[2025] NZTT 5291004

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Representative for the tenants

RESPONDENT: Kāinga Ora–Homes And Communities Jasmine Grey

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the applicant and tenants names and identifying details.
2. The application is dismissed.

Reasons:

1. Both parties attended the hearing. The landlord was represented by Jasmine Grey via video conference. [The tenant/s] appeared via a telephone call due to technical issues with the link preventing them accessing the conferencing. The applicant acts on behalf of the tenants. This is a role that predates this application. The landlord had no issue with the applicant being recognised as a representative of the tenants.
2. The applicant sought two orders.
    a. The first requiring Kainga Ora to provide all evidence justifying meth testing at [Tenancy address suppressed] within 7 days, including:

        - Copies of any complaints, police reports, or inspection notes.

        - Lab results if testing occurred, or previous tests at the property, if any

        - Internal communications about the decision to test.

    b. The second being an injunction order prohibiting the landlord from conducting meth testing until it complies with the first order.

3. A party who brings a claim to the Tenancy Tribunal must prove on the balance of probabilities (more likely than not) that their version of events took place. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden of proof.

4. The issue of evidence at Tenancy Tribunal hearings was considered by the District Court in *Kaipo v Clarke & McCarthy (DC) TT233/02***.** Judge Mather stated:

> "…[the applicant] needs to be reminded that like anyone who brings an application before a Tribunal or a Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to providethe necessary evidence. It is not up to the other parties and it is certainly not up to the Tribunal to extract evidence."

Background

5. This tenancy commenced 15 January 2020. There are two named tenants, [The tenant/s]. There are two other whanau members residing at the premises.

6. There was no baseline testing of methamphetamine at the commencement of the tenancy.

7. The landlord has decided to conduct a methamphetamine test. The source of any contamination, if found, is not an issue for determination here.

8. Previous written attempts to arrange appropriate testing have been rebuffed by the tenants, or others on their behalf. One notice was served on 13 June 2025, citing s 48(2)(ba) RTA as the authority to do so.

9. Their representative has lodged this application seeking orders to stop any testing until tenancy related information, as sought, is provided.

10. The applicant submitted three grounds existed in support of the application:

    a. The landlord failed to provide evidence justifying testing, despite a verbal request at a meeting held on 28 May 2025 and following a formal objection in writing on 17 June 2025.

    b. The landlord breached s 38 RTA by interfering with [The tenant/s]' quiet enjoyment without cause, and without [The tenant/s]' consent on a previous attempt to test.

    c. The landlord breached s77(2)(f) RTA by acting without reasonable grounds.

11. There has been no termination notice so the claim regarding s 77(2)(f) RTA had no basis and is not considered. At the hearing the applicant recount threats to evict them. Based on the submissions, this appears to be related to the ongoing denial of access for testing. Any landlord verbal reference or warning of

possible grounds for termination appear more aligned with a possible application citing s 56 RTA – termination due to a failure to remedy a breach, being denial of access.

12. The landlord stressed at the hearing that the purpose of the testing was to ensure no threat to the occupants' health and safety from contamination existed. She confirmed no baseline test for prior contamination existed and that no eviction or other orders due to any methamphetamine contamination, if found, are envisaged. This is consistent with case law as discussed below.

13. At the hearing the landlord advised that a separate process to provide the requested evidence and information requested is underway per the Official Information Act 1982. It is not yet known exactly when that information will be made available.

14. The applicant cited other authorities and considerations that prevent any testing at this time, including tikanga Māori. She mentioned other courses of action under in other jurisdictions.

15. The jurisdiction of this Tribunal is established by the Residential Tenancies Act 1986. This determination reflects that authority and statutory requirements.

The relevant law in this jurisdiction

16. Section 45 RTA (Landlord's responsibilities) includes sub-section (1)(bd) that requires The landlord shall comply with all requirements in respect of contaminants imposed on the landlord by regulations made under section 138C(3)(c). Failure by the landlord to comply with this is declared to be an unlawful act (s 45(1A)) that can attract exemplary damages of up to $7,2000.00.

17. Section 48(2)(ba) RTA (Landlord's right of entry) grants the landlord a right of entry for the purpose of testing for the presence of contaminants or taking samples for such testing (except where the testing or sample taking is part of a prescribed decontamination process) at any time between 8 o'clock in the morning and 7 o'clock in the evening of any day, after giving to the tenant notice of the intended entry and the reason for it (including stating the contaminants to be tested for) at least 48 hours but not more than 14 days before the intended entry.

18. Section 48 RTA (Quiet enjoyment) requires the landlord shall not cause or permit any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.

19. Any impact on the tenant's quiet enjoyment and privacy must be balanced against the landlord obligations to ensure the premises are safe to occupy.

20. In my view, the need to ensure the premises are safe to occupy requires an abundance of caution and even if any grounds for a test are considered spurious as submitted by the applicant, the landlord's obligation, and the

minimal impact of testing, means the testing should be completed as soon as practical.

Baselines

21. Any suggestion of methamphetamine use and contamination is understandably emotive. The potential health threats of either is well established and they are not recounted in this order. The relevant statutory provisions, and the significant exemplary damages provided for in the case of any unlawful failure to adhere to them, reflects such concerns.

22. The applicant appears concerned that if any contamination was found, whanau may be blamed and/or lose their home. I note the reassurance Ms Gray gave at the hearing. She affirmed there was no baseline test conducted prior to this tenancy and any contamination, if found, would be treated as a safety issue for the occupants that needed landlord resolution.

23. This approach where no baseline testing exists is consistent with higher court decisions.

24. In *Eren Limited v Martin and Kukuruzsnayak* [2021] NZDC 15210 and *Brooking and Hodges v Imrie* [2021] NZDC 16976, under appeal, the District Court considered evidential requirements where there was no pre-tenancy inspection and contamination found. The court confirmed in both determinations that the absence of a pre-tenancy inspection was determinative. They considered in those two matters the absence of a pre-let methamphetamine test made it almost impossible to show tenants caused contamination.

Decision

25. The desire of the landlord to test for methamphetamine contamination mirrors its statutory and lawful requirement to so do where there may be possible contamination. The demand by the applicant of justifying evidence prior to allowing such testing, when appropriately notified, has no legal basis. Such testing is “business as usual” between tenancies or where a need to eliminate possible contamination exists. A safety concern establishes an additional moral basis for the landlord to conduct the testing.

26. The application is dismissed. The tenants are to allow access for testing for possible methamphetamine contamination to be conducted, as appropriately notified by the landlord. This testing is considered in their best interests. There is no requirement in this jurisdiction for the landlord to provide the information or evidence as sought. It appears that request is being handled appropriately elsewhere.

Suppression

27. Section 95A RTA states regarding suppression orders that the Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case.
28. Further, the Tribunal may, on the application of any party to proceedings or on its own initiative, having regard to the interests of the parties and to the public interest, order that all or part of the evidence given or the name or any identifying particulars of any witness or party not be published.
29. The applicants requested suppression in their application. This is not available as of right given the lack of success.
30. However, given the application regards methamphetamine contamination, albeit yet to be confirmed and, if present, of an unknown source, I consider it would be unfair on the tenants to have their names made public in this order.
31. The applicant and tenant details are ordered suppressed.
32. If further issues arise regarding this tenancy such that either party makes further applications and further orders are made, any future suppression order will be reconsidered as appropriate at that time.

M Brennan
21 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, or the failure to make an order, where the amount in dispute on appeal is less than $1000
- a final order to undertake work, or the failure to make an order, where the value of the work in dispute on appeal is 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.