

**TENANCY TRIBUNAL AT** Waitakere

APPLICANT: Josephine Willma Sixsmith  
Tenant

RESPONDENT: Mary Simpson  
Landlord

TENANCY ADDRESS: 554A Waitakere Road, Taupaki, RD 2, Taupaki 0782

**ORDER**

1. Mary Simpson must pay Josephine Willma Sixsmith \$11,020.44 immediately, calculated as set out in the table below.
2. The Bond Centre must immediately pay the bond of \$560.00 to Josephine Willma Sixsmith.
3. All other claims are dismissed

	<b>Landlord</b>	<b>Tenant</b>
<b>Description</b>		
Failing to maintain house – rent reduction		\$7,800.00
Failing to maintain water system		\$1,000.00
Failing to install insulation		\$1,000.00
Compensation for contractors use of power		\$200.00
Exemplary damages: no smoke alarms		\$1,000.00
Filing fee reimbursement		\$20.44
<b>Total award</b>		<b>\$11,020.44</b>
Bond Centre to pay the bond		\$560.00
<b>Total payable by Landlord to Tenant</b>		<b>\$11,020.44</b>

**Reasons:**

1. The tenant, Josephine Sixsmith, attended in person with a support person, Kay Nelson. The landlord, Mary Simpson, attended in person with her daughter, Anna Simpson.

2. The tenant brings five broad claims against the landlord:
  - a. Landlord's failing to meet their statutory obligations:
    - i. To maintain the house (seeking rent reduction).
    - ii. To maintain the premises' water system (seeking compensation).
    - iii. To insulate (seeking compensation).
    - iv. To install fire alarms (seeking exemplary damages).
  - b. Contractors using tenant's power (seeking compensation).
  - c. Unlawful entry onto the premises (seeking exemplary damages).
  - d. Cost of caravan hire (seeking compensation).
  - e. Cost of destroyed property.

#### **Landlord's alleged failures to meet statutory obligations**

3. The premises are in a rural area. The house appears to be a quaint old cottage which may have once been a farmhouse. The tenant has lived in the premises for 13 years.
4. Over the years, the house deteriorated, eventually becoming quite dilapidated.
5. Under s 45 of the Residential Tenancies Act 1986 (RTA), a landlord must
  - a. provide and maintain the premises in a reasonable state of repair;
  - b. comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016;
  - c. comply with any relevant enactment in relation to buildings, health and safety; and
  - d. provide an adequate means for the collection and storage of water if there is no reticulated supply
6. The tenant says the problems at the premises included:
  - a. Mould in two bedrooms, on ceilings, walls, curtains, and carpets.
  - b. Window joinery rotting, causing draughts and damp, and some windows not to open.
  - c. Weatherboards rotting, causing draughts, damp, and allowing rats to get in.
  - d. No insulation.
  - e. Dirty, unmaintained guttering and no filters to the house's tank water system.

### *Failure to maintain*

7. There is no doubt that the landlord is responsible for undertaking maintenance of the house. This is required by s 45(1)(b) of the RTA.
8. The landlord accepts that she did not carry out any formal inspections over the years. She submits that she has always promptly fixed any maintenance issues the tenant raised. She felt she had such a good relationship with the tenant she didn't need to. The landlord worked fulltime and being busy did not visit the cottage.
9. The landlord says was astonished by how severe the problems with the cottage were when she found out about them in 2020. She soon arranged for the tenant to move out of the premises for extensive renovations to be done over several months. The tenant did not have to pay rent while the renovations were done. The landlord tried to arrange a caravan on-site for the tenant for the tenant to stay in, and she agreed with the tenant she would move back in once the house was repaired.
10. It may be noted that the tenant had an obligation under s 40(1)(d) of the RTA to notify the landlord of the need for repairs. She says she did not do that because she was afraid she might lose the tenancy. The fact the tenant failed in her obligation to inform the landlord does not relieve the landlord of her obligations. The landlord should have regularly inspected the premises to ensure they were properly maintained. If she had, it is likely the house would not have become so dilapidated.
11. From viewing the photographs and considering the other material, it is clear the premises have been in a sorry state for some time. There may well have been something of a tipping point about two years prior to the tenant moving out in July of 2020.
12. The application did not seek exemplary damages. The tenant referred to there being no extractor fan in the bathroom or rangehood. The RTA does not require those so long as there are opening windows in those rooms, which I understand there were.
13. The tenant also mentioned some other more minor deficiencies in the premises and the fact she incurred costs for items such as rat bait and rugs.
14. I quantify the tenant's loss of amenity in the premises and associated costs at \$75.00, which is about 20-25 per cent of the rent, for two years (104 weeks).
15. I settle on \$7,800.00 for loss of amenity and associated costs.

### *Water supply*

16. The house was on tank water. The tank was filled from water from the roof. However, the guttering had become clogged with dirty sludge. There were no filters, so there was a high risk the water would be contaminated. I note, the tenant relied on the tank water for drinking as well as showering, cleaning dishes, and so on.

