[2024] NZTT 4779397, 4774827

4806117

TENANCY TRIBUNAL - Tauranga | Tauranga Moana

APPLICANT	Robert James Jackson
And RESPONDENT:	Tenant
RESPONDENT And APPLICANT:	Aaron Rex Turvey And Colleen Barbara Turvey As Trustees For The Aaron Rex Turvey Family Trust Landlord
TENANCY ADDRESS:	1501 State Highway 29, Lower Kaimai, RD 1, Tauranga 3171

ORDER

1. Aaron Rex Turvey And Colleen Barbara Turvey As Trustees For The Aaron Rex Turvey Family Trust must pay Robert James Jackson $74.32 immediately, calculated as shown in table below.
2. The Bond Centre to pay the bond of $1400.00 to Robert James Jackson immediately.

Description	Landlord	Tenant
Rent arrears as at 1/2/24	$1,250.00	
Rent in lieu of notice	$950.00	
Rubbish removal	$50.00	
Cleaning	$30.00	
Hardie plank replacement	$266.68	
Replacement of downstairs lighting	$366.99	
Replacement master bedroom wardrobe door and downstairs door	$368.95	
Replacement toilet seat	$75.51	
Painting of walls	$75.00	
Lawn repair	$153.50	
Repair hole in floor	$25.04	
Replacement trees	$80.00	

Replacement of garage work bench	$149.75	
Front door replacement	$170.00	
Replacement bench seat and table	$200.00	
Replacement bbq table	$200.00	
Replacement fence panels	$414.26	
Exemplary damages - s45		$3,500.00
Exemplary damages s60AA		$1,400.00
Total award	**$4,825.68**	**$4,900.00**
Net award		$74.32
Bond		$1,400.00
Total payable by Landlord to Tenant		**$74.32**

Reasons:

1. Both parties have made a claim against the other.
2. Hearings were held on 26 April 2024, 16 July 2024, 10 December 2024 and 11 December 2024. Mr Turvey represented the landlord Trust company, The Aaron Rex Turvey Family Trust, through all hearings.
3. I shall address each of the claims made in turn.

Landlords' claim

Rent arrears

4. The landlord originally claimed that as at 1 February 2024 $1,600.00 was owed in rent arrears.
5. However at the hearing on 16 July 2024 it was established that the landlord missed one payment of $350.00 made by the tenant on 5 January 2024.
6. The tenant stated that another payment of $350.00 was missed in December 2023 but this was not established at the hearings.
7. This means that as at 1 February 2024 the tenant owed $1,250.00 in rent arrears. This amount was accepted by the tenant.

Rent in lieu of notice

8. The landlord claims 26 days of rent in lieu of the 28 day notice of termination period now required by law.
9. However the tenancy agreement provides that the tenant is required to give 21 days' notice of termination.
10. I am satisfied that the tenant ought to have given 21 days' notice of termination. Although the law changed during the tenancy to require 28 days' notice of termination, s11 of the RTA essentially provides that the landlord and tenant can agree to less onerous requirements for the tenant and that those less onerous requirements prevail over the Act.

11. Given that the 21 days' notice applies, the tenant owes a further 19 days' rent – that is, a further $950.00.

Rubbish removal

12. At the end of a 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.

13. In terms of rubbish removal the landlord claims $717.50 for the labour required for rubbish removal and has provided evidence of tip fees amounting to a further $2001.20.

14. The difficulty with this part of the landlord's claim is that the tenant separately rented a section beside the residential premises. This section does not form part of the residential tenancy – it was paid for separately and was used as a storage area.

15. The Tenancy Tribunal does not have jurisdiction to hear claims other than for residential premises and so the claim for rubbish removal can only relate to rubbish on the residential premises.

16. While the landlord originally stated that the amounts described above all relate to rubbish that was removed from the residential tenancy premises, at the hearing on 10 December 2024 it was established that much of the rubbish photographed as evidence was actually in the storage section.

17. It was also established that the photographs were taken prior to the tenant hiring and filling a skip bin with rubbish.

18. This means that there is no evidence of the rubbish that was left behind and which the landlord states that he has had to remove.

