

**TENANCY TRIBUNAL AT Kaikohe**

APPLICANT: Wendy Kathleen Ferguson

Landlord

RESPONDENT: Sarah Cordery

Tenant

TENANCY ADDRESS: 87 Hokianga Harbour Drive, Opononi, Kaikohe 0473

**ORDER**

1. The tenancy between Wendy Ferguson and Sarah Cordery was a periodic tenancy.
2. Wendy Kathleen Ferguson must pay Sarah Cordery \$150.00 immediately, calculated as shown in table below.

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Compensation: Lawns		\$150.00
<b>Total award</b>		<b>\$150.00</b>
<b>Total payable by Landlord to Tenant</b>		<b>\$150.00</b>

**Reasons:**

1. The tenancy began in May 2020.
2. On 9 August 2020 Ms Ferguson gave a 90-day notice to terminate the tenancy on 6 November 2020.
3. Ms Cordery disputed the notice on the grounds that she believed that she was in a fixed term tenancy through until Christmas 2020.
4. On 2 October 2020 Ms Ferguson filed an application seeking a declaration from the Tribunal that the tenancy is periodic and that her termination notice was valid.

5. The date of 6 November passed before the application could be heard.
6. To avoid conflict, Ms Cordery vacated on 6 November, but she maintains her view that the notice was invalid.
7. Ms Cordery's application seeks damages for breach of quiet enjoyment, failure to maintain the premises, and failure to
8. Both parties attended the hearing in Kaikohe on 30 November 2020.

Fixed term or periodic tenancy

9. There is no written tenancy agreement.
10. Ms Cordery submitted that in her conversations with Ms Ferguson about the property she made it clear that she needed the property until at least Christmas 2020.
11. Ms Cordery submitted that she was offered the tenancy, and accepted it, on that basis.
12. Ms Cordery referred me to an email from Ms Ferguson dated 28 January 2020 where Ms Ferguson stated "I can let the house but it won't be until after the end of April. I need to charge 280 per week over winter until September end then 300".
13. Ms Ferguson denied that there were any (pre-agreement) conversations about the tenancy lasting until Christmas 2020, or until any other specific time. Ms Ferguson submitted that she understood that Ms Cordery wanted the property for a short (but undefined) period and that she had no intention of entering into a fixed term tenancy.
14. There are only two types of tenancy. If a tenancy is not fixed term, it is periodic. Periodic tenancies can be ended at any time by the landlord or tenant giving notice in accordance with section 51 of the Residential Tenancies Act 1986 ("RTA").
15. A fixed term tenancy is defined in the RTA (somewhat prosaically) as "a tenancy for a fixed term". A fixed term tenancy has either a defined period or a defined start and end date.
16. A fixed term tenancy is a strong obligation on both landlords and tenants. Fixed term tenancies cannot be ended by notice. The Tenancy Tribunal has a limited power to reduce or end a fixed term tenancy (section 66 RTA). Fixed term tenancies are almost always written, although an oral fixed term tenancy would be enforceable (section 13C RTA).
17. My finding is that it is not proven that this was a fixed term tenancy. Ms Cordery and Ms Ferguson gave conflicting oral evidence about the terms of the agreement. The burden of proof is with Ms Cordery.

18. Ms Ferguson's texts and emails show that, at various times, she was open to a range of possibilities about how long the tenancy could continue for. However, that is not the same thing as entering into a fixed term agreement, which has a specific end date.
19. Because it is not proven that the tenancy was for a fixed term, it was a periodic tenancy. Ms Ferguson's 90-day notice was valid, and the tenancy ended on 6 November 2020.

#### Leak in ceiling

20. Ms Cordery submitted that the ceiling leaked on several occasions during the winter period. She informed Ms Ferguson about this.
21. Ms Ferguson was aware of previous incidences of ceiling leaks.
22. Ms Ferguson submitted that the previous leaks were rare and sporadic. Ms Ferguson has had builders and roofers inspect the roof, but no obvious source of the leak has been found.
23. Landlords have a legal duty to "provide and maintain the premises in a reasonable state of repair, have regard to the age and character of the premises and the period during which the premises are likely to remain habitable for residential purposes" (section 45(1)(b) RTA).
24. The property is a 1940's era wooden 'bach', near the coast.
25. As discussed in more detail below, the property is somewhat draughty, and given its age and construction it is perhaps not surprising that there is also some water ingress through the roof.
26. Ms Ferguson has taken reasonable and appropriate steps to try and remedy the problem. Intermittent roof leaks are inherently difficult to diagnose and repair – often the source of the leak cannot be traced unless the particular wind / rain conditions in which the leak manifests are present at that time. When that occurs rarely, and often outside of ordinary business hours, there is not much that a landlord can do.
27. Ms Ferguson has not failed to meet her legal duty in this instance.