17. The gutters should have been regularly cleaned and there should have been some form of filtration.
18. I order \$1,000.00 compensation for loss of amenity to the tenant for the landlord's failure to maintain the water system. The application did not seek exemplary damages for this item.

*Failure to insulate*

19. The house's underfloor was not insulated in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. The walls did not have to be insulated.
20. From 1 July 2019, all residential premises must be insulated to a minimum standard. Where the premises were insulated before 1 July 2016, the ceiling insulation must have an R-value of at least 1.9 (or 1.5 for houses of a brick or concrete block construction). The underfloor insulation must have an R-value of at least 0.9. The insulation must be in reasonable condition.
21. Where insulation is installed after 1 July 2016, the minimum R-value for ceiling insulation is 2.9 in Zones 1 and 2, and 3.3 for Zone 3 (Zone 3 covers the South Island and central North Island). The minimum R-value for underfloor insulation is 1.3.
22. The tenant had sought compensation and not exemplary damages in her original application. I quantify her loss of amenity for the lack of insulation at \$1,000.00.

*No smoke alarms*

23. Under s 45 of the RTA the landlord had to fit the house with smoke alarms by virtue of the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016. The landlord failed to do so. Breach of that obligation 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 of the RTA.
24. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) Residential Tenancies Act 1986.
25. The landlord was not aware of her obligations under the Act. However, ignorance of the law is no excuse. Absent ignorance of the law, the landlord must be taken to have failed to fit fire alarms intentionally.
26. The failure to fit smoke alarms must be treated seriously. A great proportion of fatalities from house fires would be averted if smoke alarms were installed and working. Exemplary damages must be awarded to deter landlords from failing in their obligations in this area. I take account of the fact that the landlord's intent is implied as to actual in this case, the effect of the act to reduce the tenant's safety, the tenant's interest in that, and the public interest in ensuring the safety of tenants.
27. I award \$1,000.00 in exemplary damages against the landlord.

### **Contractors using the tenant's power**

28. The tenant produced photographs showing the contractors who were doing the renovation work plugged their power tools into the tenant's power.
29. The tenant's power bills were usually about \$90.00 per month. The account for the period to the end of August 2020 was for \$328.10.
30. I am satisfied the contractors' use of power significantly added to the tenant's power bill and order the landlord to pay her \$200.00 for the additional power cost.

### **Unlawful entry**

31. The tenant claims the landlord has entered the premises without consent or notice.
32. A landlord may not enter the premises during the tenancy except with the tenant's consent, in an emergency, or after giving the required notice for inspections and repairs and maintenance: s 48(1) and (2) of the RTA.
33. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of \$1,000.00: s 48(4)(a) and Schedule 1A of the RTA.
34. The landlord entered the premises for the purpose of the renovation. The landlord had given notice that the renovation would take several months. The tenant was not going to be living in the house or paying rent during that time although most of her possessions were stored in one of the rooms and she was going to be living on the premises' grounds in a caravan.
35. I consider that the notice of the renovations was sufficient to cover the landlord entering the premises during that time for the purpose of the renovations. It would not make sense that only the contractors could enter the premises during that time. The contractors would need to regularly get instructions from the owner given the extent of the works being done. She needed to access the premises to assess what needed to be done.
36. The tenant is unhappy that the landlord took a shortcut over the back fence to get to the premises. That may have been inconsiderate, but I do not consider it breached the terms of the notice.
37. I find the tenant's claim of unlawful entry by the landlord is not proved.

### **Caravan costs**

38. The landlord relieved the tenant from paying rent during the renovation and said she could live in a caravan on the grounds while the work was done.
39. The landlord tried to arrange a caravan for the tenant but that did not work out. The tenant got her own caravan.

I do not consider the landlord is liable for the tenant's costs for the caravan. The tenant was not paying rent so was able to arrange alternative accommodation as she saw fit.

### **Damaged property**

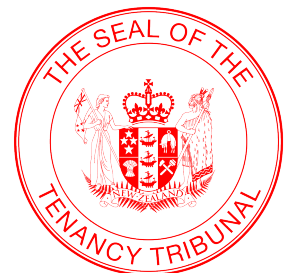
40. The tenant sought reimbursement for a cactus she says the landlord's son removed and a garden ornament he allegedly broke.
41. I do not consider the tenant has proved the landlord is liable for these on the balance of probabilities.
42. The tenant had sought exemplary damages for this, but exemplary damages do not appear to be available in the circumstances.

### **Bond**

43. The tenant has applied for refund of the bond.
44. Section 22B(2) of the RTA provides that, where a tenant applies for refund of the bond, and the landlord seeks payment from the bond, the landlord must file an application setting out the details of the counterclaim. Because the landlord has not filed a counterclaim the bond is refunded in full to the tenant.

### **Filing fee**

45. Because the tenant has been substantially successful in her application, I order the landlord to reimburse her for the cost of the filing fee.



R Kee  
26 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.