

**TENANCY TRIBUNAL - MANUKAU**

APPLICANT: Chelsea Pearl Collins-Kemp  
Tenant

RESPONDENT: Edge Real Estate Limited Michelle Conquer  
Landlord

TENANCY ADDRESS: 17A Harbour Crest Drive, Waiuku, Waiuku 2123

**ORDER**

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Bond Services is to release from the Bond the sum of \$253.00 to Edge Real Estate Limited Michelle Conquer immediately.
3. Bond Services is to pay the balance of the Bond, \$1,907.00 to Chelsea Pearl Collins-Kemp immediately.

**Reasons:**

1. Both parties attended the hearing.
2. The Landlord has applied to be compensated for carpet cleaning and a crack in the bathroom vanity at the end of the tenancy.
3. The Tenant claims compensation for stress due to the Landlord not releasing her bond to her.
4. In terms of the Tenant's claim, I note the parties have been in dispute regarding damage to the premises and have attended mediation. I do not get the sense the Landlord has deliberately withheld the bond to upset the Tenant. There is a genuine dispute between the parties.

*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, remove all rubbish, return all keys and security devices, and leave all

chattels provided for their benefit: s 40(1)(e)(ii)-(v) Residential Tenancies Act 1986 (RTA).

6. The Landlord has produced photographs showing the condition of the carpet at the commencement of the tenancy and at the end.
7. The Tenant said she cleaned the carpet herself at the end of the tenancy, but professional carpet cleaning was required to restore the carpet, and I note, whereas the Tenant was not able to restore the carpet to its pre-tenancy state, the professional cleaner has been able to do so and has noted the carpet was dirty and appeared not to have been cleaned in some time, despite the Tenant's efforts.
8. The Tenant has a dog and it is possible the Tenant's dog has contributed to the build-up of dirt on the carpets in the home, but without more information about the dog and its activities, I make no firm finding in this regard.
9. I award the Landlord its costs in having the carpets professionally cleaned.

*Is the tenant responsible for the damage to the premises?*

10. 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: s 40(2)(a), 41 and 49B RTA.
11. Where the damage is careless, and occurs after 27 August 2019, section 49B RTA applies. If the landlord becomes aware of the damage after 27 August, the damage is presumed to have occurred after that date unless the tenant proves otherwise.
12. 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): s 49B(3)(a) RTA.
13. 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: s 49B(3A)(a) RTA.
14. 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: s 49B(1) RTA.
15. 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.

16. The Landlord claims the vanity was damaged during the tenancy.

17. The Landlord has failed to establish the damage occurred during the tenancy:

- a. There are no pre-tenancy, close-up photographs of the affected area of the vanity.
- b. The nature of the damage is such that it could have occurred gradually and imperceptibly over time.
- c. There is no reference to the damage in any inspection reports completed during the tenancy.
- d. The Tenant has presented a screenshot of one frame from a video she made soon after the tenancy began in which the vanity surface can be seen, and the crack plainly observed. The video was not taken for the purposes of showing the damage to the vanity, it was a personal video from the Tenant's Snapchat application.
- e. On balance, I find it more likely the crack started as a hairline crack and grew larger as the tenancy progressed, but I find it unlikely the crack has been caused by the Tenant because it can be plainly seen in the Tenant's screenshot, so soon after the commencement of the tenancy, yet has not been noted in the pre-tenancy inspection checklist, nor has it been documented by the parties anywhere else until after the tenancy ended.



M Steens  
04 January 2023

## **Please read carefully:**

Visit [justice.govt.nz/tribunals/tenancy/rehearings-appeals](https://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](https://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](https://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](https://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.

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If you require further help or information regarding this matter, visit [tenancy.govt.nz/disputes/enforcing-decisions](https://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](https://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](https://tenancy.govt.nz/disputes/enforcing-decisions), pe fesootai mai le Tenancy Services i le numera 0800 836 262.