[2025] NZTT 5260540

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	Land Information New Zealand Landlord
RESPONDENT:	[The respondent/s] Tenant
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. The Tribunal orders suppression of the Tenant name and identifying details and of the tenancy address.
2. The application for possession is dismissed.

Reasons:

1. The landlord's representatives, Trudy Whitlow and Elliott Harris, attended the hearing by telephone. The tenant, [The tenant/s], and her representative, [The tenant's representative] also attended by telephone.
2. The landlord has applied for a possession order for premises at the tenancy address under sections 64 and section 65 of the Residential Tenancies Act 1986 (RTA).
3. A possession order acts as a warrant which authorises a court bailiff or constable to take possession of the premises; section 106 RTA.

Relevant law on possession orders

4. Section 64 RTA says that the Tribunal must give a possession order to any person entitled to possession of the premises after a tenancy has been terminated.

5. Section 65 RTA says the Tribunal must give a possession order to any person entitled to possession of residential premises where there is someone in the premises as a squatter or trespasser or with no lawful right of occupation.

Relevant law on giving notice to terminate a tenancy

6. A landlord may give a tenant notice to terminate a periodic[1] tenancy in various ways and for various reasons. These include by giving:-
    a. At least 90 days' notice with no reason being required; section 51(1) RTA.
    b. At least 42 days' notice if the owner is required, under an unconditional agreement for the sale of the premises, to give the purchaser vacant possession; section 51(2)(b) RTA.

Details of the tenancy

7. The tenancy premises are known as the 'school house' and are located at the tenancy address ([Tenancy address suppressed]).
8. There is a tenancy agreement recording that a tenancy was granted to [The tenant/s] at the tenancy address starting from 5 July 2018. The agreement does not specifically mention the 'school house' or other identifier for the premises.
9. Neither is the landlord named on the tenancy agreement.
10. Trudy Whitlow has provided a written statement that she is employed by Land Information New Zealand as Kaiarahi | Leader of the Crown Property Team.
11. The written statement says that the land at this address is owned by the Crown and that this is recorded on the record of title. The Tribunal has not been given a copy of the record of title.
12. The statement also says that LINZ acts on behalf of the Crown as the landlord of the school house.
13. I accept Trudy Whitlow's written evidence that LINZ acts on behalf of the Crown as the landlord of a tenancy of the school house at the tenancy address.
14. [The tenant/s] agreed that she signed the tenancy agreement and lives in the school house. She said she had paid rent to the bank account provided to her for that purpose up until "a while ago" when she stopped doing so. She said she stopped because the bank account kept changing but that she is saving the rent in an account.

[1] Not a fixed term Tenancy.

15. I find that there is a tenancy between LINZ as landlord and [the tenant/s] as tenant relating to the school house at the tenancy address.

Has the tenancy been terminated?

16. The landlord gave the tenant a written notice to terminate the residential tenancy at the house at [Tenancy address suppressed]. The notice was personally delivered and handed to [the tenant/s] on 4 March 2025.

17. The notice said:

> Pursuant to s 51(2)(b) of the Residential Tenancies Act 1986 we are required to give you no less than 42 days' notice to terminate your tenancy.

18. The notice also said that the last day of the tenancy would be 15 April 2025.

19. The landlord then gave the tenant a second written notice.

20. The second written notice is dated 24 March 2025 and was also personally delivered and handed to the tenant on 25 March 2025.

21. This second notice is not personally addressed to [the tenant/s] but to "everyone occupying [Tenancy address suppressed]".

22. The second notice says:

    1. We are writing to you as a person who is currently occupying [Tenancy address suppressed]. The land was formerly used as [school].
    2. This letter replaces the letter to you dated 4 March 2025.

    ……..

    <u>The land</u>

    5. If you are currently on the land without the consent of someone who holds a lease with LINZ, you are unlawfully occupying the land.
    6. If someone has told you that they have a lease, and that you are allowed to be on the land because of that lease, you should be aware that all leases of the land are being terminated. The land must be vacated by midnight on 30 April 2025.
    7. Anyone on the land after midnight on 30 April 2025 will not have any legal right to be there.

