

TENANCY TRIBUNAL - Palmerston North | Te Papaioea

APPLICANT: Fordyce Realty Limited As Agent For Ashleigh Lowe
Landlord

RESPONDENT: Samuel Smits
Tenant

TENANCY ADDRESS: 18A Fairs Road, Milson, Palmerston North 4414

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Samuel Smits must pay Fordyce Realty Limited As Agent For Ashleigh Lowe \$1,913.50 immediately, calculated as shown in table below.

Description	Landlord
Rent arrears to 26/8/2023 after bond refunded	\$165.71
Filing fee reimbursement	\$20.44
Repairs: front door	\$207.00
Repairs: other including rubbish removal	\$664.90
Break lease fee	\$555.45
Gate replacement	\$300.00
Total award	\$1,913.50
Total payable by Tenant to Landlord	\$1,913.50

Reasons:

1. The landlord attended the hearing represented by Mr Fordyce. The tenant did not attend.

2. The tenancy commenced on 9 April 2023 for a fixed term of one year but was ended early at the tenant's request. The premises were retenanted from 27 August 2023.
3. The landlord has applied for rent arrears, compensation, and reimbursement of the filing fee following the end of the tenancy.

How much is owed for rent ?

4. When a fixed term tenancy is broken, the tenant is liable for rent to the date the premises were retenanted.. The landlord provided rent records of the rent due to 26 August 2023. The bond has been refunded leaving arrears of \$165.71 owing.

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. See section 40(1)(e)(ii)-(v) Residential Tenancies Act 1986
6. The tenant did not remove all rubbish.
7. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

8. 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.
9. 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.
10. 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.
11. 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.

12. 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.
13. The following damage was caused during the tenancy:
- Damage to the back and front doors from dog scratches. These required filing and repainting;
 - The curtains in one room were covered in mould and had to be replaced. These were new at the beginning of the tenancy;
 - There was blue paint on some of the decking and two large gouges on two decking boards. These boards have been replaced and the paint removed;
 - There were deep gouges on one of the bedroom walls that required repair;
 - The large wire gate had been badly dented on one side and cannot be repaired. It cannot be opened easily. The Landlord claimed \$648.60 for a replacement gate, however photographs showed that the gate was far from new and showed signs of rust. I have taken into account depreciation and awarded \$300.00 as a contribution towards replacement.
 - The landlord claimed for 2 replacement lavender bushes that he believed had been damaged by a dog. The photographs showed that while there was some damage the plants were alive and with trimming back would regrow. I have deducted \$40.00 from the claim.
14. While I find the damage was not intentional I do find it can be regarded as careless and more than fair wear and tear, and the tenant has not disproved liability for the damage.
15. The amounts ordered are proved.
- Can expenses on lease break be awarded?*
16. Where the landlord agrees to an early termination of lease they are entitled to claim any reasonable expenses incurred in this process, including retreating, provided an itemised account is presented. See s.44A RTA
17. The landlord did present an itemised account of reasonable expenses and that claim is successful.

18. Because Fordyce Realty Limited As Agent For Ashleigh Lowe has substantially succeeded with the claim I have reimbursed the filing fee.



J Robson
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.