19. The only evidence of rubbish left behind was a stack of rotting firewood which the landlord states that he put into a compost pit.

20. I am awarding the landlord $50.00 for having to remove this firewood.

Cleaning

21. The landlord claims $717.50 for cleaning the premises after the tenancy had been vacated. He says this relates to the twenty one and a half hours that were spent cleaning it.

22. The tenant disputes this cost and says that he spent three days cleaning the premises before he left.

23. As the applicant, it is the landlord's obligation to prove his case on the balance of probabilities – that is, that more likely than not the tenant did not leave the premises reasonably clean and it took twenty one and a half hours to clean it.

24. In a dispute such as this where one person disputes what the other is saying, the only way to for an applicant to prove a case to the required standard is to provide some sort of objective evidence that supports their view.

25. The only objective evidence that the landlord has provided is a photograph of a fireplace that has not been cleaned.

On this evidence I am awarding the landlord $30.00 as compensation for cleaning.

Missing chattels

Replacing missing lightbulbs and shades

26. At the hearing on 10 December 2024 the landlord elected to withdraw this part of his claim because he realised that he had insufficient evidence to support it.

Replacement of garage work bench

27. The landlord claims $599.00 as the cost of a new garage bench to replace the old one which the tenant acknowledged that he had removed.
28. The tenant states that he removed it because it was falling apart. There was no evidence of this and he did not tell the landlord that he had removed it or alluded to the condition of the bench.
29. A photograph provided by the landlord taken at the beginning of the tenancy shows a workbench that is old but in relatively good condition.
30. Given the age of the workbench I am ordering the tenant to pay just a quarter of the claimed cost of its replacement - $149.75.

Replacement of master bedroom wardrobe door and downstairs door

31. The landlord claims $368.95 as the cost of replacing the two doors.
32. The tenant accepts that he removed both doors but states that he removed the downstairs door because it was mouldy.
33. The tenant provided no evidence that the downstairs door was mouldy and given that he removed both doors intentionally I am requiring him to pay the cost of replacing them.
34. At the hearing on 10 December 2024 it was established that the master bedroom wardrobe door replacement, including handles, cost a total of $72.40. The landlord states that the remainder was made up of the paint and labour required to replace the wardrobe door, as well as an estimate of the cost of replacing the downstairs door which he has not yet replaced.
35. I accept that the cost of the downstairs door may be similar to the wardrobe door - $72.40.
36. This leaves $224.15 as the cost of paint and labour. The landlord has stated that he has assessed his hourly rate as $35.00 per hour which I consider to be reasonable. Taking this into account I consider the cost of paint and labour is reasonable and so the tenant is required to pay the full amount claimed.

Bench seating and table in doorway

37. The landlord claims $1,299.00 as being the cost of replacing a bench seat and table that was situated in the back doorway.
38. The tenant accepts that he took it out in 2022 and he said he did so because it was falling apart.
39. I am awarding the landlord $200.00 for this part of his claim. In doing so I have taken into account that the tenant did not advise the landlord that he was removing the table and there was no evidence that it was falling apart.

40. Conversely the photograph provided of the bench seating and table indicates that it was not new and was likely more than 10 years old.

Barbecue table

41. As with the above table, the tenant states that he threw this table out because it was falling apart. Again, he did not advise the landlord of this and nor are there any photographs of the table in this condition.

42. Although I accept that this table was left behind by a previous tenant, I do not consider that this negates the tenant's liability. It was provided with the tenancy and it cannot just be thrown out without consultation with the landlord.

43. I accept the evidence that a replacement second hand table costs $200.00 and I am ordering the tenant to pay this amount.

Net curtains

44. The landlord claims $107.69 as the cost of replacing net curtains that the tenant threw out during the tenancy.

45. I am dismissing this part of the landlord's claim because I accept that these net curtains were old and net curtains are not expected to last more than a few years in a tenanting situation.

Damages to premises

46. Section 40(2)(a) of the Residential Tenancies Act 1986 provides that a tenant must not intentionally or carelessly damage the premises or permit any other person to damage the premises. In any claim for damages the landlord must first establish, on the balance of probabilities, that the damage occurred during the course of the tenancy and that it exceeds fair wear and tear.

