# Appendix J - Tenancy Tribunal Order

**[2025] NZTT 5245534, 5281719**

**TENANCY TRIBUNAL AT WELLINGTON | TE TARAIPIUNARA RETIHANGA KI TE WHANGANUI-A-TARA**

APPLICANT: Andrew McCombs and Atom Zonnevylle

Tenant

RESPONDENT: Taylor Property Plus (2006) Limited As Agent For LML Holdings Limited

And

LML Holdings Limited

Landlord

TENANCY ADDRESS: Unit/Flat 1, 14 Kenwyn Terrace, Newtown, Wellington 6021

**ORDER**

1. Taylor Property Plus (2006) Limited As Agent and LML Holdings Limited must pay Andrew McCombs and Atom Zonnevylle $9,185.00 immediately, calculated as shown in the table below:
2. All other claims are dismissed.

| **Description** | **Landlord** | **Tenant** |
|---|---|---|
| Compensation: Damaged chattels | | $500.00 |
| Compensation: Damaged plants | | $500.00 |
| Compensation: Cleaning & testing--labour & materials | | $2,500.00 |
| Compensation: Loss of amenity | | $3,658.00 |
| Compensation: Emotional distress | | $2,000.00 |
| Filing fee reimbursement | | $27.00 |
| **Total award** | | **$9,185.00** |
| **Total payable by Landlord to Tenant** | | **$9,185.00** |

**Reasons:**

1. Both parties attended the hearing.

2. The owner of the premises is LML holdings Limited (LML) and they were represented at the hearing by Taylor Property Plus (2006) Limited (TPP), as their agent. Mr Samuel Taylor attended the hearing for TPP. TPP was also represented at the hearing by legal counsel, Mr David Northfield. The tenants, Mr Andrew McCombs and Mr Atom Zonnevylle were both present at the hearing and represented by Mr Tony McCombs.

*Background to the proceedings*

3. This order should be read in conjunction with the order dated 30 June 2025 which dealt with the cross application filed by the landlord. The order also records a consent order for termination of the tenancy.
4. This decision deals with the substantive claims lodged by the tenants seeking compensation and exemplary damages for lead contamination at the premises, following exterior lead paint removal work that started on or about 17 February 2025.
5. The building in which the premises are located comprises of three levels with Unit 1, the subject of this claim, located on the top level. A separate unit 2 is on the middle level, and a shared laundry for both units is located on the ground level. The tenants have rented these premises for about 6 years with the current renewal due to end on 12 February 2026.
6. The tenants lodged an application on 27 April 2025 seeking compensation and exemplary damages for breaches of sections 38, 45(1)(b) and 45(1)(c) of the Residential Tenancies Act 1986 (RTA). The tenants subsequently amended and itemised their claims as follows:
    a. Full rent refund on the basis that the premises are uninhabitable for the period from 27 February until the tenancy ends at weekly rent of $620;
    b. Cleaning costs (materials and time ) of $2,500;
    c. Replacement of contaminated appliances of $2,800 (in addition to $2,000 already paid by the landlord to the tenants for a replacement washing machine and dryer);
    d. Medical expenses and sick leave of $5,600;
    e. Consequential and emotional damages, including trauma, disruption of daily life and time lost of $43,100;
    f. Ongoing inconvenience and health monitoring of $5,000;
    g. Potential future health risks resulting from lead exposure of $100,000;
    h. Recognition of serious health harm and risk exposure of $75,000;
    i. The filing fee paid of $27.

7. As discussed at the hearing, a claim for defamation will not be considered by the Tribunal as it falls outside of its jurisdiction. Also discussed and agreed by the tenants is that the Tribunal may not award a party any sum, or require a party to do any work to a value, or otherwise incur expenditure, in excess of $100,000. In that regard, the tenants confirmed that they wished to abandon so much of their claim that exceeds $100,000 in order to being their claim within the jurisdiction of the Tribunal. See sections 77(5), (6) and (8) RTA.

*Facts*

8. On 17 February 2025 painting works on the exterior of the property began. LML had directly engaged Saigon Decorators (the contractor) to carry out these works. On 19 February, TPP became aware that LML had engaged the contractor for the works and of the fact that LML had also accepted a quote to replace the roof at the property. On 20 February, the tenants were notified of the owners intention to visit the property the next day, but no other information was provided. The tenants were absent from the premises at the time. However, a friend caring for the tenants' outdoor plants while they were away reported that the contractors were present and had piled the tenants' outdoor belongings into an area, destroying some of the plants being grown by the tenants.

