[2025] NZTT 5276741

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Real Homes New Zealand Limited as agent for Terry Clements and Betty Tannous

Landlord

TENANCY ADDRESS: Unit/Flat 3, 2 Hawkhurst Road, Lyttelton 8082

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenant's name and identifying details.
2. Real Homes New Zealand Limited as agent for Terry Clements and Betty Tannous must pay [The tenant/s] $1,827.000 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Compensation: loss of enjoyment of tenancy		$1,800.00
Filing fee reimbursement		$27.00
Total award		**$1,827.00**
Total payable by Landlord to Tenant		**$1,827.00**

3. The application for exemplary damages for an alleged failure to maintain the premises and for the alleged unlawful termination of the tenancy is withdrawn.
4. The application for compensation for lost wages, travel costs, and moving costs is dismissed.
5. The application for exemplary damages is dismissed.

Reasons:

1. Both parties attended the hearing. Ms Baird represented the landlord. I heard evidence from both parties as well as from a witness for the tenant (another tenant who resides in a different flat).
2. I have considered all the evidence, oral and documentary placed before the Tribunal, and the submissions the parties made, even if I do not specifically refer to it.

Background

3. The tenancy started on 29 November 2021. Initially the tenancy was managed by another property management company. It seems to have been managed by the owner for a time. More recently, Real Homes New Zealand Limited has become the landlord as agent for the owner. I have changed the proceedings to reflect that.
4. The premises are located in former army barracks and are about 80 years old. There are several apartments.
5. The premises require considerable work to satisfy local authority compliance as well as for fire service requirements.
6. The work is substantial. The roof has had to be replaced to remove asbestos. Additional work is required to repair and replace balconies and underfloor bearers. As Ms Baird put it ‘every time the owners start on one thing, they discover that more work is required’.
7. The tenant seems to have a fractious relationship with the owner of the premises who resides in a unit directly below the tenant’s unit.
8. The landlord served notice to terminate the tenancy by letter dated 23 May 2025. The reason given was that substantial work is required on the premises.
9. Since amendments to the Residential Tenancies Act 1986 (RTA) took effect this year, a landlord can terminate a tenancy on 90 days’ notice for no reason. But the landlord has not relied on that provision in this case.
10. The landlord’s notice to end the tenancy came shortly after a verbal altercation between the tenant and the owner over access to check a stove that had suddenly stopped working.
11. The tenant considers that the landlord therefore terminated the tenancy in retaliation following that incident. He claims exemplary damages, for that and for other alleged breaches by the landlord, and compensation for what he says has been considerable disruption to him and a significant loss of his quiet enjoyment of the tenancy due to on-going construction work and noise.

Issues

12. The Tribunal must determine the following issues:

    - Was the notice to terminate the tenancy a retaliatory notice?
    - Has the tenant proved a claim for compensation. If so, what amount should the Tribunal award?
    - Has the tenant proved a claim for exemplary damages for breaches by the landlord that amount to defined unlawful acts?

Relevant law

13. Section 38 RTA provides that a tenant shall be entitled to have quiet enjoyment of the premises without interruption by the landlord and that 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.

14. Section 45 RTA sets out a landlord's responsibilities. Included among them are the responsibility to provide the premises in a reasonably clean state; to provide and maintain the premises in a reasonable state of repair (having regard to the age and character of the premises); and to comply with the Healthy Homes Standards (HHS).

15. Section 54 RTA provides that the Tribunal may declare a notice to terminate a tenancy retaliatory if, in giving the notice, the landlord was motivated wholly or partly by the exercise or proposed exercise by the tenant of any right, power, authority, or remedy conferred on the tenant by the tenancy agreement or by the RTA or any other Act or any complaint by the tenant against the landlord relating to the tenancy

Compensation and exemplary damages

16. The Tribunal may award compensation to a party for losses arising from a proven breach or breaches by the other party of their statutory responsibilities.

17. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.

18. In *Birch v Otautahi Community Housing Trust*[1] the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:

    - The nature of the breach;

[1] [2020] NZDC 17667

- The duration of the breach; and
- The effect of the breach on the party.