47. If that is established, the tenant must show that on the balance of probabilities that the damage was not intentionally or carelessly caused by either the tenant or any person in or on the premises with the tenant's permission.

48. Where it is established that the damage is careless, the landlord must disclose whether or not the premises are insured for the event from which the damage arose.

49. Where the landlord holds insurance, then, the landlord must provide the Tribunal with the insurance policy and the schedule to the policy.

50. If the damage is intentional, the tenant does not have the benefit of the landlord's insurance and compensation may then be awarded by the Tribunal in accordance with the provisions of the Act. Intention is determined from the point of view of the tenant. Case law has held that damage can be seen to be intentional when the tenant "courts the risk" of incurring that damage, or if the damage has been incurred because of "reckless disregard for the consequences".

51. The landlord makes a number of claims under this heading.

The hardie plank panels

52. The landlord claims $266.68 as the cost of replacing the hardie plank panel on the outside of the house. He has provided photographs which show that damage to the panel occurred during the tenancy.

53. I consider this damage to be beyond fair wear and tear and that most likely it was caused by carelessness.

54. I accept the landlord's evidence that while his insurance policy would cover this damage, the excess payable on a claim is $750.00.

55. I accept that the cost of replacing the panel is $266.68 and given that I am satisfied that the damage is careless I am ordering the tenant to pay this amount.

Exterior light lens

56. I accept that the exterior light lens was there at the beginning of the tenancy.

57. As the applicant, it is the landlord's obligation to prove that more likely than not the disappearance of the lens was caused intentionally or carelessly by the tenant.

58. The tenant disputes that it was caused carelessly or intentionally. He says it just fell out.

59. There is no objective evidence to show that the lens fell out by careless or intentional action by the tenant and in the absence of such evidence I am dismissing this part of the landlord's claim.

The downstairs lighting

60. It was accepted evidence that at the beginning of the tenancy there was lighting downstairs.

61. The tenant acknowledges that he deliberately removed this lighting and he is therefore required to pay the cost of its replacement.

62. This was proven as being $336.99.

Toilet seat

63. The landlord claims $75.51 as the cost of replacing the toilet seat and provided a photograph of the toilet seat to support it.

64. At the hearing on 10 December 2024 the tenant accepted this claim. He is therefore required to pay the $75.51 claimed – that being $59.02 for the toilet seat and the remainder being the labour required to replace it.

Painting walls

65. The landlord claims $817.71 as the cost of repainting 2 bedrooms, lounge, kitchen, bathroom and laundry. This amount is made up of $292.71 as the material required for the painting and labour of $535.00.

66. The landlord provided photographs to support this claim, only some of which show that damage to the walls was beyond fair wear and tear.

67. Painted walls in rental accommodation are expected to last 7-10 years.

68. The landlord was unable to say when the premises were last painted since it was purchased in 2011, but in considering the photographs I would say that the paintwork was well more than 10 years old.

69. This means that the painted walls were beyond their life expectancy and the tenant ought not then to have to pay the cost of repainting the walls to new condition.

70. However, I accept that the tenant ought to pay the cost of repairing damage to the walls that was careless or intentional and on the evidence before me I am putting this cost at $75.00.

Repairing the lawn

71. The landlord claims $307.00 as the cost of removing the rubbish from the lawn and replacing the grass after the tenant had created a firepit in the middle of the lawn.

72. He provided photographs of rubbish in a lawn and evidence of the cost of the lawn seed - $132.00. He stated that it took him 5 hours to reseed the lawn and remove the rubbish.

73. The tenant disputed that all the photographs of rubbish in the lawn were in the residential part of the premises but acknowledged that some were.

74. I am ordering the tenant to pay half the claimed cost ($153.50) because the landlord was unable to show that all the rubbish removal claimed for was in the residential section, and because a photograph taken at the beginning of the tenancy showed a lawn with large patches of dirt. On this evidence the tenant ought not to be required to reseed the entire lawn.

