

TENANCY TRIBUNAL - Dunedin | Ōtepoti

APPLICANT: Propertyscouts Dunedin 2017 Limited As Agent For T
Barnes
Landlord

RESPONDENT: Rory Greer, Josh Brandt, Eddy Martin, Murphy Lunjevich,
Jackson Willis, Wil De Geest
Tenant

TENANCY ADDRESS: Unit/Flat 4, 617 Castle Street, North Dunedin, Dunedin 9016

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Rory Greer, Josh Brandt, Eddy Martin, Murphy Lunjevich, Jackson Willis and Wil De Geest must pay Propertyscouts Dunedin 2017 Limited As Agent For T Barnes **\$17,760.83** immediately, calculated as shown in table below.
3. This order incorporates the Tribunal order made on 12/1/2023 under application 4464300.

Description	Landlord	Tenant
Balance of arrears from previous order 4464300	\$3,192.58	
Cleaning	\$632.50	
Carpet Cleaning of bedrooms	\$540.00	
Dishwasher replacement as agreed by tenants	\$575.00	
Repairs, gibstopping, painting	\$14,660.31	
Loss of rent for two weeks	\$2,220.00	
Filing fee reimbursement	\$20.44	
Total award	\$21,840.83	
Bond awarded 1/6/2023	\$4,080.00	
Total payable by Tenant to Landlord	\$17,760.83	

Reasons:

1. All parties attended the rescheduled hearing, two of the tenants by telephone.
2. This was the third hearing of the compensation claim, the two previous hearings being on 30/3/ and 1/6/2023 respectively.
3. In addition, on 12/1/2023 the Tribunal made an order relating to this tenancy, for rent arrears of \$3,325.00 to 19/12/2022.
4. The previous order is incorporated into this order for enforcement purposes.
5. On 18/2/2023 the landlord applied for compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
6. The tenancy was for a fixed term from 10/1/2022 to 19/12/2022 at \$1,020.00 rent per week.

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

7. At the end of the tenancy the tenants 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. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986.
8. The landlord initially claimed compensation for cleaning of \$1,138.00.
9. However, because this account included cleaning after repairs were undertaken the claim was reduced to 10 hours work.
10. Further, the landlord claimed \$540.00 for cleaning of the bedroom carpets.
11. In support of the claim the landlord provided entry and inspection reports, with photographs and invoices.
12. In response the tenants disputed that the carpets needed cleaning at the end of the tenancy.
13. I am satisfied from the evidence that the tenants did not leave the premises reasonably clean and tidy, and the bedroom carpets required cleaning.
14. Awards have been made for carpet cleaning and 10 hours cleaning of the kitchen and bathroom.

Are the tenants responsible for the damage to the premises?

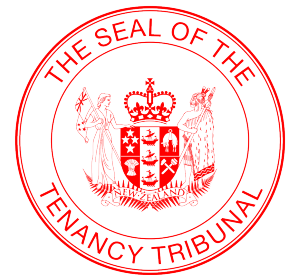
15. A landlord must prove that damage to the premises occurred during the tenancy and is more than fair wear and tear. If this is established, to avoid liability, the tenant must prove they did not carelessly or intentionally cause or permit the

damage. Tenants are liable for the actions of people at the premises with their permission. See sections 40(2)(a), 41 and 49B RTA.

16. Where the damage is caused carelessly, and is covered by the landlord's insurance, the tenant's liability is limited to the lesser of the insurance excess or four weeks' rent (or four weeks' market rent in the case of a tenant paying income-related rent). See section 49B(3)(a) RTA.
17. Where the damage is careless and is not covered by the landlord's insurance, the tenant's liability is limited to four weeks' rent (or market rent). See section 49B(3)(b) RTA. Where insurance money is irrecoverable because of the tenant's conduct, the property is treated as if it is not insured against the damage. See section 49B(3A)(a) RTA.
18. 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.
19. 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.
20. Due to the extent and type of damage the landlord believed the damage was intentional.
21. Moreover, the landlord is unable to obtain insurance for the premises.
22. Based on the invoices from the builder who undertook the work, which included the costs of the electrical and gib stopping contractors the landlord sought compensation of \$21,990.47.
23. Further the landlord claimed \$575.00 for replacement of the dishwasher and \$4,440.00 loss of rent for the time taken to complete the work on the premises.
24. During the hearing the landlord reduced the claim for loss of rent to two weeks because the time taken included work on another flat in the same complex.
25. The builder who undertook the work appeared and gave evidence about the extensive damage to walls, doors, the heat pump, dishwasher and flooring in the kitchen/lounge.
26. The witness also explained his invoices and suggested that all the work undertaken on the premises was not charged for, in particular the damage to the external wall in October.
27. I am persuaded by the evidence provided, including the witness and photographs that significant damage was caused to the premises during the tenancy. This included holes in walls and doors, the heat pump removed from

the wall, the dishwasher was damaged and flooring in the kitchen/lounge had to be replaced.

28. The damage is more than fair wear and tear.
29. Although the tenants did not dispute most of the damage, they were unhappy with the amount being claimed.
30. In making an award I have taken into account betterment and depreciation.
31. The landlord should be returned to the position they would have been in had the tenants not breached their obligations and should not be better or worse off.
32. In calculating depreciation, I have considered the age and condition of the items at the start of the tenancy and their likely useful lifespan and the acknowledgement of both the landlord and witness that the premises had been remedied to a higher standard, using more industrial materials, than previously.
33. As Propertyscouts Dunedin 2017 Limited As Agent For T Barnes has wholly succeeded with the claim I must award the filing fee.



J Wilson
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.