    …….

    <u>School house</u>

    9. The residential tenancy as it relates to the School House is also being terminated. The residential tenancy terminates on 15 April 2025 (i.e. earlier than the termination date of any lease). Any individuals who remain in the School House after midnight on 15 April 2025 will not have any legal right to be there. The Crown may bring proceedings against any person remaining in the School House after 15 April 2025.

23. The first notice gives the tenant exactly 42 days' notice of the date the tenancy will terminate (from 5 March 2025 to 15 April 2025).

24. There are other legal requirements for notices to terminate a tenancy which are in the law at section 51(3) RTA. This says the notice must:

    (a) be in writing; and

    (b) identify the premises to which it relates; and

    (c) specify the date by which the tenant is to vacate the premises; and

    (ca) if the landlord gives less than 90 days' notice, set out the reasons for the termination; and

    (d) be signed by the party giving the notice, or by that party's agent.

25. The first notice complies with all of these requirements except that it does not set out the reason for the termination (it has to do this because the notice period is less than 90 days'); s51(3)(ca) RTA.

26. The notice just says " … Pursuant to s 51(2)(b) of the Residential Tenancies Act 1986 …".

27. The landlord says that referring to the section in the law is enough because the tenant already knows the reason why the tenancy is being terminated.

28. Trudy Whitlow's written statement says the reason for the termination of the tenancy is that the Crown is required to transfer the property on which the school house is situated to a third party with vacant possession. The statement says that the transfer is required pursuant to the terms of a Deed of Settlement between the Crown and the third party.

29. The landlord submits the tenant knows this because there is a history of communication and dealings between the landlord and tenant.

30. I understand what the landlord is saying but I do not agree that it is enough to refer to the section of the law that applies.

31. The purpose of requiring a landlord to write down the reason for a termination must be so that a tenant can understand exactly why their tenancy is being terminated on less than 90 days' notice.

32. A landlord cannot expect a tenant to look up the law that applies or to guess from other communication what the reason for the termination is.

33. My decision is that the first notice is invalid because it did not set out the reason for the termination of the tenancy.

34. There is another reason why the tenancy has not terminated.

35. This is that the landlord chose to give the tenant a second notice and said that it replaced the letter of 4 March 2025.

36. The tenant alerted me to this second letter or notice.

37. She said that she was confused because the landlord had given two different letters with two different dates in it.
38. I agree with the tenant that the two notices are confusing.
39. It seems clear to me that if the second notice replaces the first notice, then the second notice should give the tenant at least 42 days' notice to terminate the tenancy from the date she is given the second notice.
40. That would mean the tenancy would terminate no earlier than 6 May 2025.
41. The second notice is also required to set out the reason for the termination of the tenancy.
42. The landlord referred me to a part of the law that says that a notice to terminate a tenancy should not be invalid for a failure to comply strictly with the notice requirements as long as it is in writing, the intention to terminate the tenancy on a particular date or on the expiry of a particular period is stated clearly in the notice, and I am satisfied that any non-compliance is not such as to mislead or affect unjustly the interests of the recipient; s51(4) RTA.
43. My decision is that the mistakes in the first and second notices do mislead and unjustly affect the interests of the tenant.
    a. The first notice does not tell her the reason for the termination of her tenancy.
    b. The second notice does not give her the minimum period of notice nor set out the reason for the termination.
44. The first and second notices of termination are invalid.
45. The tenancy has not terminated.
46. This means I cannot grant the landlord a possession order under section 64 RTA. This application is dismissed.

Order for possession under section 65 RTA

47. I also dismiss the application for a possession order pursuant to section 65 RTA.
48. The tenant has a lawful right to occupy the school house at the tenancy address because of her tenancy so she is able to grant the right to other people to live there (up to a maximum of 6 people, as stated in the tenancy agreement).

Suppression of names and address

49. The Tribunal may suppress the names of parties where it considers their interests outweigh the public interest. I do not suppress the landlord's name as it is acting for the Crown so the public interest favours transparency. I suppress the tenant's name and the tenancy address to protect her privacy and because the landlord's application has been unsuccessful.

N Maplesden
11 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.