

TENANCY TRIBUNAL - Whangarei | Whangārei-terenga-parāoa

APPLICANT: Shamrose Chaudhry
Landlord

RESPONDENT: Mike Henwood
Tenant

TENANCY ADDRESS: 5 Ashley Avenue, Raumanga, Whangarei 0110

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Mike Henwood is to pay Shamrose Chaudhry \$58.00 from the bond, calculated as shown in table below.
3. The Bond Centre is to pay the bond of \$1,860.00 (5708464-002) immediately apportioned as follows:

Shamrose Chaudhry:	\$58.00
Mike Henwood:	\$1,802.00

Description	Landlord	Tenant
Key replacement	\$33.00	
Cleaning: Carport and garage	\$25.00	
Total award	\$58.00	
Bond	\$58.00	\$1,802.00

Reasons:

Background

1. The tenancy ended on 12 June 2023.
2. The landlord's application seeks:
 - a. Compensation for cleaning (\$97.70) and then replacing (\$358.00) the hob.
 - b. Cost of a replacement key (\$33.00).
 - c. Cleaning costs (\$25.00).
 - d. Compensation for time / inconvenience due to power being turned off (\$288.57).
 - e. Compensation for costs associated for landlord dealing with end of tenancy issues and filing this application (\$782.00).
3. The tenant's application seeks refund of the bond and raises an issue with regards to the basis for termination of the tenancy.
4. The hearing took place in Whangarei on 15 September 2023. Both parties attended the hearing.

Landlord application

Hob

5. Mr Chaudry submitted that the hob elements were badly rusted at the end of the tenancy. He attempted to clean the hob and he applied a rust treatment product.
6. The cleaning removed some of the surface rust, but it also revealed deep pitting on the elements. The damage cannot be repaired, and it affected the functioning of the hob.
7. Mr Chaudry submitted that the hob had very little use and was in good condition at the beginning of Mr Henwood's tenancy in January 2021. The IRD's depreciation guidelines state that an average expected lifespan of a hob is eight years. Mr Chaudry submitted that the fact that this hob needed to be replaced after two years shows that Mr Henwood treated it carelessly, either leaving wet items on the elements or failing to clean up spills.
8. Mr Chaudry's claim seeks cleaning costs and the cost of purchasing and installing a new hob.
9. Mr Henwood submitted that:
 - a. The hob elements were already showing signs of deterioration at the beginning of the tenancy. Mr Henwood provided a photograph in support of this.

b. The hob is a Bellini brand that can be purchased at Bunnings for approximately \$200. These hobs have a short lifespan and are particularly susceptible to rusting elements. In support of this, Mr Henwood provided:

i. An email from Mr Whitehead, a Service Manager with Laser Electrical, who states:

It is common for this style of hob to rust after only a short time.

These cheaper cooktops are more suited to a holiday home, beach house etc that is only used a few times a year.

The more expensive brands are made using better steel in the hotplates which should last a lot longer than their cheaper counterparts although hotplates do not last as long as a ceramic top or quality gas cooktop would.

ii. Two one-star product reviews of the Bellini hob from the Bunnings website. One reviewer, Kay, succinctly describes the product as “Rubbish” and states:

This product is not fit for purpose. Elements rusted on first use, the stainless steel is so thin it gets very hot to touch and spills bake on and cannot be cleaned.

The other one-star review also notes that the elements rusted quickly and extensively.

10. I note that there are now a total of five ratings of this product on the Bunnings website, two one-star, two two-star and one four-star. One of the two-star reviews also states “rusts very quickly”.

11. The evidence provided by Mr Henwood is sufficient to rebut the inference that the rapid deterioration of the elements is due to some careless action by Mr Henwood rather than normal wear and tear for this particular make and model.

12. This part of the landlord's claim is dismissed.

Key

13. At the end of the tenancy Mr Henwood was missing two keys. He had a conversation with Mr Choudry about this. Mr Henwood said that he would look for the keys. Mr Choudry said that was fine, and if Mr Henwood could not find them then he would simply cut more keys.

14. Mr Henwood found one key but not the other.

15. The claim seeks the cost of cutting a new key (\$8.00) plus the landlord's time and travel (\$25.00)

16. Mr Henwood submitted that the landlord has insurance for replacement of keys or locks with a nil excess.

17. A tenant's liability for careless damage to the property is limited to the amount of the landlord's insurance excess or the equivalent of four weeks' rent, whichever is the lesser¹.
18. Mr Henwood's argument is that this principle also applies to his liability for replacing the missing key.
19. My finding is that the limitation does not apply.
20. The section in the Residential Tenancies Act 1986 that sets out the limitation is within a part of the Act entitled "Responsibility for damage". That part includes sections 49A – 49E.
21. Per section 49B, the limitation applies to the tenant's liability for "destruction of, or damage to the premises that is caused by a careless act or omission of the tenant".
22. The tenant's obligation to return all keys at the end of the tenancy is in a different part of the Act². A tenant's failure to return the keys does not amount to destruction of, or damage to the premises.
23. The limitation of liability does not apply.
24. Even though Mr Choudry holds insurance with a nil excess, he is not obliged to make an insurance claim. Mr Henwood is liable for the proven and reasonable costs of replacing the key.
25. The amount claimed by Mr Choudray is fair and reasonable. Mr Choudray is entitled to be compensated for his time in addition to the actual cost of cutting a new key.

