

TENANCY TRIBUNAL - Auckland | Tāmaki Makaurau

APPLICANT: Imogen Bassett
Tenant

RESPONDENT: Rent Real Estate Limited
Landlord

TENANCY ADDRESS: 48 Wainui Avenue, Point Chevalier, Auckland 1022

ORDER

1. Rent Real Estate Limited must pay Imogen Bassett \$370.44 immediately as set out in the table as follows:

Description	Landlord	Tenant
Filing fee reimbursement		\$20.44
Compensation: Failure to Maintain		\$350.00
Total award		\$370.44
Total payable by Landlord to Tenant		\$370.44

2. The tenant's claim in respect of a retaliatory notice is dismissed.

Reasons:

1. Both parties attended the hearing. The tenant was assisted with a representative.
2. This is a tenant application in respect of alleged breaches by the landlord relating to a failure to maintain and a retaliatory notice to terminate.

Failure to Maintain - Kitchen tiles

3. Imogen Bassett claims that the landlord has breached their obligations under section 45 of the Residential Tenancies Act 1986.
4. Under section 45, a landlord must

- provide and maintain the premises in a reasonable state of repair
5. The tenants have resided at the property for approximately 10 years. The relationship between the parties has largely been very good with minimal issues raised.
 6. The tenants say that on 31 January 2023 they raised an issue with the landlord in respect of the tiles in the kitchen. They say that not only did the tiles need attention but there was also the possibility of asbestos contamination. This was based on informal advice from a builder who stated that asbestos is a possibility given the age of the building. During the hearing the age of the tiles was estimated to be approximately 20 years old.
 7. The landlord acknowledged the tenant's email from 31 January the following day. Unfortunately, there was no follow up on this issue until a property inspection on 14 March 2023 where the tenants raised the issue once again. On 7 April 2023 the tenants sent a further email to the landlord raising the issue of the kitchen tiles and the need for an inspection.
 8. On 17 April 2023 the landlord replied stating that they would arrange testing of the kitchen tile area. The tenants heard nothing further.
 9. The owner gave *viva voce* evidence during the hearing. She acknowledged receipt of the tenant's request for inspection of the tiles on 31 January 2023. While efforts were made to have the kitchen tiles inspected she accepted during the hearing that these efforts were not undertaken at the earliest possible opportunity.
 10. On 18 April 2023 All Clear Limited provided a quote and a management plan in respect of the tiles. The owner also confirmed that no one had attended to the tenants request between 31 January 2023 and 18 April 2023. It was not until 19 June 2023 that Hills Labs attended and confirmed that no asbestos was present. Unfortunately, by this stage the tenants had vacated the premises. The landlord accepts that the testing should have taken place a lot earlier than it did.
 11. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of \$7,200.00. See section 45(1A) and Schedule 1A Residential Tenancies Act 1986.
 12. Having considered the evidence filed in support of the tenant's application I am satisfied that the landlord did not attend to their maintenance obligations in a timely manner. The tenant made a number of requests in respect of the kitchen tiles and in my view the landlord should have made arrangements for asbestos testing without unreasonable delay. I am also satisfied that this breach does not justify exemplary damages but rather a small award of compensation to reflect

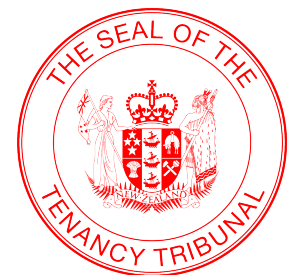
the breach of obligations. I accept the landlord's frank and responsible explanation in respect of this breach.

13. Accordingly, I allow the tenant's claim in respect of breach of maintenance obligations and find the claim proven.

Retaliatory Notice

14. On 1 May 2023 the landlord served the tenants with a 63-day Notice to Terminate so that the owner and her partner could move back in. The termination date was 3 July 2023. The tenant claims the notice is retaliatory.
15. This application was filed with the Tribunal on 7 August 2023.
16. On 8 May 2023 the tenants advised the landlord that they had found a new place to rent. This was next door to the existing tenancy.
17. During the hearing the owner stated that her and her partner moved from Auckland to Waiheke Island in 2017. At the time they had decided to reside on the Island for 5 years. Amongst other things they described the Island property as being difficult. They were also concerned about spending another winter on the Island.
18. In 2022 the owner and her partner began talking about the possibility of moving back to Auckland city. In addition to this the owner's partner had open heart surgery in May 2022 and was discharged from hospital approximately one week later. The surgery left him debilitated and made it difficult for him to get out of the property on Waiheke Island. I was provided with written confirmation from the hospital of his heart surgery during the hearing.
19. By the end of 2022 they were both keen to move off the Island and back to this tenancy address. The owner had also undertaken a Te Reo language course at AUT and when that concluded there were no other courses she could undertake from the Island.
20. The owner then found a course being offered through UNITEC starting on 24 July 2023. This was to be a face-to-face course which would have been difficult attending from Waiheke Island.
21. On 12 May 2023 the owner was provided with the opportunity for knee surgery. She says she had been on a waiting list for quite some time. After the surgery she was on crutches for a period.
22. The owner and her partner went to the property after the tenants had vacated with the intention of undertaking minor renovations prior to moving back in. Within no time at all they realised, given their recent health events, that moving back into the tenancy address was a silly and unrealistic decision. The tenants then noticed the same property manager attend the property on 4 August 2023.

23. During the hearing the owner maintained that her notice to terminate was never intended to be retaliatory. She confirmed that they had always enjoyed a very good relationship with the tenants. She stated that they were good tenants and that she did not want to see them go.
24. For a notice to be declared retaliatory, the tenant must prove that in terminating the tenancy, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act, or by any complaint against the landlord. See section 54(1) Residential Tenancies Act 1986. The tenant must also make an application to the Tribunal within 28 working days after receipt of a notice terminating the tenancy.
25. The tenant's claim declaring the notice retaliatory was also made out of time.
26. Having considered the evidence before me I am not satisfied that the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement. The parties enjoyed an otherwise excellent relationship and I see no evidence that the relationship had deteriorated to an extent where the notice was retaliatory in nature. The owner's evidence was creditable, and I have no reason to find otherwise. I also have no jurisdiction where the application is made out of time, as it has been in this case.
27. Accordingly, the claim in respect of a retaliatory notice must be dismissed.
28. Because Imogen Bassett has partially succeeded with the claim I will reimburse the filing fee.



M Manhire
24 November 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.