lounge, and joinery. The tenant said that when it rained water actually flowed into the fixed window in the bathroom. She also showed a photograph of mould in the kitchen ceiling which she said regularly recurred and had to be washed off. Her grandfather helped her with that area of mould every couple of months because she could not reach it. There were also photographs showing mould in the laundry. The tenant was adamant she aired the house and cleaned the mould appropriately, but the mould returned time and again.
28. Mr Al-Rufaie says that the rotting joinery has now been fixed. He produced references from other tenants attesting to his caring and responsible qualities as a landlord and his responsiveness to any maintenance issues. I do not doubt the legitimacy of the references, but the objective evidence in this case shows the house had significant maintenance issues.

29. I am persuaded on the balance of probabilities that the house was not adequately dry due to those maintenance issues and that mould was occurring in various places in the house as a result.
30. The tenant says she and her grandparents had reported the mould and damp issues, but even if they had not, the deterioration of the joinery should have been obvious upon inspection and should have been attended to. Indeed, the fixed window's wooden sill shows signs that the wooden was rotting but had been painted over.
31. Section 45 of the RTA requires the landlords to "provide and maintain the premises in a reasonable state of repair". Regulation 6 of the Housing Improvement Regulations 1947 provides, "Every living room shall be fitted with a fireplace and chimney or other approved form of heating". Regulation 15 provides that "Every house shall be free from dampness". The tenant's evidence, which includes photographs, her own evidence, and a letter from her grandparents, satisfies me that the landlords failed to provide and maintain the premises in reasonable state of repair, failed to provide an approved form of heating, and failed to ensure the house was free of dampness.
32. The landlord did replace the oven as soon as was practicable, but nonetheless the tenant did suffer a loss of amenity in an essential item, which caused her cost because she could not bake for her children.
33. The tenant could probably have communicated the problems to the landlords more clearly and assertively, but the landlords should have kept ahead of the problems by careful inspections and attending to maintenance before disrepair became issues affecting the premises' habitability.
34. It is difficult to assess compensation in a case such as this. I am not sure that the onset of the family's many ailments are linked to the mould and damp problems, but they would likely have exacerbated them. Mould is inherently potentially dangerous and the point of provisions such as the relevant ones here is to place on landlords an obligation that such a risk to human health and enjoyment in premises does not arise.
35. In this case the tenant seeks compensation of \$3,000.00 for the maintenance issues including the delay in providing the replacement oven. I consider that is not unreasonable. It equates to about \$21.00 per week, or about 4 per cent of the rent paid of \$550.00 per week. I consider the damp, cold, and mould caused a significant loss of amenity in the premises such that compensation at that level is apposite.

*Other*

36. The bond is to be returned to the tenant.
37. No order is made for reimbursement of the filing fees as each party's application was successful in part.



R Kee  
02 October 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.