

**TENANCY TRIBUNAL - North Shore | Ōkahukura**

APPLICANT: Rachelle Sharlene Nordstrand  
Tenant

RESPONDENT: Angela Wei Zhang  
Landlord

TENANCY ADDRESS: 158 Archers Road, Glenfield, Auckland 0629

**ORDER**

1. Angela Wei Zhang must pay Rachelle Sharlene Nordstrand \$250.00 immediately, calculated as shown in table below:

Description	Landlord	Tenant
Compensation – loss of enjoyment of tenancy		\$250.00
<b>Total payable by Landlord to Tenant</b>		<b>\$250.00</b>

**Reasons:**

1. Both parties attended the hearing which I held on 24 November 2023. The Tribunal was assisted by an interpreter.

2. The tenant has applied for compensation for alleged breaches by the landlord and for exemplary damages for breaches she alleges amount to unlawful acts.
3. The tenancy started on 29 August 2022. It was a fixed term tenancy until 27 February 2023. The tenant gave notice to end the tenancy and left on 21 October 2022. I will return to that point later.
4. The tenant previously rented premises from the same landlord. The tenant says the landlord 'moved her to this property because she wanted more rent from the other property'.
5. The landlord claims that she has lodged cross applications but if she has those applications are not considered to be complete and have not been processed by Tenancy Services.
6. The landlord sought, and was granted (due to illness), an adjournment of the hearing of this application on 28 August 2023. The day before this hearing she sought an adjournment again because she wanted to complete her cross application(s).
7. I declined the adjournment request. The tenant's application was filed on 1 November 2022, more than a year ago. Tribunal time is valuable. The landlord's reasons for a further adjournment were not sufficient for one to be granted.
8. The tenant alleges that the landlord did not lodge her bond and that the premises were not compliant with the Healthy Homes Standards (HHS). Both breaches if proved could attract an award of exemplary damages.
9. The tenant also alleges that the landlord did not attend to repairs (a broken window and a replacement stove) and that she interfered with the tenant's quiet enjoyment of the tenancy.

### **Issues**

10. The issues the Tribunal must determine are these:
  - Did the landlord fail to lodge the bond?
  - Did the premises comply with the HHS?
  - Should the tenant be awarded exemplary damages?
  - Did the landlord breach the tenant's quiet enjoyment? And did the landlord fail to complete repairs? If so, should the tenant be awarded compensation?

### **Did the landlord fail to lodge the bond?**

11. The tenant said she paid a bond on her former tenancy to this landlord which was to be transferred to the new tenancy. She said that the Bond Centre had confirmed that the bond was never lodged.
12. The landlord's evidence about the bond lodgement was confused, confusing and convoluted. In short, she claimed to have not been able to transfer the bond to the Bond Centre. She claims that she made many efforts to lodge the bond and contacted the Bond Centre numerous times without success. She claimed to have now lodged the bond.
13. I did not find the landlord's evidence convincing at the hearing.
14. However, as she claimed she had documentary evidence to support her position I adjourned the hearing until Monday 27 November to allow her time to provide the evidence to support her claims.
15. The landlord has now provided evidence of her dealings with Tenancy Services that appears to support her statement that she tried but failed to lodge the bond.
16. I am satisfied that the bond has now been lodged, so it is protected.

### **Did the premises comply with the HHS?**

17. The landlord had 90 days from the start of this tenancy to comply with the HHS.
18. The landlord said she was exempt from compliance because she had received a resource consent to subdivide the property.
19. I need not decide whether the landlord was validly exempt.
20. The tenant terminated the tenancy on notice, something she was not able to do.
21. A fixed term tenancy cannot be terminated by notice. It can only be terminated by agreement between the parties or by order of the Tribunal.
22. Here, the tenant separately alleges that the landlord agreed for her to leave. The text messages produced in evidence suggest that was the case.
23. Because the tenant considered that the tenancy ended on 21 October 2022, it ended before the landlord compliance time frame for the HHS expired.
24. The landlord therefore did not breach the Residential Tenancies Act 1986 (RTA) because she still had time to ensure HHS compliance. The tenant left before the compliance time frame ended.

### **Should the tenant be awarded exemplary damages?**

25. Exemplary damages designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish. They are like a fine, though they go to the citizen who has been the victim of conduct.

26. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.

27. In *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667 the Court said this:

In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in *Chief Executive, ex parte Edmondson v Walls* TT548/92 said:

Before an award of exemplary damages can be made the threshold question for the Tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the Tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.

