

TENANCY TRIBUNAL - Invercargill | Waihōpai

APPLICANT: Todd Realty Limited
Landlord

RESPONDENT: Melanie Barrett
Tenant

TENANCY ADDRESS: 25 Marne Street, Riverton, Riverton 9822

ORDER

1. Melanie Barrett must pay Todd Realty Limited \$1,234.44 immediately, calculated as shown in table below.
2. The Bond Centre is to pay the bond of \$1,400.00 (3728022-008) to Todd Realty Limited immediately.

Description	Landlord	Tenant
Filing fee reimbursement	\$20.44	
Replace smoke alarms	\$114.00	
Meth testing/Cleaning: Insurance Excess	\$2,500.00	
Total award	\$2,634.44	
Bond	\$1,400.00	
Total payable by Tenant to Landlord	\$1,234.44	

Reasons:

1. The landlord attended the hearing. There was no appearance by the tenant.
2. The landlord has applied for compensation for damage, refund of the bond, replacement smoke alarms and reimbursement of the filing fee following the end of the tenancy.

3. The tenant moved into the property on 20 July 2022. The tenancy concluded on 4 June 2023.
4. The landlord claims that the tenant has used, or permitted the use of, methamphetamine at the premises and is claiming reimbursement of the insurance excess.
5. The landlord is not seeking exemplary damages.

What were the methamphetamine test results?

6. A composite test (where the results of multiple samples are combined) on 9 June 2023 and 13 July 2023 indicated that methamphetamine was present. These results were confirmed by way of Certificate of Analysis from Analytica Laboratories.
7. The landlord also provided confirmation from Hill Laboratories dated 11 July 2022 of zero methamphetamine at the start of the tenancy.
8. I accept the in-depth test reports and laboratory results as reliable.

What does the Residential Tenancies Act 1986 say about methamphetamine damage to tenancy premises?

9. A tenant must not use, or permit the use of, the premises for any unlawful purpose; section 40(2)(b) RTA. To do so is an unlawful act for which exemplary damages may be awarded of up to \$1,800.00; s40(3A)(c) RTA
10. A landlord must prove that premises have been damaged during the tenancy and that the damage is the result of an 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 s49B(8)(a) RTA. The use or possession of methamphetamine is an imprisonable offence; see the Misuse of Drugs Act 1975.
11. If the landlord proves this, then a tenant is liable for the costs of “making good the damage” and other reasonably foreseeable losses related to the damage; sections 49A and 49B(1)(b) RTA.
12. The standard of proof that applies is the civil standard “on the balance of probabilities”. This means that I do not have to be completely certain, but I must be satisfied that what is alleged is “more probable than not”.
13. The landlord has provided written test results from Hill Laboratories dated 11 July 2022 taken at the start of the tenancy confirming that there were negligible traces of methamphetamine present.
14. The landlord has provided creditable evidence in the form of written testing results from samples taken on 19 June 2023 confirming that meth residue was detected in 13 out of 13 samples of which 8 individual samples exceeded the levels in NZS8510. 9 Further samples taken on 13 July 2023 confirmed positive

methamphetamine results in 7 out of 9 results of which 3 individual samples exceeded the levels in NZS8510.

15. After considering the evidence, I am satisfied that it is more probable than not that the tenant herself engaged in, or allowed, methamphetamine related activity at the premises during this tenancy.

Did the methamphetamine related behaviour during the tenancy cause damage to the premises?

16. I am satisfied that it is more probable than not that there was methamphetamine use during this tenancy, however the tenant is only liable to pay compensation if that use caused damage to the premises.
17. The landlord provided evidence from Jae Limited dated 28 June 2023 confirming a Scope of Work for Decontamination of Methamphetamine in respect of this tenancy address. I have also sighted a quote from Carpet Plus dated 9 August 2023 and confirmation of a statement from State Insurance dated 29 August 2023.
18. I am satisfied that the tenant's use of methamphetamine at the address has caused significant damage to the premises.
19. I am satisfied that the methamphetamine use was intentional and that the tenant is legally responsible for it. The test results clearly indicate use throughout the house. I consider that the tenant must have known about it and permitted it.
20. After taking into account the tenant's intent (to use, or allow the use of, prohibited drugs inside rented premises), the effect on the landlord (significant inconvenience from testing, making an insurance claim, and taking these proceedings), the interests of the landlord (that their property not be implicated in unlawful activity that may damage it or reduce the ability to rent it out in the future) and the public interest (that tenants be discouraged from using premises for unlawful activity), the damage is intentional and accordingly I allow the landlord's claim for the insurance excess.

Smoke Alarms:

21. The landlord claims that the tenant removed two smoke alarms which had been installed within the house. The landlord provided evidence from Smoke Alarm Testing Services dated 21 June 2023 confirming replacement of these two units. Having sighted this evidence I am satisfied that the tenant is responsible for payment of the amount as claimed.
22. The amounts ordered are proved.

23. Because Todd Realty Limited has wholly succeeded with the claim I must reimburse 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.