

TENANCY TRIBUNAL - Tauranga | Tauranga Moana

APPLICANT: Boutique Rentals Bop Limited
Landlord

RESPONDENT: Billie Te Tau
Tenant

TENANCY ADDRESS: 6 Lion Place, Papamoa, Papamoa 3118

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Billie Te Tau must pay Boutique Rentals Bop Limited \$10,421.85 immediately, calculated as shown in table below.
3. The Bond Centre is to pay the bond of \$2,640.00 (6380758-005) to Boutique Rentals Bop Limited immediately.

Description	Landlord	Tenant
Rent arrears to 7 July 2023	\$3,644.82	
Water rates	\$88.07	
Cleaning and materials	\$1,725.25	
Oven cleaning	\$92.00	
Rubbish removal	\$1,294.33	
Missing items, garage remotes, shower trap	\$314.16	
Lock/key replacement	\$175.27	
Repairs/replace: Insinkerator, replacement plugs	\$1,004.53	
Garden work, rubbish bags, bulbs, plugs, dishwasher repair	\$397.16	
Replace carpet	\$5,250.84	
Replace garage carpet	\$1,280.00	
Repairs: paintwork	\$6,800.00	
Replace furnishings: blinds	\$1,310.00	
Window repairs	\$442.66	

Electrical repairs to heat pump, oven, rangehood, lights	\$772.32
Lost rent	\$2,250.00
Filing fee reimbursement	\$20.44
Total award	\$26,861.85
Net award	\$26,861.85
Less Insurance monies paid	\$13,800.00
Bond	\$2,640.00
Total payable by Tenant to Landlord	\$10,421.85

Reasons:

1. The landlord attended the hearing. The tenant did not appear.
2. The landlord has applied for rent arrears, compensation, exemplary damages, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.

How much is owed for rent and water rates?

3. The tenancy ended on 7 July 2023. The landlord provided rent records and water rates invoices which prove the amount owing at the end of the tenancy.

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

4. At the end of the 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. 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. The tenant must also replace standard light bulbs.
5. The tenant did not leave the premises reasonably clean and tidy, and did not remove a significant amount of rubbish. The premises required extensive cleaning to bring it up to a reasonable standard.
6. The tenant did not return the keys or garage remotes.
7. The following chattels were missing at the end of the tenancy: plugs from bathrooms and insinkerator stopper. The landlord also had to replace light bulbs.
8. The amounts ordered are proved. I have reduced the amount claimed for cleaning to \$25.00 per hour for the work done by the owners for a total amount of \$1550.00 for 31 hours (2 people). I find the time spent was reasonable given the filthy state the premises was left in.

Is the tenant responsible for the damage to the premises?

9. 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. 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.
11. 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.
12. 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.
13. 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.
14. The landlord withdrew claims relating to the benchtop and floorboards totalling \$13,443.85.
15. I find that the following intentional and extensive damage was caused during the tenancy: multiple holes in walls throughout the premises, smashed doors, carpet damaged by extensive staining and faeces throughout, garage carpet damaged by extensive oil stains, broken insinkerator, dishwasher door damaged, ceilings damaged, blinds broken, broken shower trap, broken window in lounge; and multiple electrical repairs due to damaged heat pump and rangehood, oven floor, light fitting in bedroom, and extractor fan in bathroom.
16. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
17. The amounts ordered are proved. The landlord claimed \$549.00 for a new dishwasher. However, I have reduced this by 50% to reflect likely repair costs as I am not persuaded a new machine was required when the door could have been fixed/replaced.
18. I have taken into account betterment and depreciation in relation to the paintwork and carpets. The landlord should be returned to the position they would have been in had the tenant not breached their obligations, and should not be better or worse

off. In calculating depreciation, I have taken into account the age and condition of the items at the start of the tenancy (3 years) and their likely useful lifespan.

19. The landlord made a successful insurance claim of \$13,800.00 for the damages and this amount has been deducted off the amount awarded by the Tribunal.
20. The also landlord claimed 4 weeks lost rent due to the extensive nature of the damage and time taken for repairs. While a realistic landlord's business plan should include an allowance for some loss of rent between tenancies, I acknowledge the extent of the damage and the time it took to remedy which inevitably led to a delay in re-letting. I award 3 weeks lost rent for a total of \$2,250.00 as fair, reasonable and proportionate compensation.

Exemplary damages

21. Boutique Rentals Bop Limited claims the tenant has used the premises unlawfully, by using or permitting the use of methamphetamine at the premises.
22. A tenant must not use the premises or permit the premises to be used for an unlawful purpose. See section 40(2)(b) Residential Tenancies Act 1986.
23. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of \$1,800.00. See section 40(3A)(c) and Schedule 1A Residential Tenancies Act 1986.
24. The landlord provided a composite test for methamphetamine dated 10 July 2023 which records a level of 37.40ug/100cm for the 10 areas tested.
25. However, the landlord faces an evidential difficulty in proving this part of the claim. The 'ingoing' test for methamphetamine was done some 4 months before this tenancy started. In these circumstances, I am unable to conclude that the tenant used the premises for an unlawful purpose during this tenancy.
26. This part of the claim is dismissed.
27. As the landlord has substantially succeeded with the claim, the tenant must reimburse the filing fee.



A Macpherson
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 fesootea mai le Tenancy Services i le numera 0800 836 262.