Filling holes in the floor

75. The landlord claims $50.08 as the cost of filling holes in the lounge and middle bedroom. This amount is comprised of $32.58 for material and a half hour of labour.

76. I am not accepting the tenant's explanation that he drilled out an existing hole – there is no evidence of the existing hole and he did not inform the landlord that he was doing so.

77. However, I am ordering the tenant to pay half the claimed cost because there is a photograph of only one hole and the tenant disputes the existence of the other - $25.04.

Replacement of 3 trees

78. The landlord claims $94.74 as the cost of replacing three hedging trees.

79. I accept the landlord's evidence that he planted hedging trees during the tenancy and that due to the placement of cabins built by the tenant three of the hedging trees died and required replacement. The photographs show the cabins very close to the area in which the trees were planted.

80. However, the tenant disputes the cost of the replacement trees and given that the landlord was unable to produce evidence as to the cost at the hearing, I am reducing the amount that the tenant ought to pay to $80.00.

Front door replacement

81. The landlord claims $236.18 as the cost of replacing the front door which he says the tenant broke by kicking it in.

82. The cost of the door is evidenced in a receipt dated 14 October 2020 and the landlord claims $140.00 for labour.

83. The tenant acknowledged that he broke the door on 10 October 2020. He said that the lock was broken and he could not get in otherwise. He also said it was full of borer.

84. At the hearing on 16 July 2024 the tenant advised the Tribunal that the lock broke about 6 months after he moved in – that is, about August of 2019. However, there is no evidence of his advising the landlord of this until 10 October 2020 after he had broken the door.

85. For these reasons I am ordering the tenant to pay the cost of the replacement door, although I have reduced the amount he ought to pay to $170.00 to allow for depreciation.

Fencing panels

86. The landlord claims $414.26 as being the cost of replacing rotten fence pales.

87. The tenant accepts that he stacked firewood against the fence. The photographs show that much of the firewood is rotten and I accept that the placement of the firewood would have caused the fence pales behind it to rot.

88. The stacking of the firewood as intentional and so I am requiring the tenant to reimburse the landlord $414.26 which was proven as being the cost of materials ($204.26) plus 6 hours labour.

Tenant's claim

Unlawful premises

89. The tenant claims that the house he rented was unlawful and therefore uninhabitable. He claims a rent reduction/ refund of the whole of the rent paid for his entire tenancy, and given that it was uninhabitable he states that he was therefore entitled to give just two days' notice pursuant to the provisions of s59A(3)RTA.

90. The Tribunal may declare premises to be unlawful residential premises – see s77(2)(ac) RTA.

91. Section 78A(2) RTA provides that unlawful residential premises means residential premises that are used for occupation for a person as a place of residence but –

    a. That cannot lawfully be occupied for residential purposes by that person and;

    b. Where the landlord's failure to comply with their obligations under s36 or s45(1)(c) has caused the occupation by that person to be unlawful or has contributed to the unlawful occupation.

92. Section 36 RTA states that the landlord shall take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes.

93. Section 45(1)(c) RTA provides that a landlord must comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises.

94. Parliament's intention here was to discourage landlords from renting out properties that were, for example, unconsented or unlawful and therefore had never been required to meet legal requirements to ensure their safe and healthy occupation by tenants.

95. Previous decisions made by the Tenancy Tribunal have found that for the purposes of s78A the decisions of the Tribunal in determining what was held to be unlawful fell into 3 broad categories.

    a. Unconsented, no building or resource consents issued for the premises at all; or

    b. When an abatement notice or dangerous and insanitary building notice was issued; or

    c. Cases where garages, basement conversions or parts of premises being used as a larger household unit have been converted as a separate household unit without Council consent to the change of use.

96. The tenant states that the premises he rented were never consented as a residential dwelling. He states that he lived in "The Old Kaimai Dairy" which was the shop that was referred to in a Building Report dated 27 April 2011. This was the Building Report that the landlord used for the purposes of purchasing the site.

97. Near the end of that report the report writer advises that the purchaser ought to speak to Council about the fact that there are 4 dwellings on site and that it appeared that there should only be 2 that are allowed to be rented, with one shop.