#### Broken pane in door

28. The door has leadlight glass panels.
29. One of the lead joins is bent, and there is tape on parts of the pane to hold them intact.
30. Ms Cordery submitted that at the beginning of the tenancy she understood that Ms Ferguson would repair the door as soon as possible.

31. The door was not repaired during Ms Cordery's tenancy.
32. Ms Cordery submitted that the damage to the front door was a security issue.
33. Ms Ferguson denied that she made any statements or representations to Ms Cordery that she would repair the door as soon as possible.
34. Ms Ferguson submitted that it is theoretically possible to have the door repaired, but practically difficult, because the repairs could not be done in situ. The door would have to be removed and then remain at the repairers for as long as the repair takes.
35. Clearly the door is not in perfect condition. However, Ms Ferguson has taken steps by making enquiries into the possibility of repair. I accept that repair is not a simple proposition.
36. The damage is minor and aesthetic in nature. The door still functions perfectly as a door. I do not agree with Ms Cordery's argument about security. An intruder could force entry through an intact glass pane just as easily as they could through one that has tape over it.
37. Ms Ferguson has not failed to meet her legal duty.

#### Draughts

38. Ms Cordery submitted that the property was draughty because there were gaps around the window frames, in particular in the bedroom, where the gap is visible and the curtains would move on occasion, even when the windows were closed.
39. Ms Ferguson did not dispute that the property is draughty, although she submitted that if Ms Cordery had brought any specific examples to her attention during the tenancy she may have been able to take steps such as using sealants / fillers.
40. The age, character, and location of the property is such that a reasonable tenant would expect it to be an enjoyable place to live during summer and a somewhat challenging place to live during winter.
41. My finding is that the problems described by Ms Cordery are within the range of "reasonable state of repair, having regard to the age and character of the premises".

#### Building work

42. Ms Ferguson had arranged for building work to be done after the end of the tenancy and before the summer season.
43. Ms Cordery submitted that she was not told about this building work before she agreed to the tenancy, and that because she had a fixed term agreement to rent

the property until Christmas 2020, this amounted to a breach of her reasonable peace, comfort, and privacy.

44. For the reasons given above my finding is that this was a periodic tenancy.
45. Ms Ferguson was within her rights to terminate the tenancy by 90-day notice, and have the building work done after the end of the tenancy. She had no legal duty to tell Ms Cordery about her plans at the beginning of the tenancy.

### Asbestos

46. Ms Cordery submitted that an electrician came to the property during the tenancy to replace the meter, and refused to do the work on the basis that there was asbestos in the meter back board.
47. Ms Cordery then became concerned about asbestos in other parts of the property.
48. Ms Cordery submitted that she asked Ms Ferguson to have a suitably qualified person investigate and report about asbestos in the property, which Ms Ferguson declined to do.
49. Given the age of the building it is likely that there is asbestos in some of the building materials, almost certainly in the fibreboard cladding.
50. However there is no evidence that the cladding is damaged or has lost its structural integrity.
51. Ms Ferguson has a legal duty to provide and maintain the premises in a reasonable state or repair, and to comply with “all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises” (section 45(1)(c) RTA). The mere presence of asbestos in some of the building materials in a property does not amount to a breach of those duties. Ms Ferguson did not have a legal duty to commission a report at Ms Cordery’s request.

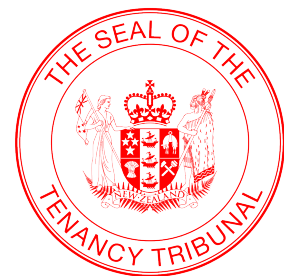
### Lawns

52. Ms Ferguson was responsible for the upkeep of the lawns per the agreement.
53. Ms Ferguson had a fairly casual arrangement with a local man, who would “mow” the lawns (using a weed whacker) when he considered that they were long enough to need it.
54. It seems that his attendances were infrequent.
55. Several explanations were offered, such as that Ms Cordery’s dog had dug holes in the lawn, or that Ms Cordery was rude to the lawn mower man, but there is no persuasive evidence about this.

56. I am satisfied that Ms Ferguson did not meet her contractual duty.
57. Ms Cordery did not receive the full benefit that she had bargained for and she is entitled to some (relatively low level) compensation.
58. The long lawns were a source of some irritation and minor inconvenience for Ms Cordery, but that is about the limit of her loss of amenity.
59. I will award compensation of \$150.00.

Filing fee

60. Each party must bear its own cost of the filing fee.



N Blake  
10 December 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.