9. On 27 February, the tenants arrived home to discover paint dust inside the premises. They began cleaning up and advised TPP on 28 February that scaffolding had been erected, painting works had commenced and the contractor had damaged outdoor items and plants. TPP says it was not aware that the works had started and advised that it would look into it and provide compensation for any damaged items.

10. On 4 March the tenants conducted a simple I-Quip test for lead based contamination which detects the presence of lead but not the precise level. The test produced a positive result in several areas tested inside. The tenants immediately informed the contractors who ignored the concerns and continued sanding and stripping the exterior paint. TPP was also informed immediately and suggested that the tenants continue to clean the property. TPP then advised LML and the contractor and the contractor said that it would arrange cleaning of the unit. However, the works also continued.

11. On 5 March, the tenants emailed TPP to express concern about the positive lead test and the paint dust and debris inside the property that had covered their food, clothing, and areas of the house. They noted that they had called the Poison Control hotline, Worksafe, and Tenancy Services because of a lack of guidance from TPP. They asked whether the paint was tested for lead before the removal work started; and if so why they were not warned of the risk. If a test had not been done, they asked for a formal lead test to be conducted.

12. On 5 March TPP replied to the tenants asking if the contractors had cleaned the property. The tenants advised the same day that the contractors were trying to do it without any PPE. The tenants said that they were trying to communicate with the contractors using google translate and believe the contractors clearly did not understand the seriousness of the situation. Therefore, the tenants cleaned the bulk of the toxic dust themselves. They also raised a concern that TPP also appeared not to understand the seriousness of the situation. They outlined advice from WorkSafe about dealing with lead paint. They noted that had they been warned about the potential hazards when removing lead paint, they could have taken steps to prepare the interior (and the exterior) to prevent clothes, food and other belongings becoming contaminated. They also raised concerns that they had done cleaning themselves and vacuumed up lead dust using their own vacuum cleaner which would now be contaminated and need replacement. They again asked TPP to arrange a proper lead test and to advise what would be done to rectify the situation.
13. On 6 March the tenants sent a further email to ask whether TPP had arranged a contractor to conduct further lead testing to understand the scale of the contamination and whether it was safe to be in the house.
14. From 5 March to 13 March, the contractors continued work sanding and stripping exterior paint. Meanwhile, TPP organised for two other cleaning companies to clean the property noting in their work orders that lead paint dust had entered the property and needed to be addressed. TPP also generally responded that their advice was to clean rather than carry out lead tests.
15. The first cleaners did not want to complete the job. The landlord says that is because the tenants talked of legal action and also because the job was bigger than the cleaners realised. The tenants who were present when the cleaners arrived says that they refused to do the work because they were not adequately prepared to deal with lead and the cleaners were the ones who suggested the tenants take legal action.
16. A second cleaning company was instructed to clean the property on 8 March. On 9 March the tenants advised TPP that while the cleaners made some effort to remove the lead dust and debris, they did not remove large portions of it. The tenants set out their concerns and request for compensation.
17. On 10 March, TPP offered to arrange for the cleaners to come back and attend to any additional areas and also advised that they would respond to the request for compensation shortly. The tenants did not take up this offer and continued to clean themselves.
18. On 14 March, after being contacted by the tenants, a WorkSafe inspector visited the site and issued a prohibition notice under the Health and Safety at Work Act 2015. This required the contractor to stop work at the site, engage a competent person to clean the inside/outside of the property until lead is at a

reasonable level as per MOH guidelines for the management of lead-based paint and to forward that evidence to the inspector.

19. It seems that work did not stop until 17 March, with the contractor alleging they were unaware of the notice. On 18 March the contractor engaged Precise Consulting (Precise) to complete lead testing at the property, advising TPP verbally on 20 March that they had done this.

20. Precise conducted lead testing at the property on 25 March. Precise completed a report dated 10 April containing the test results and recommendations. The report refers to the applicable legislation and standards for surface samples in residential homes and in soil. In a 2012 publication "Environmental Case Management of Lead-exposed Persons Guidelines for Public Health Units" the New Zealand Ministry of Health stated: "*The US Environmental Protection Agency's (US EPA) 'Lead Identification of Dangerous Levels of Lead: Final rule (2001)' clearance standards may be used as a guide to 'safe' dust lead loadings."* In addition, the report refers to The Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations which set out the clearance standards for soil.