98. The tenant also points to a letter sent by Council to the previous owners, dated 7 January 2002, which advises that there are no resource consents for the 4 dwellings on the property and so it was not possible to confirm the legality of the houses or any applicable existing use rights.

99. The tenant states that the landlord has done nothing to "legitimize" the use of the dwellings for residential purposes.

100. As stated earlier in this decision, the applicant is required to prove their case on the balance of probabilities. In this case that means that the tenant is required to show that more likely than not the premises he rented were unlawful.

101. On the evidence before me, I find that the tenant has not been able to prove this claim to the required standard. I say this for reasons that include:

    a. On a map of the premises provided for an application for a building permit, two of the four 'premises' on the site were described as "houses". I accept that the tenant rented one of those described as a house; and

    b. I accept the evidence from Council that it was not uncommon for houses not to have building consents on Council record pre 1993; and

    c. The dwelling in which the tenant resided received a permit for a fireplace from Council which I expect it would not have received had the premises been unlawful.

Breach of s45

102. Section 45 RTA sets out the landlord's responsibilities in relation to the premises they rent to tenants.

Breach of s45(1)(bb)

103. Section 45(1)(bb) RTA provides that a landlord shall comply with all Healthy Homes Standards.

104. The tenant states that the landlord has breached various this section of the RTA which has resulted in a mould issue in the house.

Failure to insulate to the required standard

105. The tenant claims that the landlord has breached the obligations under section 45(1)(bb) of the Residential Tenancies Act 1986 by failing to insulate the premises in accordance with the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016.

106. 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. 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.jjj

107. There are exceptions to these requirements, for example, where it is not reasonably practicable, or where there is a habitable space above or below the ceiling or floor that would otherwise have to be insulated.

108. In terms of the ceiling insulation the landlord states that photographs shown by the tenant indicates that the insulation was pushed down and that while he acknowledged that there were bare parts, he said this was not extensive.

109. The landlord also stated, with reference to the tenant's assertion that there was no underfloor insulation under the master bedroom wardrobe, that a

landlord is only required to insulate ‘habitable’ areas and the definition of ‘habitable’ in the Compliance Document for New Zealand Building Code, Clause 5, Interior Environment, is “A space used for activities normally associated with domestic living, but excludes any bathroom, water closet, pantry, walk-in wardrobe, corridor, hallway, clothes-drying room, or other space of a specialised nature occupied neither frequently nor for extended periods.

110. He said that this definition means that he was not required to provide underfloor insulation under the master bedroom wardrobe.

111. He also states that the underfloor insulation is sufficient even though it does not go to the double joist because the house has been altered over the years and the double joist may not now indicate where the interior and exterior of the house meet.

112. The landlord also referred to the fact that he bought 10 bales of underfloor insulation which would in all cover 100m^2. Given that the house is 91.6m^2 this means that he would have had ample insulation to cover the entire underfloor of the house.

113. He also said that he is not in breach of the insulation requirements because when he gave the tenant black polythene in December 2023 to put under the house as a moisture barrier, the tenant did not do so.

114. The landlord also stated that the Tenancy Agreement signed by the tenant shows that the insulation was sufficient at the beginning of the tenancy and that when he was advised by the tenant of its insufficiency in January 2024 he had it remedied in March 2024.

115. As stated earlier, the tenant is required to prove his claim on the balance of probabilities. That is, that more likely than not the ceiling and underfloor insulation were insufficient in terms of the Healthy Homes Standards (HHS).

116. I find that the landlord was in breach of s45(1)(bb) RTA because he did not supply insulation in the ceiling as required. I say this for reasons that include:

    a. The photographs show that there is insufficient insulation in the ceiling; and

    b. While the Tenancy Agreement may have recorded that the insulation was complete, this record was completed by the landlord and so is not objective evidence that the ceiling insulation was in fact sufficient; and

    c. It is not the tenant’s responsibility to report insufficiencies. When the Healthy Homes Standards came into effect the landlord at that time ought to have checked such things as insulation. He says that he did not.

