

TENANCY TRIBUNAL - Palmerston North | Te Papaioea

APPLICANT: Hawick Qian
Landlord

RESPONDENT: Folole Hana Fiso
Tenant

TENANCY ADDRESS: 652 Pioneer Highway, Highbury, Palmerston North 4412

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Folole Hana Fiso must pay Hawick Qian \$1,571.81 immediately, calculated as shown in table below.

| Description | Landlord | Tenant |
|--|-------------------|--------|
| Rent arrears | \$857.14 | |
| Cleaning | \$400.00 | |
| Rubbish removal | \$1,854.23 | |
| Repairs | \$360.00 | |
| Filing fee reimbursement | \$20.44 | |
| Total award | \$3,491.81 | |
| Bond | \$1,920.00 | |
| Total payable by Tenant to Landlord | \$1,571.81 | |

Reasons:

1. On 10 August 2023 I adjourned the landlord's application for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy to allow the landlord to provide proper evidence to substantiate his claims.

2. Today he was represented by his colleague, Bernadine Wastney, from Manner Property Management. Although he had advised the Tribunal before the hearing that Ms Wastney would be attending, he did not apply to have a representative appointed. Ms Wastney confirmed that Mr Qian is the owner and landlord of this property. He should have attended himself or applied for the Tribunal to allow representation. I allowed Ms Wastney to attend on Mr Qian's behalf.
3. The tenant did not appear. Ms Wastney advised that the tenant had needed to leave the property at short notice and was very apologetic that she had not been able to attend to matters properly and she had signed over the bond to Mr Qian.
4. Mr Qian has now provided a proper rent summary. The amount sought is slightly more than in the original application but the rent summary makes it clear that it is owing. The tenant had not been in arrears until the end when she did not pay the last week and a bit. The amount of \$857 owing to the date of termination on 24 March 2023 is proved.

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

5. At the end of the tenancy the tenant must leave the premises reasonably clean and tidy and remove all rubbish. See section 40(1)(e) Residential Tenancies Act 1986.
6. The landlord provided photos which showed that the tenant did not leave the premises reasonably clean and tidy, and did not remove all rubbish. Ms Wastney had helped the landlord clean and tidy the property and she confirmed that the tenant had not undertaken any cleaning.
7. The landlord submitted an invoice #2300132 dated 23 March from Feng Qian J&J Maintenance Service to Feng Qian¹ for rubbish dispose for "Enviro waste". This is the day before the rent was owed to. The quantity is 1 and the rate is shown as \$1,004.23. The labour is again, quantity 1 and the amount is \$850. There is no breakdown of hours, hourly rate and no GST. The landlord should provide receipts and itemised accounts. However, I have decided the amount is reasonable and have ordered the Tribunal to pay this.
8. There is a second invoice #2300148 dated 24 March for \$1,355.00 for cleaning. The quantity is again 1. The rate is \$1,355. Again there is no hourly rate or number of hours. I have allowed \$400.00 for cleaning the property which is a reasonable amount and in keeping with other claims before the Tribunal.

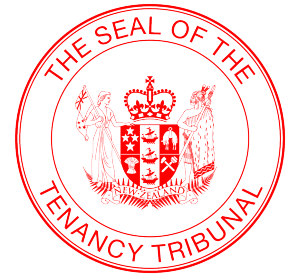
¹ The name on the tenancy agreement is Feng Qian

Is the tenant responsible for the damage to the premises?

9. The landlord has other claims for damage/repairs to the property. 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 RTA.
10. 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. See section 49B(1) RTA.
11. 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.
12. The landlord provided a photograph showing a damaged tiles in the bathroom and an itemised invoice dated 9 April 2021 from Odd Job Bob for replacing the shower platform. The landlord also provided an email dated 16 May 2021 from the tenant asking if she can start making payments for the repairs in the bathroom. I am satisfied that the damage occurred during the tenancy and it is more than fair wear and tear. I order the tenant to pay \$360.88.
13. There is a third invoice #2300134, also dated 23 March 2023 from Feng Qian J&J maintenance service. It lists a number of items totalling \$1,493.92. The items listed are living room roll curtain replacement, shower door, repair, bedroom wall paper damage, shower sink blockage, bedroom carpet replacement, towel rack broken, door handle, drawer handle. It is unclear whether the figures listed are disbursements or time spent. With the exception of the claim for carpet, there are no invoices or receipts.
14. The landlord has not provided entry photos or an entry report. The exit report is blank apart from the entry of "N" for "No" in the "undamaged" column for Lounge Room and "N" for "No" in the "undamaged" column for the following items:
Staircases/railings, Wheelie and recycle bins Pool/equipment. Street number/letter box, External walls, Balcony/porch/deck, Awning/gutters, Paving/pergola, Garage/car port/ storeroom, Garden shed, Gates/fences, Grounds/garden, External taps/hose, Clothes line, Solar panels, Paths/driveway, Other.
15. This simply does not make sense. For example, there is no evidence of a pool or solar panels in the photographs provided.
16. The landlord was provided with an opportunity to properly substantiate his claims and has not done so. Although there is an invoice for replacement of

bedroom carpet, there is no photo of the damaged carpet, description of it in the exit report, no explanation of the damage, no information about the age of the carpet.

17. All of the claims in the invoice number #2300134 are dismissed.
18. Because Hawick Qian has substantially succeeded with the claim I have reimbursed the filing fee.



T Baker
28 September 2023

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 \$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

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.