

TENANCY TRIBUNAL - Invercargill | Waihōpai

APPLICANT: Invercargill Property Management Limited
Landlord

RESPONDENT: Canning Jnr Nathan-Morrison, Tayla Hughes
Tenant

TENANCY ADDRESS: 685 Queens Drive, Waikiwi, Invercargill 9810

ORDER

1. Canning Jnr Nathan-Morrison and Tayla Hughes must pay Invercargill Property Management Limited \$498.68 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of \$2,200.00 (5454125-004) to Invercargill Property Management Limited immediately.

Description	Landlord	Tenant
Rent arrears	\$1,547.24	
Filing fee reimbursement	\$20.44	
Carpet Cleaning	\$391.00	
Rubbish removal: Bin Hire	\$280.00	
Cleaning: Cleaning, rubbish removal and garden tidy	\$460.00	
Total award	\$2,698.68	
Bond	\$2,200.00	
Total payable by Tenant to Landlord	\$498.68	

Reasons:

1. The landlord attended the hearing. There was no appearance by the tenants.
2. At 9:16am today the tribunal received notification from one of the tenants that he was unable to attend the hearing. The email advised that he was in Ashburton and asked if the matter could be adjourned.

3. I refused the adjournment out of fairness to the landlord. The tenants have had plenty of notice in respect of today's hearing. Without a proper basis for an adjournment I was not prepared to further delay the landlord's application.
4. The landlord has applied for rent arrears, compensation, refund of the bond, and reimbursement of the filing fee following the end of the tenancy.
5. I was advised during the hearing that the property was initially managed by a different property management company. The file was then transferred to Invercargill Property Management Limited who despite their best efforts were unable to obtain 'entry evidence' in support of this application.
6. The landlord has been significantly disadvantaged due to an absence of evidence of the state of the property when the tenants moved in. There are several claims by the landlord which are not supported by the evidence available. In the absence of evidence confirming the state of the property at the start of the tenancy means regrettably the landlord's claim for damage compensation must fail.

How much is owed for rent?

7. The tenancy ended on 13 October 2023. The landlord provided rent records which prove the amount owing at the end of the tenancy. Having sighted the rent ledger I am satisfied that the tenants are responsible for payment of these arrears.

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

8. 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. The tenant is required to replace worn out smoke alarm batteries during the tenancy. See section 40(1)(ca) Residential Tenancies Act 1986. The tenant must also replace standard light bulbs.
9. The tenant did not leave the premises reasonably clean and tidy and did not remove all rubbish. There is evidence provided by the landlord which confirms that the tenants did not leave the premises clean and tidy and did not remove rubbish. I have also sighted invoices provided by the landlord in support of these claims.
10. The landlord says that the carpet was stained and had to be professionally cleaned. The landlord further stated during the hearing that the tenants accepted the carpet stains. There was also an invoice provided in support of this claim.

11. These amounts claimed by the landlord are allowed on the balance of probabilities.
12. The landlord's claim for light bulbs and double plug replacement is dismissed as I cannot be satisfied of the condition of these items at the start of the tenancy.

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.
19. The landlord says that the tenants damaged a number of items within the house. This included damage to a ranch slider, internal doors, a wardrobe sliding door, kitchen drawers and a toilet seat. I acknowledge the exit photographs provided by the landlord in support of these claims however these claims are difficult in the absence of entry photographs.
20. As noted above it is vital that damage claims are supported by evidence confirming the state of the property at the start of the tenancy. This is especially

so with older properties such as this one. Without this evidence it is extremely difficult to determine whether such damage was intentional or fair wear and tear. A tenant could also rightly argue that the damage was there at the start of the tenancy.

21. The claims for damage are dismissed for the reasons provided.
22. Because Invercargill Property Management Limited has substantially succeeded with the claim I have reimbursed the filing fee.



M Manhire
27 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.