[2024] NZTT 4935813, 4981155

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]

Landlord

RESPONDENT: [The respondent/s]

Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the parties' names and identifying details.
2. [The tenant/s] must pay [The landlord/s] $1,127.98 immediately, as shown in the table below:

Description	**Landlord**	**Tenant**
Rent arrears (to 5 September)	$3,417.00	
Lawns and Garden work	$10.98	
Compensation: Breach of Quiet Enjoyment		$500.00
Total award	**$3,427.98**	**$500.00**
Net award	$2,927.98	
Bond	$1,800.00	
Total payable by Tenant to Landlord	**$1,127.98**	

3. The Bond Centre must pay the bond of $1,800 to the landlord immediately.
4. The parties' other claims are dismissed.

Reasons:

1. Both parties attended the hearing.
2. The landlord had applied for termination of the tenancy for breach of the tenant's obligations, rent arrears and refund of the bond.

3. The tenant had applied for compensation for breach of quiet enjoyment and alleged that the landlord had taken steps to terminate the tenancy without grounds.

4. By the date of the hearing, the tenancy had terminated. The issues before me, were the claim for rent arrears and the tenant application.

5. The hearing was scheduled for 10am on a Monday morning. On the Sunday evening before the hearing an email was sent on the tenant's behalf requesting an adjournment and claiming circumstances out of her control.

6. The adjournment request was declined. The hearing was scheduled well in advance. If childcare, or the timing of childcare, was an issue that could and should have been addressed before the eve of the hearing. Similarly, the tenant claimed that she could not access, send, or copy documents from the Saturday before the hearing. All documents should have been submitted before then in any event.

How much does the tenant owe?

7. This is the second set of applications regarding this tenancy within a short space of time. Throughout both sets of applications and hearings, the Tribunal has had to remind the parties of its role as an adjudicative body.

8. Rent was also an issue in the previous applications. Under those applications, the Tribunal made orders regarding rent owed to 1 July 2024 and set out the landlord's obligations for record keeping. The Order also records that:

   "The tenant should also have paid rent of $480 on 2 July 2024 for the period ending on 8 July 2024. Rent of $480 is due each Tuesday until the end of the tenancy.

9. The previous Order also made awards in favour of the tenant, with the result that there was a net payment owed by the landlord to the tenant. However, the tenant arranged for WINZ to pay the rent arrears portion of the July Order to the landlord. WINZ paid the landlord $687.14 to the landlord for rent on 5 July 2024.

10. As a result of that payment the landlord could have paid the tenant $808.11 being the amount awarded to the tenant in the previous order. Alternatively, it could have applied the $687.14 payment to current rent and paid the tenant the net award from the previous Order of $120.97.

11. The landlord paid the tenant $120.97 but did not apply the $687.14 towards rent, either at the time or up to the hearing of these applications.

12. The July Order effectively re-set the rent payments. Neither party appealed the earlier decision, so are bound by the findings regarding rent owed to 1 July. The

parties should have been starting again from a nil balance as at 1 July, with the first week rent in advance due on 2 July.

13. On this application, the landlord claimed rent arrears of $4,927.00 to 5 September 2024. The rent summary was inconsistent with the previous July Order in that it included rent accrued from 26 June 2024. The rent summary also made no allowance for the $687.14 payment made on 5 July 2024.

14. The tenant acknowledged that rent is owing and says that the amount is $2,400 + 2 days. The tenant believes that she is entitled to credit for two weeks rent paid in advance at the start of the tenancy. All rent payments before 1 July were taken into account in the previous order.

15. Neither party has properly assessed the rent. The issue is relatively straightforward; how much rent accrued in the period from 2 July 2024 to 5 September (when the tenancy ended) and how much was paid during that period?

16. The period is 9 weeks and 2 days. The rent was $480 per week. Total rent accruing was $4,457.14. There were payments of $1,010.14 (including the $687.14). That leaves a balance owing for rent of $3,417.00.

17. The landlord also claimed for lawn repair and some cleaning costs. I award the cost of lawn seed. The photographs show damage to the lawn caused during the tenancy and applying seed was a reasonable repair. The landlord did not prove its other claims. They are dismissed.

Tenant Claims

18. The tenant claims that the landlord has interfered with her quiet enjoyment of the property and has made an application to terminate the tenancy when it was not entitled to do so.

19. 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) Residential Tenancies Act 1986.

20. 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.

21. 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.

22. Under Section 60AA a landlord must not give a notice to terminate the tenancy or apply to the Tribunal for such an order, knowing they are not entitled to do so.

23. Breaching any of these obligations without a reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of $6500.00. See section 60AA and Schedule 1A Residential Tenancies Act 1986.

24. The tenant's claims stem from three 14-day notices for rent arrears issued by the landlord on 3, 5 and 10 July. That is three notices over a seven-day period, all for different amounts and only one of which was correct.

25. The first notice was issued on 3 July and was for rent arrears of $480. That notice accurately reflected the rent position at the time.

26. The second notice was on 5 July for arrears of $960. It is not clear whether the landlord had received the WINZ payment before it issued this notice, as they occurred on the same day. Before the payment was made, the rent was still $480 in arrears (the next rent due date was 9 July for the period to 15 July). After the WINZ payment on 5 July, the rent was $207.14 in credit.

27. The third 14-day notice was for arrears of $1,440 on 10 July 2024. That notice makes no allowance for the WINZ payment. Rent had been due on 9 July for the period to 15 July. So, as of 10 July, rent was in arrears of $272.86 (not the $1,440 claimed by the landlord).

28. I find that these notices did interfere with the tenant's peaceful enjoyment of the property. There were three notices over the period of a week. They were inconsistent with each other and with the Tribunal's Order regarding rent owed to 1 July 2024 and there was no allowance for the $687.14 payment on 3 July 2024. I award the tenant compensation of $500.

29. I do not accept the tenant's claim that she moved from the premises because of these notices. She had already indicated that she wanted to move and had applied for early termination of a fixed term tenancy.

30. I am not satisfied that the landlord's breach amounts to harassment or was intentional. I decline to award exemplary damages. Both parties seem to have misunderstood the effect of the July Order for rent arrears notwithstanding paragraphs 19 & 20 which stated:

    "19. The result is that there is rent of $687.14 owing for the period to 1 July 2024.

    20. The tenant should also have paid rent of $480 on 2 July 2024 for the period ending on 8 July 2024. Rent of $480 is due each Tuesday until the end of the tenancy."

31. On 10 July, the landlord also applied for termination of the tenancy for breach of the tenant's obligation to pay rent. At that date rent was in arrears, but not to

the extent claimed. The rent did not come out of arrears even though the tenant made two more payments (of $80 on 18 July and $273 on 24 July). The tenant did not pay ay rent from 24 July to the end of the tenancy on 5 September 2024.

32. Where a landlord applies to terminate for breach, and rent is at least 21 days in arrears on the hearing date, the Tribunal must terminate the tenancy. See sections 55 and 56(2) Residential Tenancies Act 1986.

33. The landlord was entitled to make the application for termination. This aspect of the tenant's claim is dismissed.

34. As both parties were partially successful, I have not awarded reimbursement of either filing fee.

Suppression

35. The tenant has applied for suppression due to safety concerns. The evidence in relation to those issues was limited. However, there was enough for me to err on the side of caution and grant suppression of all parties' details. See s95A RTA.

R Morgan
13 December 2024

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 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.