21. The Precise report test results established that the levels of lead on samples collected from inside the property and collected from external soil samples were significantly in excess of the US EPA guidelines. The report noted the importance of the WorkSafe guidelines applicable to the management of lead-based paint, such as the WorkSafe document "Guidelines for the Management of Lead-based paint" revised in 2013.

22. TPP telephoned the tenants on 11 April with the results. TPP also emailed the tenants that day confirming that they had engaged Chem Dry to complete additional cleaning at the property on 14 April, including all surfaces and furnishings. In the meantime , they arranged alternative accommodation for the tenants from 11-18 April while cleaning work was undertaken.

23. On 11 April the tenants advised TPP, that based on their experience of previous cleaning attempts by the contractor and two other cleaning companies, they had no faith that another cleaning company would be competent. They noted that the test results showed that they had been living in an unsafe environment for weeks. They advised that they would organise decontamination and would not be making use of the alternative accommodation. In a further email on 12 April, they also sought assurances from TPP that Chem Dry had been cancelled.

24. The tenants say that between the testing on 25 March and the results reported on 11 April, they continued to rigorously clean their belongings and surfaces inside the property so as to reduce potential harm.

25. From this point onwards, despite further communications and meetings, including with lawyers instructed by TPP, the tenants refused to vacate the premises temporarily to allow TPP to have the premises professionally cleaned and decontaminated. The tenants emphasize that they had no confidence that another set of cleaners would be competent to decontaminate. They believe that the landlord failed to provide them with some form of assurance and documentation from Chem Dry setting out a remediation and testing plan and how this would be carried out. In particular, they were concerned about how Chem Dry planned to deal with their personal belongings. TPP believe that they explained the process that Chem Dry would follow in their email of 11 April. It stated that the additional cleaning *".. will include all surfaces and furnishings as required. They have advised that to ensure that this is completed thoroughly and no cross-contamination they remove some items to be cleaned off site."*

26. At the tenants' insistence, and on the basis that they believed their efforts to decontaminate had been successful, TPP agreed to arrange further testing of the property, notwithstanding the landlord's concern that there was no evidence of the decontamination work that the tenants had undertaken. They warned that if the testing showed the premises were still contaminated, they would seek the testing costs from the tenants. The testing was conducted by Precise on 13 May.

27. In the meantime, the landlord had also arranged for testing of the shared laundry on 5 May. The testing results reported on 15 May established that the lead levels in the laundry also exceeded US EPA clearance levels and, it was recommended that the tenants' appliances in the laundry should be replaced. The landlord also gave notice that the laundry should not be used until further notice.

28. By email to the tenants on 26 May, TPP received preliminary results from the 13 May testing that confirmed that four of the five sample areas were now below the US EPA clearance level. However, readings for the bathroom floor were still slightly elevated. TPP noted that additional bathroom cleaning would be required and advised that the landlord was happy to arrange for Chem Dry to do the work and the offer of alternative accommodation for the tenants was still open. TPP also stated: *"Alternatively, please let us know if you would prefer to make your own cleaning arrangements, as you have to date—if so, the landlord will reimburse you for any further reasonable cleaning costs. We can also confirm that the landlord will not seek any testing costs from you."*

29. The tenants confirmed that they preferred to complete additional bathroom cleaning.

30. By email to the tenants on 28 May, lawyers for TPP advised that in fact it was the landlord's strong preference for the unit to be professionally cleaned by Chem Dry and they asked the tenants to reconsider their refusal to allow this.

This is contrary to TPP's advice on 26 May above. Counsel also confirmed in this email that Chem Dry had completed decontamination on the exterior of the house, including the pathways, hard surfaces and scaffolding. Remaining decontamination of the shared laundry and the soil was still required.

31. At the hearing (18 June), the tenants noted that an I-Quip test that day showed that the exterior deck and heat pump unit are still contaminated.

32. As at the hearing date (18 June), the laundry decontamination work was still to be done but scheduled for that day and expected to be completed within a week. Soil decontamination is also required although the landlord commented that while the ground is relatively damp through winter, there is less risk of lead contaminated soil being dispersed elsewhere.

