

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Hamilton

Tenancy Address

Flat 3, 1 Patterson Street, Frankton, Hamilton 3204

Applicant

Full Name

Cheuk Lai Chan

Landlord

Respondents

Full Name

Maycee Hinekino Patsyanne Kapo

Tenant

Order of the Tribunal

The Tribunal hereby orders:

1. The landlord's application for termination of the tenancy is dismissed.

(Section 78(1)(i) Residential Tenancies Act 1986)

2. A declaration that the 90 day notice dated 31 January 2018 and given by the landlord to end the tenancy on 1 May 2018 is invalid and of no effect.

(Section 78(1)(a) Residential Tenancies Act 1986)

3. If the tenancy is still current as at the date of this order, then the tenant is to immediately lodge the bond of \$1,720.00 with the Bond Centre. Both the landlord and the tenant are to complete and sign the required Bond Lodgement Form and the tenant is to send this to the Bond Centre along with the bond.
 4. If the tenancy has ended by the date of this order, and all rent and other obligations at the end of a tenancy are resolved between the parties, then the bond need not be lodged. However, if there is dispute between the parties as to rent or other matters not addressed by this decision, then the bond should be lodged and/or either party may apply again to the Tribunal for either mediation or another hearing to determine that dispute.
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(Sections 77(2)(l) and 78(1)(d) Residential Tenancies Act 1986)

5. Both parties agree that the landlord may enter the premises on 25 March 2018 between 3pm and 5pm in order to replace the door handles on the upstairs rooms with handles that are unable to be locked, or to provide keys or other reliable means of opening those doors from outside of the rooms.

(Sections 45(1)(b)(c), 48(2)(e) and 77(2)(l) Residential Tenancies Act 1986)

6. Both parties agree that the upstairs windows are safe and satisfactory as they are provided that the doors into those rooms are able to be unlocked from the outside.

(Section 78(1)(a) Residential Tenancies Act 1986)

7. The landlord is to provide the tenant with at least 2 sets of keys to the front door and the back door of the premises by 5pm on 25 March 2018.

(Sections 45(1)(b)(c) and 77(2)(l) Residential Tenancies Act 1986)

8. Cheuk Chan to pay Maycee Kapo the sum of \$1,070.44 immediately calculated as follows:

Compensation to be paid to Tenant:

Safety and security - lack of keys	\$150.00
Unlawful discrimination	\$550.00
Loss of quiet enjoyment	\$350.00
Filing fee reimbursement	\$20.44
Amount payable by Landlord to Tenant	\$1,070.44

(Sections 12, 38, 45, 46, 77(2)(n), 78(1)(d), 102(4)(a)(b) Residential Tenancies Act 1986)

Reasons:

1. This is a reserved decision from a hearing held on 5 March 2018.
2. The landlord applied on 2 February 2018 for termination of the tenancy on the grounds of rent arrears and non-payment of the bond, and/or for possession of the premises pursuant to a 90 day notice that had been issued to end the tenancy.
3. The tenant applied, also on 2 February 2018, for compensation for difficulties with access to and within the premises, and for breaches by the landlord of her human rights and the ability of the tenant and her family to peacefully enjoy the premises.

4. I note that the tenant did not specifically apply (in terms of the standard application form) for exemplary damages in regard to the landlord's alleged unlawful discrimination as is described in section 12(1) of the Residential Tenancies Act 1986 (RTA).
5. I explained the difference between compensation and exemplary damages to the parties during the hearing, being that the former aims to compensate a party for a loss, tangible (costs incurred, loss of use) or intangible (stress or inconvenience), that has been suffered. Exemplary damages operate more as a fine or penalty in order to punish and deter.
6. I have dealt with the application by the tenant as it was framed; as an application for compensation.

Landlord's application to terminate the tenancy

7. The landlord made an application to terminate the tenancy on the basis of rent arrears.
8. The rent ledger showed no rent owing on the day the application was made (2 February 2018) or on the date of the hearing. Accordingly this ground is not proven.
9. The landlord also applied to terminate the tenancy on the grounds that the bond of \$1,720.00 had not been paid by the due date specified in the tenancy agreement of 31 January 2018.
10. The tenant agreed at the hearing that she had not yet paid the bond to the landlord.
11. The landlord provided a copy of an email notice dated 1 February 2018 which required that the tenant pay the bond stating that it was due on 31 January 2018. The notice said that the breach must be remedied within 14 days in order to avoid a termination order.
12. However, on the basis of the evidence given at the hearing by both parties, I have decided that it was not clear whether or not the landlord was actually requiring payment of the bond and that it was therefore reasonable that the tenant had not yet done so.
13. Both parties agreed at the hearing that the tenant did advise the landlord on 31 January 2018 that she had the full amount of the bond available to pay but that the landlord then said that she did not require this to be paid if the tenant and her family were able to find somewhere else to live by 4 March 2018.
14. I therefore decline to terminate the tenancy on the grounds that the bond has not been paid.
15. I note that even if I had found that the tenant had breached the tenancy agreement by not paying the bond that I would still have needed to be satisfied that the failure to pay the bond meant that it would be "inequitable to refuse" to terminate the tenancy; see section 56(1)(c) Residential Tenancies Act 1986 (RTA). I would not have terminated the tenancy on this basis.
16. I do agree that the bond should now be held by the Bond Centre as security for rent payments and other obligations under the tenancy agreement as is the usual practice. Therefore I have made an order requiring this and that the parties both sign a bond lodgement form. I suggest that the parties could do this on 25 March 2018 when the landlord comes to the premises to change the door handles.
17. If the tenancy has ended by the date that this order is issued and all rent and other obligations at the end of a tenancy are resolved between the parties then the bond need not be lodged. However, if there is dispute between the parties as to these matters then the bond should be lodged and/or either party may apply again to the Tribunal.