117. I am also satisfied that on the balance of probabilities, the landlord was in breach of s45(1)(bb) by failing to install sufficient underfloor insulation.

118. I say this for reasons that include:

    a. The definition of “habitable” in the NZ Building Code cannot be used with reference as to whether insulation is sufficient. It would be inconceivable that the standards contemplated that landlords were not required to

insulate under bathrooms, hallways, corridors, pantries, walk-in wardrobes etc; and

b. The only exceptions with regard to insulation are those described in paragraph 105 above; and

c. None of those exceptions apply to this claim; and

d. I accept that the double joists mean that this is where the interior and exterior meet and that the insulation ought to go to this point. It does not.

e. There is no evidence that the exterior/interior wall has been moved as the landlord claimed; and

f. Although the back polythene is regarded as a moisture barrier rather than insulation, my comment is that it is up to the landlord to ensure installation, not the tenant.

Bathroom Ventilation

119. The tenant states that the Building Report dated April 2011 shows that the bathroom fan was not ducted and so this was a breach of the HHS.

120. While the landlord states that he ducted the bathroom fan as required, the tenant provided a photograph taken in January 2024 showing that there was no ducting.

121. The landlord stated that when he was advised by the tenant in January 2024 about the ducting he went into the ceiling and saw the ducting had been detached and shoved into the soffit.

122. While the landlord stated at the hearing on 16 July 2024 that he would provide a receipt for the initial ducting at the next hearing, he did not do so.

123. On this evidence I find that more likely than not the landlord failed to ventilate the bathroom as required by the HHS, by not having the bathroom fan ducted to the outside.

Breach of s45(1)(c)

124. Section 45(1)(c) RTA provides that a landlord shall comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises.

The gully trap

125. The tenant states that the landlord is in breach of s45(1)(c) because the landlord has failed to enclose the gully trap.

126. The April 2011 Building Report notes that originally the gully trap was compliant with the Building Code but that after a lean to had been erected, the gully trap became enclosed and was therefore illegal in terms of the Building Code.

127. The landlord states that he is not in breach of s45(1)(1)(c) because even if he was required to enclose it, he has put a gib wall behind the gully trap which does not show any evidence of moisture.

128. He also states that the lean to area now has a door at the rear which meant that the area was no longer enclosed.

129. I find that the landlord was in breach of s45(1)(c) RTA by failing to enclose the gully trap.

130. This is because I do not consider that a rear door to the lean to alleviates the illegality. The Building Report advises that to become compliant, the gully trap must either be removed to the exterior or the lean to removed. The landlord has done neither.

131. Further to this, whether or not there is any evidence of moisture has no bearing on whether the gully trap is compliant.

Fencing

132. The tenant states that the landlord breached s45(1)(c) by breaching the NZ Building Code Clause F4. This clause provides that where a retaining wall is over 1 metre high, there needs to be a barrier on top of that retaining wall which is also greater than 1 metre in height.

133. At the hearing on 11 December 2024 the landlord acknowledged that the retaining wall was over 1 metre in height and that it therefore required a barrier on top of it which is greater than 1 metre.

134. He accepted that the fence above the retaining wall was not 1 metre in height.

135. However, he stated that a hedge planted beside/behind the fence was more than 1 metre in height and therefore acts as a sufficient barrier in accordance with Clause 4.

136. Any insufficiency in the hedge, he stated, was caused by the tenant because the tenant built cabins right beside the hedge which caused some of the hedge to die.

137. However, I find that the landlord is in breach of s45(1)(c) because the landlord has breached Clause F4 of the Building Code (First Schedule, Building Regulations 1992).

138. I say this because:

a. The photographs of the hedge show that it is not adequately rigid or ‘full’ so as to prevent people from falling through the hedge; and

b. There are gaps in the hedge in places where there are no cabins; and

c. Even if the gaps were caused by the building of the cabins in such close proximity to the hedge, it is the landlord's, and not the tenant's, responsibility to ensure compliance.

Breach of s45(1)(b)

139. Section 45(1)(b) RTA provides that the landlord shall provide and maintain premises in a reasonable state of repair having regard to the age and character of the premises and the period during which the premises are likely to remain habitable and available for residential purposes.

