TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicants]

Tenant

RESPONDENT: Warwick Stephens and Judith Stephens

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Applications for suppression have been made in this case, and the Tribunal orders suppression of the tenants' names and identifying details. The landlords' request for suppression is refused.
2. Warwick Stephens and Judith Stephens must pay [the tenants] $2,027.00 immediately calculated as shown in the table below.
3. The parties' claims are otherwise dismissed.

Description	**Landlord**	**Tenant**
Compensation		$1,800.00
Filing fee reimbursement		$27.00
Total award		**$1,827.00**
Total payable by Landlords to Tenants		**$2,027.00**

Reasons:

1. Both parties attended the hearing.
2. The tenants claim compensation and exemplary damages for breaches of the landlords' obligations in relation to termination of the tenancy and their right to quiet enjoyment of the premises.

3. The landlords claim termination for rent arrears. There are no rent arrears and there is no basis for a termination order based on rent arrears. I have therefore dismissed the landlords' application.

Background

4. This periodic tenancy began on 14 December 2019 at a rent of $300 per week. It is the landlords' practice not to increase the rent during the currency of their tenancies which I acknowledge is a rare and beneficent way for a landlord to act. The landlords did purport to increase the rent recently because they took the view, wrongly, that the tenants had become trespassers.

5. This dispute arose after in early March 2025 the tenants reported a leak under the floor of the laundry. The floor became soft and there was damp in the vicinity.

6. On investigation, a water pipe under the floor was found to have split and water was being sprayed onto the underside of the floor. There were difficulties of access and the best that the plumber could do was to put a rag over the pipe so that the leaking water went down to the ground. That is how it remains.

7. I accept that substantial work is needed to rectify the situation. The floor in the laundry and the adjacent bathroom will need to be lifted and the pipe work replaced. This will necessitate the bathroom vanity and shower to be replaced. There is also damage to an area of floor in the kitchen.

8. The landlords say, and I accept, that the work is likely to take up to two weeks to complete. I also accept that the tenants should vacate the premises for the time that it will take to complete the work. That is because it will be difficult to live in the premises without bathroom facilities and because it would make it difficult for the contractors if the tenants are living in the premises during the work. The landlords say that the contractors will not do the work if the tenants are occupying the premises and that seems credible.

9. The tenants believed that they could continue to live in the premises during the work and so they did not agree to vacate. This resulted in the landlord giving them a 14-day termination notice on the ground that the premises were uninhabitable.

10. When the tenants refused to vacate at the end of that notice period, the landlord served them with a trespass notice and called the Police to evict them. The Police attended and, rightly, told the landlord that it was a case for this Tribunal, not for them.

Law

11. This case engages the following provisions of the Residential Tenancies Act 1986 (the Act).

12. Sections 50 and 51 of the Act set out the circumstances in which a tenancy may be terminated and what notices can be given to terminate a tenancy. Of relevance to this case, they provide that the landlord can terminate a periodic tenancy by giving a 90-day notice without needing to give any reason.

13. The relevant part of s59 of the Act is set out below.

    59 Destruction of premises

    (1) Where, otherwise than as a result of a breach of the tenancy agreement (whether for a fixed-term tenancy or a periodic tenancy), the premises are destroyed, or are so seriously damaged as to be uninhabitable,—

    (a) the rent shall abate accordingly; and

    (b) either party may give notice to the other terminating the tenancy.

    (2) Where a landlord gives notice of termination under subsection (1), the period of notice shall be not less than 7 days.

    (3) Where a tenant gives notice of termination under subsection (1), the period of notice shall be not less than 2 days.

    (4) Where, otherwise than as a result of a breach of the tenancy agreement, the premises are partially destroyed, or part of the premises is so seriously damaged as to be uninhabitable,—

    (a) the rent shall abate accordingly; and

    (b) either party may apply to the Tribunal for an order terminating the tenancy, and the Tribunal may make such an order if it is satisfied that it would be unreasonable to require the landlord to reinstate the property or (as the case may require) to require the tenant to continue with the tenancy albeit at a reduced rent.

14. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises (s38(2)).

15. 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.

16. 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".
17. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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 (s109(3)).
18. A landlord must not give a retaliatory termination notice to a tenant.
19. For a notice to be declared retaliatory, the tenant must prove that in giving the notice, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act or by any complaint against the landlord (s54(1)).
20. Giving a termination notice which is declared to be retaliatory is an unlawful act for which exemplary damages may be awarded, up to a maximum of $6,500.00.
21. 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 (s66AA).
22. 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.

Are the Premises Habitable?