33. In relation to health impacts, on 10 March, Mr McCombs was feeling very unwell with headaches, blurred vision, and kidney pain. He believes this was caused by elevated lead levels in his blood. A blood test conducted that day later returned a result of 0.14 umol/L (<0.24). According to Health NZ blood guidelines (produced in evidence by the landlord) this level is within normal background levels of exposure.

34. Mr McCombs also states that he experienced the same symptoms again and visited the Hospital Emergency Department on 28 March. The doctor initially indicated that it could be a gastro illness and advised that they could not test for lead. Mr McCombs then went to the After-Hours clinic but they could not do a lead test either. Mr McCombs did not produce any evidence of his visits to ED or After-Hours such as discharge notes or other written records.

35. A blood test conducted on 31 March showed a result of 0.15 umol/L (<0.24). Again, according to Health NZ blood guidelines (produced in evidence by the landlord), this level is within normal background levels of exposure.

*Has the landlord breached their obligations to comply with any relevant enactment in relation to buildings, health and safety and to maintain the premises?*

36. Under section 45(1)(b) RTA a landlord must maintain the premises in a reasonable state of repair and under section 45(1)(c) RTA, comply with any relevant enactment in relation to buildings, health and safety.

37. 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 RTA.

38. Section 38 RTA is also relevant in the context that a failure under s45 can also breach s38. Under s38(1) the tenant is entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord. Under s38(2) the landlord must not cause or

permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.

*The initial contamination discovered 27 February*

39. There is no real dispute, and I consider on the evidence, that the method of removing the paint by the contractors caused ingress of lead dust and debris which contaminated the premises. I find this was likely due to the contractor's failure and negligence to manage the paint removal appropriately and in accordance with established guidelines. The painting contractors did not take reasonable precautions to comply with health and safety requirements when dealing with lead-based paint. They did not check whether the exterior paint was lead-based by testing nor prepare and/or implement a proper plan to manage the safe removal of the paint.

40. The tenants claim that LML as owner and TPP as agent are also both liable for the contractor's failure to comply with health and safety requirements when dealing with lead-based paint.

41. LML and TPP deny liability for the contractors failures. TPP in particular notes that the contractor was engaged directly by LML and TPP was unaware of their engagement until 2 days after the work began. They also argue that the contractors were professional painters who assured LML and TPP that they follow best practice, including by assuming the potential for lead paint at older properties. However, there is no evidence of any formal risk assessment or management plan for dealing with lead paint. The landlord relies on an email from the contractor on or about 5 March in which they said:

    *"With health and safety about stripping the paint, some old paint has lead in it some don't, so that why I am not allow our staff to burn the old paint off, instead of that we have to use paint stripper to remove the old lead paint the old lead paint is stick to paint stripper, we put them in the bag and label them and we always let the tip people know that is the old lead paint every time and they tell us where to put them at tip. I also supply gloves, mask and glasses as PPE gears for our staff as well."*

42. It is clear from the evidence that the contractors did not follow the process they described above.

43. There are several pieces of legislation that are relevant.

44. Under the Health and Safety at Work Act 2015 (the HSWA), the contractors, LML and TPP all fit the definition of a 'person conducting a business or undertaking' (PCBU) with duties to eliminate or minimise risks to health and safety, so far as is reasonably practicable. Under the HSWA, a principal who appoints a contractor must also eliminate or minimise risks to health and safety. While a competent contractor should be well aware of the hazard of lead-based paint, the duty of the principal is largely to ensure that they

select a contractor who is aware of the hazard and capable of managing it effectively. However, the duty also extends to ensure that occupants (tenants) and others are not harmed by hazards arising from their management of the property. As happened in this case, an inspector under the Act may issue a prohibition notice to stop work that involves or will involve a serious risk to the health or safety of a person arising from exposure to a hazard, including lead contamination.

45. The Health Act 1956 is the prime statute controlling health hazards to the Public at large. It identifies lead poisoning as a notifiable disease. Under the Act, environmental health officers may issue cleansing orders or closing orders on a dwelling that is insanitary or likely to cause injury to an occupier. This could be applied to lead contaminated properties.

46. However, overall the obligation under s45(1)(c) RTA to comply with health and safety under any enactment means that landlords are required to protect occupants and others from lead contamination arising from paintwork in the tenanted premises.

