TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] Landlords
RESPONDENT:	David Baty, Lee Baty, Cecil (surname unknown) Tenants / Occupier
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. [The landlord/s] are granted possession of the premises at [Tenancy address suppressed] at 5pm on Friday 11 July 2025.
2. The occupier, Cecil Mayall, must permit the landlord access to the premises on 24 hours' notice emailed to [email address redacted] for the purpose of compliance with the [City] Council abatement notice dated 14 May 2025. Access must be permitted between 8am and 7pm.
3. The hearing is adjourned. The next hearing will determine all remaining claims by the landlord and the tenant.
4. I grant suppression of the landlords' names, the tenancy address and the occupier's contact details in paragraph 2 above.

Reasons:

1. The owner, landlord, tenant, and the current occupier of the premises attended the hearing today.
2. The landlord has applied for possession of the premises pursuant to section 65 of the Residential Tenancies Act 1986 (the Act).
3. The requirements of section 65 are that:
    - There must be residential premises.
    - The applicant must be entitled to possession of the premises.

- The occupier is a squatter or trespasser or a person without any right of occupation granted to that person by a person having lawful authority to grant that right.

Residential Premises

4. There could be debate about whether these are residential premises. The premises comprise a storage shed, part of which has been converted into a dwelling with two bedrooms. The premises have been used for both residential and commercial purposes.

5. I consider the premises are “residential premises” under the Act because they have been used for occupation as a place of residence. Whether the residential occupation was lawful or not does not matter.

6. The Tribunal determined, in its order of 17 June 2025, that the premises were “residential” and that the parties had contracted back into the Act by using a standard form residential tenancy agreement. It would be undesirable if the Tribunal could not then deal with ancillary or consequential issues, such as whether (as here) there is a sublease and whether that sublease survived termination of the head tenancy.

Right to Possession

7. The landlord is entitled to possession of the premises either as the landlord under the tenancy agreement or as the agent of the owner, who attended the hearing and confirmed the landlord’s authority to act on their behalf. A legal owner has a right to possession.

Right of Occupation

8. The remaining issue is whether the current occupier is in possession of the premises “otherwise than pursuant to any right of occupation granted to that person by any person having lawful authority to grant that right to that other person”.

9. The tenancy started on 8 November 2022. The tenant said the occupier was living at the premises from 16 December 2022, with the landlord’s knowledge. The tenant said they spoke to the landlord about the occupier taking over the tenancy. The tenant told the landlord that it would be illegal to rent the premises out (i.e., for residential purposes) but it could be leased to the occupant until this was remedied (i.e., for commercial use).

10. The evidence does not establish that the landlord consented to a sub-letting or agreed to grant a further tenancy to the occupier. No tenancy agreement was

prepared or signed. The discussions between the current occupier and the landlord were not put in writing.

11. The occupier said he offered to pay $450.00 per week and to remedy various maintenance issues at the premises. The evidence does not show that this proposal was ever accepted by the landlord and indeed a trespass notice was affixed to the premises on 10 April 2025. In fact, the general impression is that the landlord was resistant to the idea and did not put forward any proposed terms. The landlord said she reimbursed a payment of $450.00 made on about 2 April 2025 because she did not recognise the payor. It seems the payment was made by the occupier as a means of trying to progress the negotiations for a lease.

12. While the landlord knew the occupier was continuing to use the premises, because there are text messages from her responding to maintenance issues he had raised, I am not satisfied that the landlord unequivocally represented that he could stay there or granted the occupier anything more than a licence. The trespass notice revoked any such licence.

13. As noted in the Tribunal's order of 17 June 2025, the head tenancy was terminated by notice from the tenant on 30 March 2025, either pursuant to section 56A or section 51(2A) of the Act. To the extent that the tenant may have sub-let the premises without the landlord's permission, for example by handing the occupier the keys with the expectation that he could continue to use the property, I consider that termination of the head tenancy also ended any subtenancy, pursuant to section 57 of the Act.

14. It is, in any event, difficult to construe the current situation as a tenancy, because a "tenancy" is defined as a right to occupy in consideration for rent. Here, no rent is being paid. I find that the occupier has not been granted a tenancy and has no right of occupation.

Other Grounds for Termination

15. If I am wrong about the application of section 65, or if contrary to my view there is a tenancy, I consider it would have been open to the landlord to seek termination pursuant to sections 56A (termination of unlawful residential premises) and section 55B (termination where it would be unreasonable to require landlord to continue with tenancy because of hardship).

16. As to section 56A, I have not made a finding that the premises could not be lawfully occupied for residential purposes. This will be determined at the next hearing, but it is at least seriously arguable. The Council clearly considers that the premises are unconsented for residential purposes.

17. The abatement notice requires the landlord to remove the "unconsented dwelling" i.e., the premises, by 31 August 2025. As to section 55B, without a termination order the landlord will suffer greater hardship than the tenant. The landlord needs

possession to comply with the abatement notice. It would be unreasonable to require the landlord to continue with the tenancy because of that hardship. Further, the occupier is still using the premises for business purposes and is occasionally living there but is not paying rent.

18. These considerations strengthen my view that the landlord must be granted possession.

Possession Date

19. The tenant asked for 3 months to remove his goods stored at the premises, which includes a large quantity of wool. The occupier explained that the wool needs to be compressed so it can be carried in fewer truck loads and sold in Fielding. This is a 3-day round trip and there needs to be two trips. The occupier also spoke about the maintenance he has performed at the premises and said he has been paying for the power used.

20. The landlord opposed any time being given for the occupier to vacate, on the basis he has no right of occupation.

21. I have sympathy for the occupier, who has been using the premises for his business and believed that the landlord would agree to lease the premises to him when the tenant vacated. The tenant also thought that this would be agreed. On the other hand, the occupier must have realised that, if the head tenancy ended, his ability to continue using the premises would also be lost unless the landlord agreed to grant a new lease.

22. The landlord is entitled to possession. At the same time, an order for immediate possession is unrealistic. The occupier's request for three months to move out is not practical either. The abatement notice expires on 31 August 2025, so this is the latest date the occupier could remain, on a theoretical basis. The landlord needs prior access so that a building practitioner can assess the premises and apply to the Council for approvals.

23. If the occupier were to focus solely on removing his goods from the premises, I consider it could be accomplished quickly. The occupier said this was not possible, because he also runs a farm north of [City]. The situation the occupier finds himself in, while admittedly difficult, was foreseeable and has been for several months. The landlord's right to possession now takes priority. The Tribunal must recognise this, and the occupier can only be given a short time to vacate.

Access by the Landlord

24. As noted above, the landlord urgently needs to access the property. There has been an issue with the landlord's physical ability to enter which is difficult to fathom.

25. The landlord says the locks have been changed. The tenant says the landlord has a master key, the locks are the same, and the door codes have not been altered.

26. Whatever the position may be, the landlord must be allowed access and I have issued a direction to that effect.

Name Suppression

27. The landlord has successfully applied for possession and requested suppression in the application form. This must be granted.

Next Hearing

28. The next hearing will determine the remaining claims in the landlord's and tenant's applications and is intended to be the final hearing.

M Edison
02 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 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.