

TENANCY TRIBUNAL - Manukau

APPLICANT: Jamaliyeh Drake
Landlord

RESPONDENT: Devendra Prakash, Veema Chand
Tenant

TENANCY ADDRESS: 5 James Street, Mangere East, Auckland 2024

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. Devendra Prakash and Veema Chand must pay Jamaliyeh Drake \$4,995.44 immediately, calculated as shown in table below.
3. The Bond Centre is to pay the bond of \$1,650.00 (5822144-002) to Jamaliyeh Drake immediately.

Description	Landlord	Tenant
Rent arrears to 31 March 2023	\$1,220.00	
Window repairs	\$335.00	
Cleaning	\$945.00	
Repairs: Holes in wall and doors	\$300.00	
Repairs: Reinstall laundry tub	\$150.00	
Repairs: Door frames in bedrooms	\$180.00	
Repairs: Wardrobe doors	\$340.00	
Repairs: Light fittings	\$120.00	
Repairs: Toilet cistern	\$310.00	
Repairs: Bathtub	\$100.00	
Replace furnishings: towel rails and toilet roll holders	\$125.00	
Rubbish removal: 20% skip bin hire	\$50.00	
Repairs: Painting	\$850.00	

Replace furnishings: Carpet	\$1,000.00
Repairs: Fence	\$350.00
Replace furnishings: curtains and tracks	\$250.00
Filing fee reimbursement	\$20.44
Total award	\$6,645.44
Bond	\$1,650.00
Total payable by Tenant to Landlord	\$4,995.44

Reasons:

1. Both parties attended the hearing.
2. The property is large six-bedroom home in Mangere. The tenants lived there from 2012 to 2023. At the beginning of the tenancy the house had been completely renovated, new paint, new carpet, new bathroom vanity, shower etc.
3. The tenancy ended after the landlord gave the tenants a 90 day notice to end the tenancy so that the landlord could do major repairs and sell the property.
4. One of the reasons that the landlord gave the tenant notice was so that it could re-roof the property before selling. The landlord did this work after the tenants left.

Accepted claims

5. The tenants accept the landlord's claims for rent arrears and window repairs.

Disputed claims

6. The landlord's claims are for cleaning and damage to the property. The tenant disputes liability for the cleaning and repairs for the following reasons:
 - a) The tenant says that much of the damage claimed for items like carpets, curtains wardrobe doors, painting etc is fair wear and tear that would be expected over a tenancy of 11 years.
 - b) The tenant says that the landlord is seeking to improve the property for sale at the tenant's cost.
 - c) That some of the damage occurred at the beginning of the tenancy, such as the removal of the laundry tub (due to the tenant's washing machine being too big to fit in the space and that the landlord knew about this but did nothing about it.
 - d) That the tenants thought that the landlord was undertaking major repairs and therefore they did not need to clean it thoroughly.
 - e) That the landlord spent very little on the property over 11 years and that the tenants looked after repairs themselves.

- f) That the tenant improved the property by installing a heat pump which they have not been given credit for.

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

7. 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. .
8. I am satisfied from the photographs provided by the landlord and the description of the work undertaken in the cleaning invoice that the tenant did not leave the premises reasonably clean and tidy and did not remove all rubbish.
9. I do not accept the tenant's submission that they did not need to leave the property clean because the landlord was renovating. The nature and the extent of the dirtiness boarded on unhygienic (such as dog faeces being left on the carpet) and I do not consider that it appropriate to leave the property in the state that was simply because the landlord was intending on doing repairs.
10. I am also satisfied that the tenant removed curtains and tracks. I record that I would not have expected all curtains to have been at the end of their life after 12 years and, even if this was the case, the tracks should still be up.
11. I am satisfied that the costs sought by the landlord are appropriate. The amount for the skip bin was a percentage of the total costs incurred by the landlord and is reasonable. The landlord used the skip bin for other reasons such as removal of building waste which the tenant has not been charged for.
12. The amounts ordered are proved.

Is the tenant responsible for the damage to the premises?

13. 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.
14. 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.
15. 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.

16. 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.
17. 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.
18. 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.

Carpets

19. I am satisfied that the damage to the carpets is intentional. The tenant kept a dog at the property in breach of the agreement and the landlord issues a 14 day notice for a dog in 2020, which the tenant complied with, however in an inspection in 2022, the landlord found a dog locked a bedroom. It is this bedroom where the carpet was ripped by the dog and where the landlord found dog faeces after the tenant moved out.
20. The tenant accepts that the dog has caused damage but says that carpet is old and was nearing the end of its life.
21. The landlord has only claimed a percentage of the total cost of the replacement carpet. The amount asked for is for the part of the carpet in the bedroom which was intentionally damaged.
22. I am satisfied that the damage ion the bedroom is intentional. The tenant was in breach of his agreement and thy knew that damage was occurring and took no steps to rectify it.
23. Carpet in bedrooms is expected to last up to 15 years. I accept the landlord's evidence that they have replaced the whole of the carpet in the house but are seeking are lesser amount taking into account depreciation and betterment. I have taken into account depreciation and betterment and have awarded the landlord \$1000.00 in particular this takes into account that the landlord has had to replace the carpet earlier than it otherwise would have as a result of the tenant's actions.

Holes in the wall and painting.

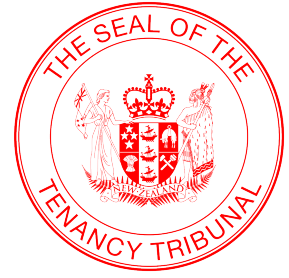
24. The landlord says that the tenant left numerous holes in the walls and graffiti on the walls. The tenant says that it repaired all of the holes in the walls, and they just needed painting. I consider the holes in the walls and the graffiti intentional. However, when I take into account the age of the paint work and the number of people in the home then I consider that the house was nearing a time that it would have needed repainting. I accept that the landlord would have needed to do some preparatory work before the property was painted, especially in areas where the tenant had plastered over holes.
25. There are some holes in the property that were over 6 years old. The time frame for bringing a claim to the tribunal is 6 years.
26. Taking all the above into account the amounts awarded are proven.

Other damage claimed

27. I consider that the tenant also broke the wardrobe doors, broke some of the door frames, deliberately removed the laundry tub causing damage, broke the toilet cistern, removed the towel rails and toilet roll holders and scratched the bathtub and broke light fittings.
28. The damage is more than fair wear and tear, and the tenant has not disproved liability for the damage.
29. The amounts ordered are proved. I have taken into account betterment and depreciation. 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 and their likely useful lifespan. I have reduced some of the landlord's claimed costs to better reflect the depreciation and the nature and extent of the damage.

Claims not proven

30. I do not consider the tenant should be responsible for acid washing the driveway, there was no evidence provided by the landlord to show that this was necessary.
31. There was also no evidence to support the landlord's claims for 3 new doors. There were pictures of all the doors at the beginning of the tenancy, and the age of the doors in the house suggests that they are nearing the end of their lifespan.
32. Because Jamaliyeh Drake has substantially succeeded with the claim I have reimbursed the filing fee.



T Prowse
25 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.