47. In 2013 WorkSafe in conjunction with Ministry of Health (MOH) and Ministry of Business Innovation and Employment (MBIE) revised the 'Guidelines for the Management of Lead-based Paint' ("the lead paint guidelines") drafted with reference to the Health and Safety in Employment Act 1992 (the HSEA). The HSEA has now been repealed and replaced by the HSWA. However, the content on removal of lead paint is still relevant and the guidelines are still available. The foreword to the guidelines states that they are intended for three groups: painting contractors; property owners and managers; and safety and health practitioners. The guidelines have no formal status under the HSEA, nor the current HSWA. However, the guidelines may be considered best practice that could be taken into account when determining whether a landlord has discharged their duties to eliminate or minimise risks to health and safety, so far as is reasonably practicable.

*Is LML or TPP liable for the contractor's negligence?*

48. The issue to determine is whether LML and/or TPP are liable for the contractor's actions.

49. There are several legal issues that arise in this case including those relating to the law of agency; a party's duty of care to another party and whether a principal (landlord) can be held vicariously liable for an independent contractors negligence; and the jurisdiction of the Tenancy Tribunal and its overriding purpose of determining disputes concerning the rights and obligations between a tenant and landlord.

50. Compensation can be awarded in the Tribunal where a tenant or landlord is found to have breached its obligation(s) to the other. It must also be shown that

any such breach caused a loss to the other party. To succeed with a claim that the landlord is liable for damage caused by an independent contractor, the tenants must prove: first, that the landlord owes a duty to the tenants in relation to the acts of the independent contractor; second, that the contractor has performed its tasks negligently causing damage; and third, that the tenants have suffered a loss for which they should be compensated.

51. In the High Court decision of *Cashfield House Ltd v Syme & Co Ltd & ors* CP398/93 [1994] NZHC (13 December 1994) at pp 25-26, the Court held the starting premise at common law was that there is no liability resting on a principal for the conduct of an independent contractor'. The Court summarised its conclusions and held that under the common law:

*"A principal has no vicarious i.e. secondary, liability for the negligence of an independent contractor on the basis that the activity involved is a particularly hazardous one or on any other basis.*

*The principal may nevertheless in some circumstances owe a primary non-delegable duty of care and thus be liable to those to whom the independent contractor is liable if the independent contractor is negligent.*

*The principal may well owe a primary duty of care to those who could foreseeably be damaged by the acts or omissions of the independent contractor. That duty may be to select, instruct and sometimes supervise the independent contractor with reasonable care. The greater the expertise of the independent contractor and the more specialised the task the less call there may be for the involvement of the principal beyond selection and instruction. If the principal has selected and instructed the independent contractor with the skill and care appropriate to the occasion, the principal should generally be entitled to leave the task to the independent contractor without further supervision. If the principal does so there will be no liability unless, of course, the principal owes a non-delegable primary duty to those damaged by the independent contractor's negligence."*

52. In *Barfoot & Thompson v Casey*[1] the District Court addressed the extent of the obligations imposed on the landlord by s45 RTA and referred to a decision in *Body Corporate No. 126001 v Chan*[2]. In *Chan*, the Court held that:

*Where the defect is latent and not obvious, and the proprietor's attention is not drawn to a potential defect not readily observable, then I cannot see that where the defect suddenly and without warning shows itself, that a proprietor can be liable for what results..*"

*53.* A similar approach was followed by the Tribunal in *Hallam v Tandem Realty Ltd trading as Harcourts*[3]*.* However, in that case, the Tribunal found a landlord was in breach and liable to compensate the tenant for flood damage to her chattels

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[1] *Barfoot & Thompson v Casey* (DC) CIV-2005-004-01762

[2] *Body Corporate No. 126001 v Chan* [1998] DCR270

[3] *Hallam, v Tandem Realty Ltd, 12/00304/TA and also seeIn view of  CIV-2012-044-1420, DC North Shore, 3-10-13*

caused by faulty drains because the landlord had prior knowledge of the faulty drains noting *"[18]…The owner's knowledge is relevant because I do not think the obligation on the owner is so strict as to impose liability for an undiscovered defect."*