19. In *Tenants* v *Singh*[2] the Tribunal set out a helpful guide to awards of compensation. It said:

> *"Accordingly, I consider that the bands that might usefully inform my decision in this case are;*
>
> *A. At the lower end of the scale, where a breach causes inconvenience, frustration, annoyance, or disappointment: an award of $200.00 to $1,000.00.*
>
> *B. Where due to the breach the party has endured more inconvenience and a higher level of distress such as worry, stress, tension, or anxiety: an award of $1,000.00 to $2,000.00*
>
> *C. At the upper end of the scale, where the party has experienced hardship, insecurity, humiliation, intimidation, aggravation, or fear: an award of $2,000.00 and upwards."*

20. Exemplary damages are different. They are designed to punish and to deter. They are like a fine.

21. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.

22. In *Birch,* the Court said this:

> In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in *Chief Executive, ex parte Edmondson v Walls* TT548/92 said:
>
> > Before an award of exemplary damages can be made the threshold question for the Tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the Tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.
> >
> > If the Tribunal considers that the person against whom the order is sought has committed the unlawful act intentionally, the Tribunal must then consider whether it would be just to require that person to pay exemplary damages, taking into account:
> >
> > (a) The intention of the person;
> > (b) The effect of the unlawful act;
> > (c) The interests of the party against whom the unlawful act was committed; and
> > (d) The public interest.

[2] [2022] NZTT 4315225

Discussion

Was the notice to terminate the tenancy a retaliatory notice?

23. The tenant does not seek to have the notice to terminate the tenancy set aside. He has decided to vacate the tenancy which will end on 5 September 2025.

24. Rather, the tenant seeks to have the notice to terminate the tenancy declared retaliatory since that would mean that the landlord committed an unlawful act with a potential entitlement to exemplary damages.

25. The tenant bases his claim mainly on the short time between him denying the owner access to assess the stove (all the elements having stopped working) and the giving of the notice 3 days later.

26. The tenant denied the owner access because he was at a funeral, and he had not been given notice of the entry by the owner.

27. As it happened, the only issue with the stove was a fuse that had tripped. Later, when Ms Baird spoke to the tenant, she suggested he check the fuse. He did that. The fuse was turned back to the correct position and the problem was resolved.

28. Often, proximity between an event (such as a complaint, or some other action by the tenant) and the giving of a notice to terminate a tenancy can be persuasive proof of a retaliatory intent.

29. Here though, the temporal connection is, as Ms Baird submitted, coincidental. There were valid reasons for the tenancy to be terminated. Significant repairs are required at the premises, for local authority and fire compliance. The tenant appears to accept now that the scope of the works is considerable.

30. Also, Ms Baird gave evidence that the landlord (the owner) was prepared to have the tenant back as a tenant after the work was completed but was unable to provide a timeframe for the completion of the works.

31. The tenant's suspicion about the proximity of his denial of access to the owner and the giving of the notice is understandable, but having objectively considered all the evidence, I do not find the required probable link. The landlord's reasons for terminating the tenancy were genuine. Other premises owned by the landlord (the owner) have either been vacated or have had the tenancies terminated for the same reason – substantial repair work is required.

32. I dismiss the application to have the notice to terminate the tenancy declared retaliatory.

Has the tenant proved a claim for compensation. If so, what amount should the Tribunal award?

33. There is no dispute that there has been disruption caused to this (and other) tenants due to the on-going construction work. The premises have been scaffolded. The tenant described loud construction noise (with some decibel recordings produced) that continued throughout the day over a period of time since March 2025.

34. While the scaffolding was there for a short period, the work has continued, though the level of noise intrusion has varied during the period in question.

35. Ms Baird said the owner had taken all reasonable steps to mitigate the noise, limited mostly between 9am and 4.30pm during weekdays. She said the premises were located in an industrial zone, with no noise restrictions.

36. The tenant said he preferred to work from home but was often unable to due to the noise. He sought a rent rebate of $8,165.14; a loss of wages (10,910.71); travel costs because he had to work from his office in the city ($5,027.66); and moving costs since he will now vacate the tenancy ($1,360.00).