140. The tenant states that the landlord breached s45(1)(b) by failing to maintain it to a reasonable standard. He says that for the most part the landlord has not done work to the premises from the time that he bought it in 2011 and the Building Report at that time described a house with the 'usual age related damage' which would benefit from painting and then repainting every 5-7 years. He also stated that the chimney had not been swept during his tenancy, there is putty falling out of the windows, and the hedges needed trimming.

141. I find that more likely than not the landlord is in breach of s45(1)(b). In coming to this conclusion I have taken into account:

a. Although I accept that the landlord painted one set of windows, the photographs provided show an exterior that is generally badly in need of painting; and

b. Although the landlord stated that he had come in and swept the chimney himself, there is no evidence of him having given any kind of notice to the tenant of him doing so; and

c. The photographs also show a hedge that is overgrown in parts.

142. I note that I could not see any evidence of putty falling out of windows in spite of the weather boards and windows being in dire need of a paint.

Unlawful acts

143. Section 45(1)(1A) provides that failure by the landlord to comply with any of the paragraphs s45(1)(a) to (ca) is an unlawful act.

144. An unlawful act is subject to an award of exemplary damages and Schedule 1A RTA provides that the maximum amount of exemplary damages that may be awarded under s45(1)(1A) is $7,200.00.

145. Section 109 provides that if the Tribunal is satisfied that a party has intentionally committed an unlawful act, then the Tribunal may make an award of exemplary damages after having regard to the intent of the person committing the unlawful act, the effect of the unlawful act, the interests of the person against whom the unlawful act was committed and the public interest.

146. Decisions in the District Court (eg *MBIE v Hills Shearing Ltd* [2024] NZDC 27583 and *Gardiner v Upland Bay Investments Limited* (DC Wellington, CIV 2014-085-13, 27 August 2014) have held that where there are multiple breaches of a particular section, then the Tribunal is to award one amount of exemplary damages, rather than awards for each particular breach.

147. This means that although the landlord has breached s45(1)(a) to (c) in a number of ways, only one amount of exemplary damages may be awarded.

148. I am awarding $3,500.00 in exemplary damages.

149. I do so because I consider that for the most part the landlord intended to commit these breaches. For example he would have known that the house required maintenance and yet he failed to maintain it; he would have known about the matters set out in the Building Report of 2011 and yet failed to address them, and he ought to have known about the requirements for the retaining wall and barrier.

150. When ascertaining the landlord's intention, my sense of this landlord/tenant relationship is that it was rather informal with very little required by the tenant in terms of maintenance of the property or adherence to the NZ Building Code or Insulation requirements.

151. The only real effect of these breaches that the tenant describes is mould in the house. I accept that there was mould, although I also accept that where the landlord recorded moisture readings, those readings were within the normal range.

152. I note that the landlord stated that the tenant has built cabins on site that are not built to the Building Code standards, have no insulation, and are mouldy. However, whether or not that is the case, those cabins do not form part of what the landlord is renting to the tenant and so cannot be taken into account when considering an exemplary damages award.

153. Given that exemplary damages are intended to be punitive in nature and to act as a deterrent, I have also taken into account that there is a significant public interest in landlords abiding by their obligations to tenants, particularly when it comes to the provision of residences that are compliant with NZ Standards.

Failure to provide and maintain a lock

154. Section 46(1) RTA provides that a landlord shall provide and maintain such locks and other similar devices as are necessary to ensure that the premises are reasonably secure.

155. For the reasons contained above under "*Front door replacement"* I am dismissing this part of the tenant's claim.

Breach of privacy

156. Section 38(2) RTA provides that the landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

157. Contravention of this section in circumstances that amount to harassment is an unlawful act which may attract an award of exemplary damages of up to $3000.00.

158. The tenant claims that the landlord has breached s38(2) by cutting down trees and hedges so that there was no longer privacy between he and his neighbours. He provided before and after photos of the tree trimming.