54. In view of the *Cashfield House* decision and above case law, I find that LML was the principal that appointed the contracting painters and LML owed a non-delegable primary duty to the tenants affected by the contractor's negligence. I find this is reinforced by the fact that LML had to know that there was a high probability that the house was painted with lead-based paint which would require management in accordance with the lead paint guidelines . No evidence was presented to establish what if any steps LML took to ensure that the contractors they appointed had the necessary skill and would take reasonable precautions to manage the removal of the paint. It is telling that the tenants were not notified of the impending paint work and there is no evidence of LML and the contractors assessing the premises, the risk of exposure, and the controls necessary to manage the risk. For example, it is clear on the evidence that the dust and debris was easily able to enter gaps around windows. However, it was the tenants who later sealed windows with plastic. This was not done by contractors. There was a suggestion at the hearing by TPP that the contractors went ahead and started the work without LML's express consent. However, there was no direct evidence from LML on that point. Also, there was evidence that the tenants received advice that LML visited the site on 19 February.

55. In summary I find that LML breached its duties under s45(1)(c) RTA and can be held liable for the failings of its contractor and damage suffered by the tenants as a result.

*Failure to remedy the contamination*

56. Once the tenants reported the presence of paint dust and debris inside the premises, both LML and TPP were on notice and were then under a duty both in respect of sections 45(1)(b) and (c) to remedy the problem within a reasonable time frame.

57. Based on the evidence, I have no difficulty finding that both TPP and LML were slow to react and take necessary steps to investigate and remedy the presence of dust and debris both inside and outside the premises in breach of their above obligations. As soon as it was reported, I consider that they had a duty to investigate whether the paint dust contained lead and take reasonable steps to protect the tenants health and safety and remediate. They did not. The first response from TPP was fairly casual suggesting if the tenants could not clean it themselves then they would arrange someone to do it.

58. When the tenants reported a positive I-quip lead test on 4 March, the approach did not change other than the landlord arranging for the premises to be cleaned. However, it is clear that the cleaning undertaken was inadequate given the high lead readings still present on 25 March after cleaning.

59. More importantly, the landlords did nothing to stop the paint removal work. It took a complaint from the tenants to WorkSafe before the work was shut down on 14 March. Even then, the painters ignored the prohibition notice initially and did not stop work until 17 March (19 days after the tenants reported the problem).

60. The failure to act appropriately and in a timely manner meant that the tenants continued to live in and endure contaminated premises for approximately 6 weeks from 27 February to 11 April (when the first test results were reported) with no offer of alternative accommodation from the landlords and inadequate cleaning by the landlord to address the problem. Even though the landlords took reasonable steps to ensure compliance with the prohibition notice, they did not consider any interim measures such as alternative accommodation between the date work stopped and testing results were released.

61. From 11 April, I accept that the landlords then acted swiftly to take reasonable steps to engage professional cleaners and offer the tenants alternative accommodation while this work was undertaken. The tenants refused those offers and preferred to do the work themselves for reasons already set out in some detail. In assessing any compensation payable to the tenants for the landlords' breaches, I must take this into account. Section 49 RTA stipulates that parties must take reasonable steps to mitigate their losses.

62. In summary, I find LML liable for the painting contractors negligence causing lead contamination at the premises, in breach of section 45(1)(c) RTA. However, once the problem was reported by the tenants on 27 February, I find that both LML and TPP failed to remedy the problem in a reasonable time frame in breach of both sections 45(1)(b) and (c) RTA.

*Compensation and exemplary damages for breaches of s45*

63. The Tribunal may make orders for compensation and exemplary damages. See section 78 and 109 RTA.

64. It is well established that the purpose of compensation is to, so far as money can do it, put the injured party in the same position as they would have been in, but for the breach. Liability exists for actual losses arising from a proven breach of the other party's obligations. Compensation may also be awarded for less tangible effects such as loss of quiet enjoyment or amenity of the tenancy. See

*Tenants v Singh*[4] for the approach to quantifying compensation for general damages.

65. Exemplary damages may be awarded, at the Tribunal's discretion, where a party establishes that the other has intentionally committed an unlawful act as defined in the RTA. Exemplary damages are intended to punish or deter.[5]

66. The tenants seek compensation under several different heads. However, many of their claims and amounts sought are unrealistic and have no basis in law. Therefore, I have awarded compensation for actual loses as far as they can be determined and for loss of amenity and quiet enjoyment as a global sum.