18. The landlord also applied to terminate the tenancy on the grounds of abandonment. However, the tenancy was not abandoned. It may be that this part of the application form was filled in in error as this was not discussed at the hearing.

Landlord's application for termination and possession pursuant to 90 day notice

19. The landlord also applied for termination of the tenancy and for a possession order on the basis that she had given the tenant at least 90 days notice to end the tenancy.
20. Section 51 RTA allows a landlord to terminate a tenancy without a reason being required provided that the tenant is given a minimum of 90 days notice.
21. The District Court has ruled that the 90 day notice period is a strict one and cannot be shortened without the consent of a tenant; see *Charan v Barfoot & Thompson Ltd* DC Manukau CIV-2010-092-002100, 14 June 2010.
22. The landlord emailed the tenant at 11:44pm on 31 January 2018 stating that the email was written notice that the tenancy would have to be terminated in 90 days' time - on 1 May 2018.
23. Section 136 of the Act sets out how notices and other documents are required to be "served" or given.
24. A notice may be emailed but only if a party has provided an email address as an "address for service". The tenant had done this on the tenancy agreement.
25. If an email is sent after 5pm on any day then it is to be treated as having been given or served on the next working day after it was transmitted; s136(9) RTA.
26. This means that the 90 day notice was served on 1 February 2018.
27. The 90 day period starts the day *after* the notice was served; s136A RTA. So the 90 days starts on 2 February 2018.
28. This means that the tenant must be given at least 90 days notice from 2 February 2018 of the ending of the tenancy.
29. There are 88 days from 2 February 2018 until 1 May 2018.
30. The tenant was not given the legally required minimum of 90 days notice therefore the notice given on 31 January 2018 at 11:44pm is invalid and of no effect.
31. The landlord may give the tenant another notice at any time however must take care that this gives 90 days' notice or more while allowing for service periods.

Tenant's application for compensation for difficulties with access to and within the premises

32. The evidence satisfied me, and the parties agreed, that the tenant had been provided with one key to the front doors and one garage remote but no key to the back door.
33. I am also satisfied that there were issues with doors on upstairs bedrooms being lockable from the inside but that keys were not available to open these.

34. The tenant said that her 3 year old child locked himself in one of the upstairs rooms on two occasions which resulted in the fire service being called to free him as the landlord lived in another city and could not provide keys or other means of opening the doors.
35. A landlord is obliged to consider the security and the health and safety of their tenants; s45 and 46 RTA.
36. I agree that it is not safe that a young child is able to lock themselves into a room in a house without a means of being able to unlock that door from the other side.
37. The landlord agreed at the hearing to replace the handles with those that cannot be locked so as to remove this risk. The date and time to do this work were agreed to by the parties at the hearing and I have made an order recording this.
38. I have also recorded that the parties agree that the upstairs windows are safe as they are, as long as the doors are able to be unlocked from the outside so that children can be supervised.
39. I have also made an order requiring that the landlord provide the tenant with at least two sets of keys to both the front and back external doors to the premises by 5pm on 25 March 2018. This is a reasonable requirement.
40. I note the landlord's comment in the hearing that the tenant assured her at the beginning of the tenancy that the lack of keys would not be a problem. I also acknowledge the landlord's actions to change the handles on the doors upstairs after the first incident. Unfortunately this did not resolve the problem.
41. However, after 6 weeks (by the time of the hearing) it is reasonable to expect that the tenant would have been provided with more than one set of keys and a reliable solution to the doors upstairs.
42. I have awarded compensation of \$150.00 to the tenant in regard to the stress and inconvenience of these issues.