23. The short answer to this is that the landlords accept that they are.
24. Apart from the oral evidence given by the parties, the only evidence on this point is an email from the landlords' builder. In it he says that the premises are not "liveable", and he refers to the risk of someone falling through the rotten floor. But the landlords accept that he is referring to when the work is undertaken, not the situation now. In any case, any risk from the rotten floor (in places) can be mitigated by putting a sheet of plywood or the like over the weakened area.
25. It follows that the landlords cannot rely on s59 of the Act to terminate the tenancy because it is predicated on the premises or part of them being uninhabitable.
26. At most, only part of the premises would have been rendered uninhabitable by the damage from the leaking pipe which means that the landlords could not terminate the tenancy by notice. They would have to apply under s59 to the Tribunal for an order.
27. It follows that the landlords' termination notice was invalid.

Timeline of Key Events

- On 7 March 2025 the tenants reported the damage to the landlords.
- On 21 March the tenants gave the landlord a 14-day breach notice for the repairs.
- On 21 March the landlord told the tenants that they had 7 days to vacate for the repairs to be completed.
- On 23 March the tenants invited the landlord to serve a written termination notice.
- On 23 March the landlord served a 14-day termination notice on the tenants, expiring on 7 April.
- On 31 March the tenants informed the landlords that they had no right to terminate the tenancy.
- On 2 April the landlords messaged the tenants telling them that if by 7 April they didn't "sign off" the inspection and sign over the bond "you will be evicted by the Courts most likely on Tuesday (8 April)".
- On 5 April the tenants informed the landlords that they will move their stuff out and get a room if necessary.
- The landlords then served a trespass notice on the tenants.
- On 24 April the landlords sent the tenants a message stating that the Tribunal had said that the only way to stop an eviction order was for them to vacate the premises.
- On 27 April the landlords gave the tenants a letter setting out the consequences for them of not complying with the trespass notice. It described the tenants as "squatters" following the expiring of the trespass notice and said that, if necessary, the Police would remove them from the property.

Discussion and Decision

28. During the hearing, there was discussion between the parties about the tenants moving out for two weeks while the remedial work was undertaken. The landlords were amenable to that. But ultimately, the tenants said that they did not want to remain in the premises, and they would leave when they had found somewhere to move to.
29. The landlords expressed concern about how long that would take. The Tribunal pointed out that they could serve a 90-day termination notice and the tenants would be required to leave at the end of the notice period. The tenants can serve their own 21-day termination notice. The parties can also agree on a termination date.

30. As I have said, the landlords' 14-day termination notice was invalid. That raises the question of whether the landlord knew that they were not entitled to serve the notice. In my view this is a case where the application of s59 of the Act, certainly for a layman, is not straightforward. I note as well that the landlords say that they received advice from tenancy services that they could serve a notice under the section. I am willing to accept that the landlords made an honest mistake and therefore there has been no unlawful act.

31. For similar reasons I find that the landlords' notice was not retaliatory. The landlords believed that they were entitled to serve the notice and there was a perceived factual basis for the notice.

32. There is no doubt at all that the landlords should not have served a trespass notice on the tenants for the simple reason that the landlords were not in occupation of the premises. The proper course was for the landlords to apply to the Tribunal for a possession order.

33. As well as that misstep, the landlords put the tenants under considerable pressure to move out and made unjustified assertions and threats. There was a dispute here, and it is this Tribunal that resolves such disputes following an application by a party and a hearing. The landlords sought to bypass that process by asserting to the tenants that eviction was a certainty when plainly it wasn't.

34. The landlords made the point that the tenants invited them to serve a termination notice and said that they would vacate. But that needs to be seen in context. The tenants were also disputing the need for them to vacate, and they were being put under considerable pressure. The fact remains that the notice was invalid and the tenants' response to it does not change that.

35. The landlords' pressure on the tenants was persistent and I have no hesitation in finding that it amounted to harassment. It followed an invalid termination notice and so it was an interference with the tenants' quiet enjoyment of the premises. That is an unlawful act.

36. Because the landlords had some reason to think that their notice was valid, I find that the unlawful act was not intentional. But the tenants are entitled to compensation.

37. I accept that this has been an extremely unpleasant experience for the tenants. The process began with an unlawful notice and things went from bad to much worse when the landlords employed "self-help" methods to resolve the situation in their favour instead of coming to the Tribunal for a resolution.

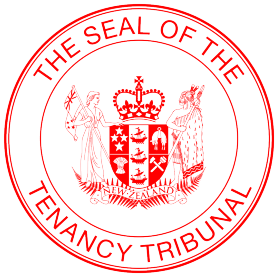
38. I accept that this has caused the tenants to suffer very significant stress brought about by the fear of eviction and the very real difficulties that would have imposed on them. I find that the tenants are entitled to a significant award to compensate them for that.

39. I find that an award of $1,800, being six weeks rent, is appropriate. I find that for the period since this dispute turned to threatened eviction, the tenants would not have been able to find much peace or enjoyment in their use of the premises.

40. The tenants have succeeded to some extent and so I have awarded them the filing fee.

41. For the same reason I have granted them name suppression.

42. I find no basis to grant the landlords' request for name suppression.



R Armstrong
13 May 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 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.