

Order of the Tenancy Tribunal

Residential Tenancies Act 1986

Office of the Tenancy Tribunal

Tenancy Tribunal at Auckland

Tenancy Address

49 Waterbank Crescent, Waterview, Auckland 1026

Applicant

Full Name

Hora Aoria Bell

Tenant

Respondents

Full Name

Housing New Zealand Corporation

Landlord

Order of the Tribunal

The Tribunal hereby orders:

1. Housing New Zealand Corporation is granted immediate possession of the premises situated at 49 Waterbank Crescent, Waterview, Auckland 1026.

(Section 64(1) Residential Tenancies Act 1986)

2. Ms Bell's application is dismissed.

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

Reasons:

1. Ms Bell has lived at the premises since 1989. Housing New Zealand purported to terminate her tenancy as at 29 June 2015 because of methamphetamine contamination that it says makes the premises uninhabitable. Ms Bell does not wish to leave her home leading to her application and Housing New Zealand's cross-application for possession of the premises.
2. A landlord is entitled to terminate a tenancy on 7 days notice where, as a result of a breach of the tenancy agreement by a party, the premises are destroyed or so seriously damaged as to be uninhabitable: s 59A(1) of the Residential Tenancies Act 1986.

Are the premises contaminated and has the contamination damage rendered the premises uninhabitable?

3. Housing New Zealand produced evidence showing contamination in 7 areas of the premises, that contamination levels exceeded Ministry of Health guidelines and that the contamination was such that the premises were uninhabitable. Ms Bell did not produce evidence to show that Housing New Zealand's test results or that the advice Housing New Zealand has received regarding habitability was incorrect.
4. I accept Housing New Zealand's evidence that there is methamphetamine contamination at the premises and that this contamination has rendered the premises uninhabitable.

Is methamphetamine contamination damage for the purposes of s 59A of the Act?

5. At the first hearing of this claim on 22 July 2015 I expressed concern regarding the application of s 59A of the Residential Tenancies Act 1986 in relation to methamphetamine contamination. Specifically, whether contamination could be considered damage. Housing New Zealand was invited to provide submissions on this question.
6. Having regard to Housing New Zealand's submissions, previous cases on this question determined in this Tribunal and with the benefit of having discussed this issue with the parties at length during today's hearing I find that methamphetamine contamination is damage for the purposes of s 59A. While damage is not defined in the Residential Tenancies Act 1986, case law has found that damage is "a physical alteration or change, not necessarily permanent or irreparable, which impairs the value or usefulness of the thing said to be damaged": *Ranicar v Frigmobile Limited* (1983) 2 ANZ Ins Cas 60-525, and that damage can be at a chemical level: *Bayer Australia Limited v Kemcon Pty Limited* (1991) 6 ANZ Ins Cas 61-026. I accept Housing New Zealand's argument that methamphetamine contamination is damage at a chemical level that impairs the usefulness of the premises. This finding is consistent with the many decisions of this Tribunal presented by Housing New Zealand including the recent decision of Adjudicator Benson in *Housing New Zealand Corporation v Teepa* application no 15/04385/MK dated 7 August 2015.

Was the contamination damage caused by a breach of the tenancy agreement?

7. Section 59A requires not only that there be serious damage rendering the premises uninhabitable but also that the damage was a result of a breach of the tenancy agreement by the tenant.
8. The tenancy agreement includes an express provision in the "Rights and responsibilities" section that the tenant shall "not damage or permit damage to the premises". Clause 7 of Ms Bell's tenancy agreement also incorporates the provisions of the Residential Tenancies Act 1986 into the agreement. The Residential Tenancies Act 1986 provides that tenants shall not intentionally or carelessly damage or permit any other person to intentionally or carelessly damage the premises: s 40(2)(a) of the Act. The Residential Tenancies Act 1986 also

provides that where damage occurs during the tenancy it is for the tenant to prove that the damage was not caused intentionally or carelessly: s 40(4) of the Act, and that the tenant is responsible for the acts of others at the property with their permission: s 41 of the Act.

9. Ms Bell's tenancy is one of very long duration. It is inherently improbable to suggest that the methamphetamine contamination identified by Housing New Zealand predates her occupancy. For this reason I find that the contamination damage occurred during the tenancy, breaching her obligation under the tenancy agreement not to damage the premises. Ms Bell argued that she did not know how the contamination arose at the premises however the contamination did not occur spontaneously; it could only be the result of methamphetamine use by an individual on the premises. As noted above, s 41 fo the Residential Tenancies Act 1986 provides that a tenant is responsible for the acts of others. Ms Bell suggested that the contamination may have been caused by Housing New Zealand contractors however she did not have any evidence to support this. Ms Bell also suggested that the contamination was caused by methamphetamine use in the adjacent premises however the test results are inconsistent with this proposition: the highest readings are not in areas near the adjacent property. As Ms Bell did not know how the contamination arose she was unable to produce evidence to show that the damage was not caused intentionally or carelessly.
10. For these reasons I find that the methamphetamine contamination was caused by a breach of the tenancy agreement.

Conclusion

11. I find that as a result of methamphetamine contamination the premises have been so seriously damaged as to be uninhabitable and that this damage was the result of a breach of the tenancy agreement by Ms Bell. For this reason I find that Housing New Zealand was entitled to terminate Ms Bell's tenancy pursuant to s 59A of the Residential Tenancies Act 1986. As the notice period for the termination has now expired I find that Housing New Zealand is entitled to possession of the premises.