Tenant's application for compensation for breaches of her human rights

43. The tenant, Ms Kapo, said in her application and at the hearing that, after granting the tenancy on 15 January 2018, the landlord then changed her mind and sought to end the tenancy on 4 March 2018 saying that this was because she believed that the tenant had lied about her work status and that of her partner, and about their children's ages.
44. Section 12 of the Residential Tenancies Act 1986 makes it clear that it is unlawful to discriminate against any person in the granting, continuing, terminating or renewing of a tenancy in contravention of the Human Rights Act 1993.
45. The Human Rights Act 1993 (HRA) states that one of the prohibited grounds of discrimination is "employment status" being whether or not a person is unemployed or receiving a benefit; s21(1)(k) HRA.
46. The evidence showed that what led the landlord to change her mind was the tenant asking her to consider becoming a WINZ provider (to enable WINZ to advance the bond in one lump sum and the tenant to then repay WINZ), a belief that the landlord then formed that the tenant and her partner were not both employed, and concern that their children were younger than the tenant had said they were. The landlord also said she was unhappy about the tenant's requests to make part-payments towards the bond.
47. Taken together, I am satisfied that the landlord put considerable emphasis on the employment status of the tenant and her partner and that it is more probable than not that Ms Chan's concern about this motivated her decision to seek to end the tenancy early on 4 March 2018, and also to make her applications to the Tribunal.

48. This seems particularly likely given that both parties agreed at the hearing that Ms Kapo told Ms Chan that she had the full amount of the bond ready to pay on the 31st January 2018, the due date as required by the tenancy agreement. There were no rent arrears. Therefore there was no legitimate reason why the tenancy should end.
49. I am satisfied that Ms Chan did not realise until the hearing that it is unlawful to take someone's employment status into account in tenancy situations, or indeed in employment, or the provision of goods and services including education, and in other circumstances as set out in the HRA.
50. I note that Ms Kapo repeatedly told the landlord that, in fact, she and her partner were both employed and offered to provide evidence of this. However, that is not the point. The Residential Tenancies Act 1986 and the Human Rights Act 1993 make it clear that whether or not someone is employed, or receives a benefit or ACC, is not relevant to tenancy decisions.
51. Ms Kapo described the frustration and humiliation of herself and her family in being treated in this way and her understandable strength of feeling was evident to me at the hearing.
52. In another Tribunal case, *Naden & Simon v Sandford* [1997] NZTT Auckland 868/97, the Adjudicator put it this way. He accepted that, where a landlord decided to cancel a tenancy after finding out his tenants received a benefit, that the tenants "undoubtedly suffered humiliation and the range of human emotions that must inevitably be deeply felt by those on the receiving end of any discriminatory practices".
53. I have awarded the tenant the amount of \$550.00 compensation in regard to the discrimination.

Tenant's application for compensation for breaches of quiet enjoyment of the tenancy

54. Section 38 RTA says:-

38 Quiet enjoyment

(1) The tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord or any person claiming by, through, or under the landlord or having superior title to that of the landlord.

(2) The landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

55. Ms Kapo described in her application and at the hearing, how she "pleaded" with the landlord to be able to stay at the premises after Ms Chan told her that she wanted the family to move out by 4 March 2018, or as soon as possible.
56. Ms Kapo described the disruption of having to think about moving house, and the upset and distress of feeling she had to "prove" that she and her partner were employed, and justify the age and development of her children.
57. She referred to the stress of having already moved from Wellington to a new city, a new house and new jobs, and to then be told 2 weeks into the tenancy that the landlord wanted them to vacate the premises, as considerable.
58. "Quiet enjoyment" may be thought of as the ability to live in a house undisturbed and to feel as if the property is your home.

59. On the basis of all of the evidence, I am satisfied that the landlord did breach the quiet enjoyment of the tenant and her family.
60. The actions of seeking that the tenant vacate the premises by 4 March 2018, emailing 14 day notices in regard to rent and bond which I have also found were unjustified, and issuing a 90 day notice to terminate the tenancy, all within 2-3 weeks of the tenancy beginning, are all sufficient to significantly disturb any sense of belonging or settled occupation of the premises.
61. I also note that it became apparent at the hearing that the landlord may have been influenced by neighbours who had taken it upon themselves to report back to Ms Chan (who lives in another city). I have no doubt that to feel that you are being watched is also unsettling and upsetting.
62. Taking into account the impact on the tenant, and the other awards of compensation that I have already made (as the impact of the discrimination and the disturbance of quiet enjoyment do overlap), I have awarded \$350.00 in regard to the breach of quiet enjoyment.

Filing fee

63. I am satisfied that the tenant has been largely successful in the claims brought to the Tribunal and therefore consider it appropriate that the landlord pay the applicant the filing fee.

Conclusion

64. I make a final comment.
65. This decision has found fault with some of Ms Chan's actions. However, the landlord conducted herself at the hearing in an open and frank manner and I accept that she is also relatively inexperienced as a landlord.
66. However, Ms Chan has made some serious errors of judgment particularly in acting to try to end a tenancy on the basis of what is a discriminatory reason.
67. The aim of this decision is not primarily to punish the landlord so much as to acknowledge the real and serious effects that discrimination has. The tenant and her family felt angry, humiliated and powerless through no fault of their own.
68. Whether or not someone fulfills their obligations as a tenant, or as a landlord, comes down to a variety of factors including knowledge of those obligations, personal attributes, willingness to communicate, and life circumstances (including financial resources).
69. Prohibitions against discrimination in part aim to guide us all in how we judge and assess others.