*Medical/ health*

67. I decline any award of compensation in relation to claims for medical expenses, sick leave, harm to health suffered, ongoing health monitoring, and potential health risks. There was insufficient evidence to establish that either tenant suffered harm in relation to their health as a result of the lead contamination at the premises. Mr McCombs blood tests showed lead levels that were within normal background levels of exposure with no need to further investigate according to MOH guidelines. In any event, no evidence was presented to establish the costs claimed. Furthermore, there is no basis under the RTA to award compensation claimed for ongoing health monitoring and potential health risks.

*Appliance and plants replacement*

68. I accept that the tenants were required to replace appliances that could not be decontaminated of lead dust: the vacuum cleaner, toaster, kettle, dehumidifier, 2x heaters, microwave and air fryer. The landlord has already paid the tenants $2,000 for replacement of the washing machine and dryer. The tenants provided evidence of the cost to replace those items, noting that they were all 3-5 years old. The replacement costs total $2,634.55.

69. Clause 24 of the tenancy agreement provides that the tenants are to insure their own chattels. The tenants advise that they did not have contents insurance. Be that as it may, given that the landlord reimbursed the replacement cost of the washing machine and dryer, I consider it is fair in the circumstances to award something for replacement of the other appliances.

70. I must consider betterment and depreciation. The tenant should be returned to the position they would have been in had the landlord not breached their obligations, and should not be better or worse off. In calculating depreciation, I

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[4] *Tenants v Singh* [2022] NZTT 4315225z

[5] *Auckland City Council v Blundell* [1986] NZLR 732 and *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667.

have taken into account the age and condition of the items at the start of the tenancy and their likely useful lifespan. Current depreciation guidelines estimate that small household appliances have an estimated life of 3-5 years. Therefore the tenant's appliances should be fully depreciated. However, I accept that but for the damage, the appliances should have lasted a few more years yet. Therefore, I award the tenants $500, being just under 20% of the replacement costs.

71. I also accept the tenants' evidence that during the course of their 6-year tenancy, they had cultivated a garden with vegetables and plants now ruined by lead contamination. The tenants showed photos of the gardens prior to the contamination. While they did not provide an itemised list of plants, I accept that they have suffered a loss. I award $500 as a contribution towards the loss.

*Cleaning costs*

72. I accept that the tenants made extensive and ongoing efforts to clean and decontaminate the property which were largely effective in reducing the lead levels below the clearance levels as evidenced by the lead testing. The tenants provided some evidence of receipts for materials such as wipes and I-Quip tests They did not keep a record of the hours they spent cleaning, but there is little dispute that it would have taken considerable time and effort. They estimated a sum of $2,500 for cleaning costs including labour and materials. I consider the claim is reasonable and justified.

*Rent rebate, loss of amenity and emotional harm*

73. The tenants claim a 100% rent rebate at $620/week for the contamination period plus consequential and emotional damages including trauma and disruption to daily life of $43,100.

74. The tenants have proved that the landlord (both LML and TPP) breached their obligations under s45 and they have given extensive evidence about the effect this had on them. It caused them severe emotional distress and worry; inconvenience through the need to continuously clean the premises and belongings; and generally interrupted their right to quiet enjoyment of the premises, preserved under s38 RTA. While the premises may be considered "safe" given the 13 May testing results, as at the hearing date, the tenants still could not use the garden nor the shared laundry.

75. There was no evidence given and no claims brought claiming that the premises were uninhabitable. Neither party sought to terminate the tenancy under s59 or 59A RTA. Therefore a 100% rent rebate would not be justified.

76. As already mentioned, I must consider the tenants' decision not to vacate the premises on 11 April and whether they failed to mitigate their loss at this point.

*Loss of amenity*

77. For the loss of amenity and breach of quiet enjoyment in the tenants' use of the premises I consider the following global amounts are justified and awarded;

    a. For the approximate 6-week period from 27 February to 11 April when the property was significantly contaminated, I award a rent rebate of 50% of the rent which is $1,860;

    b. For the approximate 5-week period from 11 April to 13 May, when the property was contaminated; the tenants refused to vacate; and the tenants largely decontaminated the premises, I also award a rent rebate of 50% which is $1550. This is on the basis that the tenants effectively decontaminated the premises and mitigated the landlords potential costs of alternative accommodation and cleaning;

    c. For the approximate 4-week period from 13 May to 18 June, where the premises were largely decontaminated but the tenants could not enjoy the garden or use the laundry, I award a rent rebate of 10% which is $248.

