

TENANCY TRIBUNAL - Waitakere | Waitākere

APPLICANT: Peresitene Akelise
Tenant

RESPONDENT: Shelter Realty Limited trading as Harcourts New Lynn as
agent for Gordon Deane
Landlord

TENANCY ADDRESS: Unit/Flat 3, 42 Brandon Road, Glen Eden, Auckland 0602

ORDER

1. An application for suppression has been made in this case by both parties. No suppression orders are made.
2. Shelter Realty Limited trading as Harcourts New Lynn as agent for Gordon Deane must pay Peresitene Akelise \$900.00 immediately, being compensation for the loss of enjoyment of the tenancy due to a leaking pipe that caused dampness and damage to the floor in parts of the premises.

Reasons:

1. Both parties attended the hearing. Mr Singh and Ms Ahluwalia represented the landlord.
2. The tenant has applied for a full refund of rent as compensation for the loss of enjoyment and use of the premises due to dampness and moisture that compromised areas of flooring and caused mould in the living room. The tenant also alleges that there was no source of heating at the premises.

Background

3. The tenancy started on 10 December 2021. It was a fixed term tenancy to 8 December 2022.
4. During the tenancy various repair issues arose. The main issue was dampness that affected the floors in the bathroom/shower, toilet, and 1 adjoining bedroom.
5. The tenant says there was no source of heating and in winter the premises were cold.
6. The tenants contacted government agencies for assistance. They were placed in emergency accommodation and they had to move several times before being offered a Kāinga-Ora house where they now reside.
7. When the landlord had the dampness issue assessed, a leaking pipe under the house was discovered. That was the cause of the dampness in the floors in the affected rooms (the floors were sealed plywood). Contractor unavailability meant that the leak could not be repaired immediately.
8. The landlord offered the tenant other places to view but the tenant did not consider them within his rental price range.
9. The tenancy ended on 11 July 2022. The landlord agreed to release the tenant from the fixed term tenancy.
10. On 24 April 2023 the tenant made the application that is before the Tribunal today. He sought compensation in the form of a full refund of rent paid (\$18,000.00) for what he alleged was the landlord's failure to provide and maintain the premises in a reasonable state of repair.
11. The tenant did not attend the first scheduled hearing. The application was dismissed. However, the adjudicator who was to hear the application granted the tenant a rehearing.

Issues

12. The issues before the Tribunal are these:
 - Did the landlord fail to provide and maintain the premises in a reasonable state of repair?
 - If so, should the Tribunal award the tenant compensation?

Did the landlord fail to provide and maintain the premises in a reasonable state of repair?

13. The tenant alleges that the premises had no form of heating.

14. The landlord produced evidence (pre and post tenancy inspections reports) that show there was a heat pump in the lounge.
15. When I put that to the tenant, he said the unit was an air conditioner.
16. A heat pump has two distinct functions – heating and cooling. I suspect that the tenant did not know that the unit was a heat pump as well as an air conditioner.
17. I find that the premises did have a source of heating (the previously existing fireplace having been blocked up as required by the Healthy Homes Standards (HHS)).
18. There was no breach by the landlord failing to provide a source of heating. Therefore, the fact that the tenants chose to sleep in their car with the heating on during the coldest nights was not a consequence of any landlord breach.
19. Nor is the presence of a small area of mould in the living room in front of the closed off fireplace.
20. The landlord accepted that there was a leaking pipe under the floor of the premises that affected the plywood flooring in the bathroom/shower, toilet and 1 adjacent bedroom.
21. The tenant said that all the floors in the premises were affected, but there is insufficient evidence for me to find that was the case.
22. Due to contractor unavailability, the landlord could not have the leaking pipe repaired and the leaking continued for the last three months at least of the tenancy.
23. While the leaking was probably present before then the landlord did not have it assessed.
24. The tenant said he told his then property manager about the dampness issue in the bathroom and was promised it would be repaired. He said no-one came to fix it.
25. The landlord produced evidence that its contractors found it difficult to contact the tenant.
26. The landlord said they were first advised about the leaking on 30 March 2023 and the contractors assessed the problem on 1,4 and 6 April 2023.
27. Regardless of the conflict in the evidence, it is clear that there was a leaking issue that made the plywood flooring damp and spongy, something that needed to be repaired but was not. This affected the tenant's enjoyment of the tenancy.
28. The tenant also claimed that the kitchen tap was faulty and would not turn off.
29. The landlord said they were informed of the tap issue in February 2022 and the repair was done on 17 February. Evidence of the repair (the invoice) was produced in evidence. The taps were replaced.

30. Overall, the pre and post inspection reports, including photos, do not show that the premises were in the state of disrepair alleged by the tenant.
31. However, I accept that there would have been some loss of enjoyment of the tenancy due to the dampness that resulted from the leaking pipe under the house, and this restricted the use of part of the premises.
32. Had the tenant realised that there was a heat pump at the premises not just an air conditioner, some of that loss of enjoyment would have been reduced.

Should the Tribunal award the tenant compensation?

33. The Tribunal may award compensation to a tenant for losses arising from a proven breach or breaches by the landlord of their statutory responsibilities.
34. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.
35. The tenant's compensation claim is for the loss of use of and therefore enjoyment of the tenancy.
36. In *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667 the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:
 - The nature of the breach;
 - The duration of the breach; and
 - The effect of the breach on the party.
37. The tenant seeks a full refund of rent. That claim is unrealistic. Rent can only abate when the premises are destroyed or so seriously damaged (in whole or in part) so as to become uninhabitable. That was not the case here.
38. The tenant cannot be compensated for his belief that there was no heat pump. The evidence shows that there was a heat pump. The landlord committed no breach.
39. The tenant did experience a loss of enjoyment of the tenancy due to dampness that affected the flooring in the bathroom/shower, toilet, and 1 adjacent bedroom.
40. That loss of enjoyment was not due to a landlord breach as such; it was due to a burst pipe. But the repair work could not be done quickly, and it is probable that the problem was present from early on in the tenancy.
41. Compensation is not punitive. It simply recognises that the tenant has suffered a loss of enjoyment in this case due to a necessary repair issue that was delayed.

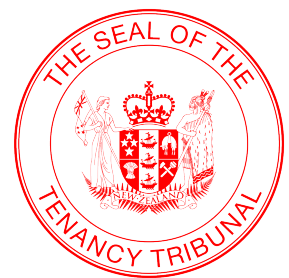
42. The landlord agreed to release the tenant from the fixed term tenancy but that too causes disruption and stress for a tenant; rental properties are in demand especially in the price range the tenant could afford. So, the landlord's offer does not detract from the loss of enjoyment the tenant experienced.
43. For this loss of enjoyment, I award the tenant compensation of \$900.00 reflecting the principles set out in *Birch* mentioned above.

Result

44. The landlord will pay the tenant compensation of \$900.00 for his loss of enjoyment of the tenancy due to dampness issues and the delayed repair of the burst pipe that caused the dampness.
45. I make no order reimbursing the filing fee. The tenant's application is only marginally successful.

Name suppression

46. Both parties sought a name suppression order.
47. I make no orders for name suppression. The tenant's application is only successful in small part. The landlord has not fully defended the application, an order having been made against it – see section 95A Residential Tenancies Act 1986.



J Greene
27 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.