37. The tenant's claim for compensation in the amounts sought is unrealistic.

38. Rent can only abate when premises are destroyed, or so seriously damaged, so as to become uninhabitable. That was not the case here. There is no evidence of uninhabitability.

39. That the tenant felt unable to work at home, (in evidence, he said he preferred to work from home) simply meant he needed to work from his office in the city. But he was able to continue to work. Because these premises are located in an industrial zone, without noise restrictions, the tenant could equally have been affected by noise from construction work anywhere in that zone. By choosing to live in premises in an industrial zone he must accept some noise intrusion especially during weekday working hours.

40. A claim for lost wages cannot succeed; there is no proof of lost wages caused by the noise of the construction work the result of a landlord breach of their responsibilities under the RTA.

41. A claim for relocation costs is not proved. The tenancy was validly terminated so the tenant bears the cost of his relocation.

42. That said, it is surprising that the landlord did not offer some compensation to the tenant for a loss of enjoyment of the tenancy due to the ongoing construction work that has continued for over 3 months. The work was solely for the landlord's benefit. It did not benefit the tenant at all, but it took away some of his enjoyment of the tenancy.

43. Compensation is not punitive; it recognises loss. In this case the tenant has experienced a loss of enjoyment of his tenancy due to the construction noise at

the premises, including work done by the owner himself whose workshop and saw bench are located just down from the tenant's lounge window.

44. I find that the tenant's loss of enjoyment of his tenancy as he described in evidence falls within the upper end of category 2 of the guide set out in *Tenants v Singh*. I award the tenant compensation of $1,800.00 for his loss of enjoyment of the tenancy due to intrusive loud construction noise over the period in question.

Has the tenant proved a claim for exemplary damages for breaches by the landlord that amount to defined unlawful acts?

45. To succeed on a claim for exemplary damages, the tenant must first prove that the landlord (in this case the owner) has committed a defined unlawful act, and secondly that the section 109 RTA criteria have been satisfied.

46. The tenant sought exemplary damages arising from breaches of his quiet enjoyment and for alleged unlawful entries.

47. Exemplary damages for breaches of quiet enjoyment can only attract exemplary damages if they amount to harassment and are committed intentionally. That means, the landlord would have to 'turn their mind' to harassing the tenant and then set about to commit that unlawful act.

48. The evidence does not establish that the landlord intentionally breached the tenant's quiet enjoyment so as to harass him. Rather, the landlord breached or allowed the breach of the tenant's quiet enjoyment through the construction work which continued over time.

49. That breach can be remedied by an award of compensation. But it was not a breach that was an intentional one, an intentional act of harassment, such that the threshold for exemplary damages is met.

50. So too with the incidents the tenant described of alleged unlawful entries. The first occurred about 4 months ago when the owner came to the tenant's balcony, apologised for the scaffolding, 'invited himself in' and was rude to the tenant's guests. The tenant did not prevent the entry, nor was there a forced entry. There was no unlawful act.

51. The second incident was about 6 months ago when the owner turned up to put fire notices in place. The tenant let him do that. There was no unlawful entry.

52. The third incident occurred 'about a year ago'. A claim for exemplary damages must be made within 12 months of the act occurring. So, this claim could be out of time. That issue aside, there was no unlawful entry.

53. The tenant's guest turned up the stereo very loudly at 3am one morning after a long party. The owner, who lives below, pounded heavily on the door, and using

expletives, demanded the stereo be turned down. While that event might have frightened the tenant's guest, the landlord did not enter the premises, and was probably justified in acting the way he did; other tenants were complaining too.

54. I dismiss the application for exemplary damages for alleged unlawful entries.

Result

55. The landlord will pay the tenant $1,827.00 comprising compensation of $1,800.00 for the tenant's loss of enjoyment of the tenancy and the filing fee of $27.00.

56. The application for compensation for lost wages, travel costs, and moving costs is dismissed.

57. The application for exemplary damages is dismissed.

Name suppression

58. The landlord did not seek name suppression. The tenant sought an order for name suppression. I have ordered suppression of the tenant's name as the application is partly successful – see section 95A RTA.

J Greene
25 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.