159. However I accept the landlord's contention that he was doing necessary maintenance.

160. In any case the tree trimming does not amount to harassment which is generally regarded as being prolonged behaviour intended to cause significant concern.

161. For these reasons I am dismissing this part of the tenant's claim against the landlord.

Retaliatory notice

162. Section 54 of the RTA provides that a notice of termination given by a landlord is of no effect if it was motivated wholly or in part by the tenant's exercise of their powers or rights.

163. I am dismissing the tenant's claim that the landlord gave him a notice of termination in breach of s54 because the landlord has not given a notice of termination. An application to the Tribunal to terminate a tenant's tenancy is not a notice of termination.

Terminating tenancy without grounds

164. Section 60AA RTA provides that a landlord commits an unlawful act if they give or purport to give a notice to terminate to the tenant or apply or purport to apply to the Tribunal for an order terminating the tenancy knowing that they are not entitled, under this Act, to give the notice or to make the application.

165. An unlawful act is subject to an award of exemplary damages and Schedule 1A RTA provides that the maximum amount of exemplary damages that may be awarded under s60AA is $6,500.00.

166. Section 109 provides that if the Tribunal is satisfied that a party has intentionally committed an unlawful act, then the Tribunal may make an award of exemplary damages after having regard to the intent of the person committing the unlawful act, the effect of the unlawful act, the interests of the person against whom the unlawful act was committed and the public interest.

167. The tenant claims that the landlord was in breach of s60AA because the landlord made an application to the Tenancy Tribunal to terminate the tenant's tenancy on the grounds that the rent was 21 days or more in arrears.

168. In the application to the Tribunal the landlord stated that the rent was $1400.00 in arrears (thus making it 21 days or more in arrears) whereas in fact on the date the application was made the rent was $550.00 in arrears and therefore not 21 days or more in arrears.

169. To be in breach of s60AA the landlord must, at the time the application was made, have intended to terminate the tenancy on the grounds that the rent was 21 days or more in arrears.

170. I am satisfied that the landlord intended to terminate the tenancy on these grounds. The application clearly sets out his application for termination on the grounds that the rent was 21 days or more in arrears.

171. While the landlord says that he miscalculated the rent arears, previous District Court decisions have said that a 'mistaken belief' does not negate intention.

172. In coming to an award of $1,400.00 in exemplary damages, I have taken into account that at the time the application was made, the relationship between landlord and tenant had deteriorated significantly. Both parties were making accusations against the other which, for the tenant, culminated in his indicating that he would be making a claim in the Tenancy Tribunal against the landlord. I have also taken into account that the tenant stated that the landlord's application was 'the straw that broke the camel's back'.

173. Again, there is significant public interest in landlord abiding by their obligations under the RTA and pursuant to any agreement they have made with the tenant.

174. As indicated earlier, I have taken into account that exemplary damages are intended to be punitive in nature and to act as a deterrent.

Tree debris

175. The tenant claims compensation for cleaning up the tree debris created when the landlord cut the trees on the property.

176. The landlord claims that the tenant did not clean up the tree debris and that he and his nephew had done it.

177. As the applicant, the tenant is required to prove his case on the balance of probabilities. For this claim that would mean that the tenant would have to prove that it is more likely than not that the tenant cleaned up the tree debris.

178. In a disputed situation such as this when one party's evidence is directly contradicted by the other's, some kind of objective evidence is required in order to prove a claim to the required standard. Objective evidence could include photographs and text messages.

179. There was no objective evidence provided to the Tribunal and I am therefore dismissing this part of the tenant's claim against the landlord.

Electrical work

180. Both parties stated that the other breached the RTA by doing electrical work at the premises.

181. These claims were withdrawn at the hearing on 11 December 2024.

Filing fee reimbursement

182. Section 102(4)(b) RTA provides that if an applicant has been partly successful in his or her claim, the Tribunal may order that the respondent pay the applicant the filing fee paid for the application.

183. Given that both parties have been partly successful I consider that each should bear their own cost of filing their application in the Tribunal.

C ter Haar
17 December 2024

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 $260. 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 fesootai mai le Tenancy Services i le numera 0800 836 262.