

**TENANCY TRIBUNAL - Kaikohe**

APPLICANT: Brendon Murray Strang  
Landlord

RESPONDENT: Micheal J Crichton, Kumiko Crichton  
Tenant

TENANCY ADDRESS: 11 Shepherd Road, Kerikeri, Kerikeri 0230

**ORDER**

1. Brendon Murray Strang must pay Micheal J Crichton and Kumiko Crichton \$48.64 immediately, calculated as shown in table below:
2. The Bond Centre is to pay the bond of \$2,700.00 (6476375-001) to Micheal J Crichton and Kumiko Crichton immediately.

Description	Landlord	Tenant
Rent arrears to 13 August 2023	\$192.86	
Asbestos report		\$241.50
<b>Total award</b>	<b>\$192.86</b>	<b>\$241.50</b>
Net award		\$48.64
Bond		\$2,700.00
<b>Total payable by Landlord to Tenant</b>		<b>\$48.64</b>

**Reasons:**

Background

1. This was a one-year fixed term tenancy that commenced on 17 December 2022.
2. In April 2023 there was a conversation between Mr Crichton and Mr Strang about asbestos in the ceiling in the lounge.

3. The parties disagree about some aspects of that conversation, but it is not disputed that Mr Strang agreed that Mr Crichton could look for another property if he was not comfortable staying at 11 Shepherd Road.
4. On 30 April 2023 Mr Crichton informed Mr Strang about some damage to the ceiling, above the fireplace. There was a small hole, and a small piece of the 'popcorn' style ceiling material had fallen down.
5. Mr Crichton submitted that the damage was caused by a rodent. Mr Strang does not accept this, and he holds the view that Mr Crichton intentionally caused the damage.
6. On 8 August 2023 Mr Crichton sent Mr Strang a message stating that he had found another property and that he would be moving out on 13 August.
7. Mr Strang's application sought rent arrears to 13 August (2 days' arrears), rent in lieu of notice for 28 days, and compensation for a damaged door.
8. Mr Crichton's cross-application sought compensation for failure to repair the damaged ceiling.
9. The hearing took place in Kaikohe on 23 November 2023. Both parties attended the hearing.
10. On 8 November 2023 Mr Crichton paid Mr Strang \$750.00 for the door, being the amount of Mr Strang's insurance excess. Having heard from Mr Crichton I am satisfied that the damage to the door was accidental and not intentional. Mr Crichton's liability is limited to the amount of Mr Strang's insurance excess<sup>1</sup>. Therefore, this part of the landlord's claim is finalised.

#### Landlord application

##### Rent arrears

11. There are proven rent arrears of \$192.86 to 13 August 2023.

##### Rent in lieu of notice

12. Mr Strang's claim for rent in lieu of notice is based on an argument that Mr Crichton had an obligation to give four weeks' notice to terminate the tenancy.
13. He did not.
14. In a periodic tenancy, a tenant can terminate the tenancy by giving at least four weeks' notice to the landlord<sup>2</sup>. Tenants do not have to provide a reason for

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<sup>1</sup> Section 49B(3) Residential Tenancies Act 1986 (RTA)

<sup>2</sup> Section 51(2B) RTA

termination. The landlord can only terminate for certain specific reasons, and must give 90-days or 63-days' notice to the tenant<sup>3</sup>.

15. In a fixed term tenancy, neither the tenant nor landlord may terminate the tenancy by notice<sup>4</sup>.
16. A fixed term tenancy continues to the end date, unless it is terminated by the Tenancy Tribunal or by agreement between the parties.
17. In this instance, Mr Strang agreed to release Mr Crichton from the fixed term tenancy but there was no new agreement that Mr Crichton had to give four weeks' notice or any other period of notice to end the tenancy once he found a new place to live.
18. There is no reasonable basis to imply a requirement for four weeks' notice. That requirement is only relevant to periodic tenancies.
19. There is no legal basis to hold Mr Crichton liable for rent in lieu of notice.

#### Tenant application

20. Mr Crichton seeks compensation on the grounds that Mr Strang failed to repair the damage to the ceiling thereby putting himself and his family "at risk" for a period of several months.
21. Mr Strang submitted that:
  - a. He had a conversation with Mr Crichton, and it was discussed and agreed that he would hold off on the repairs until Mr Crichton vacated.
  - b. In any event, he thinks that Mr Crichton caused the damage and therefore this is not a maintenance issue.
22. I am not persuaded by Mr Strang's argument that Mr Crichton intentionally caused the damage. It is clear that Mr Crichton was extremely concerned about the presence of asbestos in the property, and it seems unlikely that he would intentionally expose himself, his wife, and his two young children to what he considered to be a significant risk. It is also difficult to understand how this action would benefit Mr Crichton given that Mr Strang had already given his permission to release him from the fixed term tenancy. The relationship between Mr Strang and Mr Crichton was still good at that time.
23. Mr Crichton denies that he agreed to delay the repairs to the ceiling until he vacated.
24. However, Mr Strang was not obliged to release Mr Crichton from the fixed term tenancy. Mr Strang released Mr Crichton without requiring him to pay any costs

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<sup>3</sup> Section 51(1) and (2) RTA

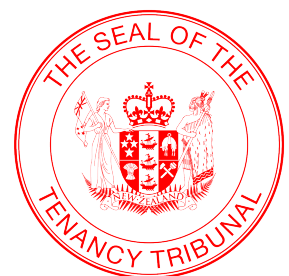
<sup>4</sup> Section 2 RTA

or requiring him to find another tenant to replace him. It is reasonable to think that there was some kind trade off or reciprocity in such an agreement, and an understanding that Mr Strang could delay the repairs until Mr Crichton vacated would make sense in that context.

25. In my view it would be unjust for Mr Crichton to receive all the benefit of being unconditionally released from the fixed term agreement without accepting some of the burden, in this instance having to 'put up with' the unrepaired ceiling for the remainder of the tenancy.
26. The only compensation that Mr Crichton is entitled to is reimbursement of the amount that he paid to have the ceiling material tested. I agree with Mr Crichton's argument that the landlord should bear this cost. Landlords have a duty to maintain the premises in a reasonable state of repair. If a landlord needs to carry out work on building materials that contain asbestos, they are subject to the requirements of the Health and Safety at Work Act 2015 and the Health and Safety at Work (Asbestos) Regulations 2016. If the age of the premises and/or the type of building material raises the possibility that asbestos may be present, it is for the landlord to clarify this so that can meet their legal duties in dealing with asbestos materials.
27. Mr Crichton paid \$241.50 to have the ceiling material tested. The test confirmed the presence of asbestos. Mr Crichton is entitled to reimbursement of that cost.

Outcome, bond

28. Mr Strang is to pay Mr & Mrs Crichton \$48.64.
29. The bond will be released to Mr & Mrs Crichton.



N Blake  
24 November 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.