    Total award for loss of amenity: $3,658

*Emotional distress*

78. The Tribunal in *Singh*[6] considered that the range of emotional harm damages that could be awarded in the Tribunal should fall within the following three bands:

    a. At the lower end of the scale, where a breach causes inconvenience, frustration, annoyance, or disappointment: an award of $200.00 to $1,000.00;

    b. Where due to the breach the party has endured more inconvenience and a higher level of mental distress such as worry, stress, tension, or anxiety: an award of $1,000.00 to $2,000.00;

    c. At the upper end of the scale, where the party has experienced hardship, insecurity, humiliation, intimidation, aggravation, or fear: an award of $2,000.00 and upwards.

79. I consider that the tenants' emotional distress sits in the middle band and I order the landlord to pay each tenant $1,000 which is a total of $2,000 in compensation for emotional harm.

*Exemplary damages.*

80. The landlord's breaches are unlawful acts under the RTA

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[6] See n4 above

81. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) RTA.

82. The definition of 'intentional' in the Tribunal case of *Edmondson v Walls North Shore*[7] has been adopted in several District Court decisions:[8]

    " *Before an award for 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"*** *[emphasis added].*

83. It is not necessary to prove that the party intended to act unlawfully, simply that they intended to commit the act or omission that amounts to a breach.[9] Negligence or carelessness is not sufficient to prove intent, although the Tribunal may not necessarily accept a claim of inadvertence or carelessness at face value. It may draw reasonable inferences of intent from all the surrounding facts and any other relevant circumstances.

84. I am not satisfied on the balance of probabilities that the breaches here were more than carelessness or negligence and I take into account that the landlord, while not taking steps as quickly as they should have, nevertheless did take steps to deal with the contamination and were open right from the start to putting matters right. In any event, taking into account the awards already made, I am not satisfied that a further award of exemplary damages is justified. The claim for exemplary damages is therefore dismissed.

*Has the landlord harassed the tenants?*

85. The tenants claim the landlord has harassed them.

86. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) RTA.

87. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See section 38(3) and Schedule 1A RTA.

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[7] *Edmondson v Walls North Shore* [1993] NZTT, 548/92, 29 June 1993 at para [38]
[8] For example, *Birch v Otautahi Community Housing Trust* [2020] NZDC 17667

[9] *Parton v Fifita* DC Auckland TT1815/00, 1 May 2001

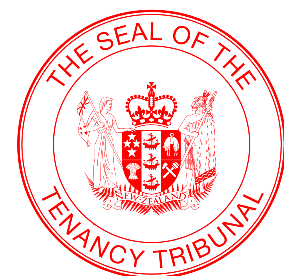
88. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds,* CIV-2009-019-001524, DC Hamilton, 26 February 2010.

89. The tenants gave a heartfelt statement at the start of the hearing outlining their view of the landlord and their advisers behaviour towards the tenants regarding the contamination. The tenants believe that the landlords undertook a sustained strategy of false claims, minimising and mischaracterising the tenants' claims, gaslighting and blame. They accuse the landlords of intimidation, bullying and abuse particularly with the engagement of legal counsel.

90. I have reviewed all the communications provided between the parties. I fully sympathise with the tenants and the unenviable situation they suffered. No doubt, it was frustrating and difficult to navigate and they were justifiably fearful of the potential harm and damage that may have been caused by the contamination. I also accept that they were required to be proactive and push the landlord for appropriate action. It was only though their reporting to WorkSafe for example the works stopped, proper testing was conducted and the extent of the issue fully realised.

91. However, in all the communications, while there was certainly disagreement over some of the facts, the steps required and the compensation that should be paid, I do not find that the landlord's responses can be characterised in the manner described by the tenants. In short, I am not satisfied that the landlords have acted in a manner that amounts to harassment of the tenants. For that reason, I dismiss the tenant's claim for harassment and exemplary damages.

92. The tenants have substantially succeeded with their claims and I award reimbursement of the filing fee.




K Stirling
16 July 2025

## ***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 $260. 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, or the failure to make an order, where the amount in dispute on appeal is less than $1000
- a final order to undertake work, or the failure to make an order, where the value of the work in dispute on appeal is 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.

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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.