Cleaning

26. Tenants must leave the premises reasonably clean and tidy at the end of the tenancy.
27. The claim seeks \$25.00 (representing half an hour of cleaning) to sweep out the carport and to remove a few piles of dirt / dust that the tenant had left in the garage.
28. Overall, the premises were left in a reasonably clean and tidy condition, but Mr Choudry's photographs show that these two areas were overlooked, and the claim is fair and reasonable.

Power turned off at the end of the tenancy

¹ Section 49B(3) Residential Tenancies Act 1986

² Section 40, under the heading 'Rights and obligations of parties'

29. Mr Henwood had the power disconnected on the last day of the tenancy and re-connected to his new property.
30. When Mr Choudry attempted to get power re-established via his own power company, he was not able to do so.
31. After several frustrating phone calls over a period of several days, Mr Choudry discovered that the main power switch at the property had been switched off.
32. Mr Choudry seeks compensation for his time and inconvenience.
33. Mr Henwood submitted that it is normal to switch off the mains power when leaving a property. In this instance he did not switch off the power, it was most likely done by one of his friends who were helping him move out. Mr Henwood submitted that the power went off around midday, which is when he asked his power company to disconnect the power. He was not aware that one of his helpers had turned off the main switch.
34. I acknowledge that Mr Choudry did incur inconvenience and delay because of this issue. However, Mr Henwood has not done anything that amounts to a breach of his legal duty as a tenant.
35. There is no legal basis to hold Mr Henwood liable for this cost, and this part of the landlord's application must be dismissed.

Compensation for general inconvenience

36. The claim seeks compensation for time and inconvenience relating to "the tenant not doing their duty per the tenancy contract and leaving the mess for the landlord to sort, including filing this application and writing all this explanation, even dealing with multiple texts, abusive messages and blackmail attempts".
37. This part of Mr Choudry's application is dismissed for the following reasons:
 - a. The Tenancy Tribunal has no power to award costs to any party except in certain limited circumstances, none of which apply in this instance³.
 - b. The proven claim against Mr Henwood is very minor.
 - c. Communicating with a tenant and dealing with end of tenancy issues is part of a landlord's normal business and the landlord cannot have any reasonable expectation of being compensated for that activity above and beyond the rent.

Tenant application

³ Section 102 RTA

38. Mr Choudry gave Mr Henwood notice to terminate the tenancy on the grounds that he was going to put the property on the market for sale.
39. Mr Henwood submitted that he had a conversation with Mr Choudry sometime after Mr Choudry gave notice, and in that conversation Mr Choudry said that he intended to put a single tenant into the property and then sell the property with that person as a sitting tenant.
40. Mr Henwood submitted that this:
 - a. Renders the termination unlawful and invalid; and
 - b. Amounts to discrimination on the basis of family status, which is a prohibited grounds of discrimination under the Human Rights Act 1993.
41. Mr Henwood noted that, as at the date of hearing, Mr Choudry had not put the house on the market for sale.
42. Mr Choudry did not in fact rent the property to a single tenant after Mr Henwood vacated.
43. Had he done so, it is arguable whether this action would have made the termination unlawful. The intent and purpose of permitting the landlord to terminate a tenancy if they intend to sell the premises is to allow the landlord to market the property when it is unoccupied and to sell it with vacant possession. From that perspective, allowing the landlord to re-rent the premises after terminating a tenancy on the basis of putting the property on the market for sale seems contrary to the spirit and intent of this provision.
44. However, it is not contrary to the actual words of the section. Section 51(2)(a) RTA states that a landlord may terminate a periodic tenancy by 90-days' notice if the premises are to be put on the market for sale within 90-days of the end of the tenancy. There is no specific requirement that the property remain untenanted after the termination until the sale.
45. Mr Henwood's argument that Mr Choudry's proposed action would amount to discrimination on the basis of family status is tenable. Discrimination is an unlawful act under section 12 of the Residential Tenancies Act 1986 and exemplary damages of up to \$6,500 can apply. Given that Mr Choudry did not replace Mr Henwood with a single tenant, there is no basis for me to consider an award of exemplary damages in this instance.
46. As noted above, part of the requirement for termination under section 51(2)(a) is that the landlord put the property on the market within 90-days of the termination of the tenancy.
47. That has not happened in this instance.
48. Mr Choudry submitted that after Mr Henwood vacated, he discovered that parts of the property required repairs and maintenance. He discussed with his real

estate agent whether he would be better to carry out the repairs and then market the house, or sell it “as is”. After some consideration, he decided to carry out the repairs. This has delayed the house going onto the market.

49. I accept that when Mr Choudry gave the notice, he intended to put the property on the market within 90-days of the end of the tenancy. I accept that Mr Choudry still intends to sell the property, and the delay is due to information that only came to light at the end of the tenancy.
50. I am satisfied that the termination was lawful.

Outcome

51. Both parties will bear their own cost of the filing fee.
52. Mr Choudry will receive \$58.00 from the bond.
53. The balance of the bond will be released to Mr Henwood.



N Blake
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.