If the Tribunal considers that the person against whom the order is sought has committed the unlawful act intentionally, the Tribunal must then consider whether it would be just to require that person to pay exemplary damages, taking into account:

- The intention of the person;
  - The effect of the unlawful act;
  - The interests of the party against whom the unlawful act was committed; and
  - The public interest.
28. There can be no award of exemplary damages for the alleged non-compliance with the HHS. I have already found that the landlord committed no breach.
29. As for the bond, I decline to award exemplary damages. I accept that the landlord tried, but failed, to lodge the bond. She did not intentionally fail to lodge the bond. It has been lodged now so is protected.

**Did the landlord breach the tenant's quiet enjoyment? And did the landlord fail to complete repairs? If so, should the tenant be awarded compensation?**

30. The Tribunal may award compensation to a tenant for losses arising from a proven breach or breaches by the landlord of their statutory responsibilities. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety. The tenant's compensation claims are for the loss of quiet enjoyment of the tenancy.
31. In *Birch* the District Court confirmed that the Tribunal must consider the following factors when deciding whether to award compensation:
- The nature of the breach;
  - The duration of the breach; and
  - The effect of the breach on the party.
32. The tenant alleges that the landlord breached her quiet enjoyment by bringing an unknown (to the tenant) person to the inspection on 15 October 2022, by sending her multiple rude text messages, and by her inappropriate comments to her daughter at the inspection. She claims that the landlord accused her of taking an internet cord from the previous premises.
33. Although the landlord denies that her friend entered the property for the inspection, even if he did, entry with the landlord is not a compensable breach. Often more than one property manager will conduct an inspection; this was no different. And the landlord feared that the tenant would become aggressive. The tenant admitted to swearing at the landlord, so neither party is blameless.
34. The tenant also says that the oven in the stove did not work, although the landlord provided a bench top oven to replace it, and that a window broken at the start of the tenancy was not adequately repaired. She alleges that the landlord told her not to put toilet paper down the toilet but to put it in a bag instead.
35. The landlord agreed that the oven did not work (it is accepted that the elements on the stove did work), but that the tenant agreed with her supplying a bench top oven as a substitute.
36. The landlord denied asking the tenant to put toilet paper in a bag. She said she just asked her not to put tissues down the toilet.
37. I have reviewed the txt messages between the parties. Some of the landlord's responses would not be considered appropriate, but possibly there is a cultural element to the tenor of her responses. Her messages around the issue of the internet cord allegedly taken by the tenant were rude and demanding.

38. I find that the landlord probably made inappropriate comments at the inspection commenting on the way the tenant lived, admonishing her daughter, and stating that the premises were dirty.
39. But the tenant also agreed that she had used aggressive and rude language at that inspection. Each party separately contacted the police to complain about the other's behaviour. So, this is not a case where each party is blameless.
40. That the Tribunal can make orders does not always mean that it should. And it needs to be cautious in cases like this where the evidence is in conflict (she says/she says) and where there is a cultural element. Language can be used differently by people from different cultural backgrounds. I am conscious of that.
41. However, I find that the landlord did breach the tenant's quiet enjoyment, but not in relation to the stove and the window repair. The short time frame of the tenancy was well within a time frame the Tribunal would consider reasonable for repairs to be done. The window was made safe, and the non-functioning oven was replaced with a bench top oven.
42. The breach of quiet enjoyment in relation to the landlord's communications with the tenant and her behaviour at the inspection on 15 October 2022 is established.
43. But given the factors outlined in *Birch*, I award minimal compensation for the landlord's breach of the tenant's quiet enjoyment. I award her \$250.00.
44. Seen objectively, this was a tenancy that had to end because the relationship between the parties deteriorated to a point where it could no longer continue. Sometimes, ending the tenancy is the only solution.

## **Result**

45. The landlord has clarified with Tenancy Services the issue that prevented her being able to lodge the bond previously and not being able to lodge her cross application. The bond will remain at the Bond Centre until the landlord's cross application is heard.
46. The landlord will pay the tenant compensation of \$250.00 for breaches of her quiet enjoyment.
47. I make no order reimbursing the filing fee as the application is only marginally successful.

### **Name suppression**

48. The tenant sought a name suppression order. I make no order as she has only been successful in small part. – see section 95A RTA. The landlord did not seek a name suppression order.

### **Comment**

49. It became apparent to the Tribunal that the landlord is not fully aware of a landlord's responsibilities under the RTA. While not an advisory body, the Tribunal recommends that the landlord has any future tenancies managed by a professional property manager.



J Greene  
27 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.