[2025] NZTT 5149511

TENANCY TRIBUNAL AT AUCKLAND | TE TARAIPIUNARA RETIHANGA KI TĀMAKI MAKAURAU

APPLICANT:	Kāinga Ora–Homes And Communities Landlord
RESPONDENT:	Craig Bernard Atley Tenant
TENANCY ADDRESS:	Unit/Flat 1, 81L Symonds Street, Royal Oak, Auckland 1061

ORDER

1. The application is dismissed.

Relevant background

1. The tenancy commenced in September 2016. Shortly afterwards the Tenant built a small porch attached to the front of the house. The porch has timber framing, plywood and transparent polycarbonate walls and polycarbonate roofing.
2. Under clause 30 of the tenancy agreement between the parties and section 42 of the Residential Tenancies Act 1986 (the RTA), he was required to obtain Kāinga Ora's written consent before doing so. Kāinga Ora says that it did not give consent. It therefore seeks orders requiring the Tenant to remove the porch, or alternatively to allow Kāinga Ora to remove the porch and recover the cost from the Tenant.
3. The Tenant says that Kāinga Ora did consent to the construction of the porch.

The Law

4. A tenant cannot affix any fixture to the premises, or make any renovation, alteration, or addition of or to the premises unless:
    a. The are permitted to do so by the tenancy agreement, or

b. They obtain the prior written consent of the Landlord.[1]

5. Where the landlord's consent is required, it is unreasonable for the landlord to withhold consent to a minor change.[2]

6. Where a tenant has affixed a fixture or made any renovation, alteration or addition without the permission or written consent, the Tribunal may order that the tenant:

   a. remove the fixture, renovation, alteration or addition;[3] or

   b. reimburse the landlord for the cost of removing the fixture, renovation, alteration or addition.

The issues

7. The issues that I must determine are:

   a. Is the porch a fixture or addition to the premises?

   b. Did Kāinga Ora give written consent to the construction of the porch?

   c. Did Kāinga Ora verbally consent to the construction of the porch?

   d. What orders should the Tribunal make?

Is the porch a fixture or addition?

8. The porch is clearly a fixture and addition to the premises. Kāinga Ora has provided photographs that show the porch is a permanent structure attached to the premises.

9. The porch is not a minor change. The porch cannot easily be removed, meaning the premises cannot be easily returned to substantially the same condition as they were in before the porch was built.

Did Kāinga Ora give written consent?

10. Because the porch is a fixture or addition, the Tenant was required to obtain Kāinga Ora's written consent. The Tenant agrees that he did not obtain Kāinga Ora's written consent. He says that he did not realise that he needed to. I therefore find that Kāinga Ora did not give written consent to the construction of the porch.

Did Kāinga Ora give verbal consent?

11. The Tenant moved into the premises in late September 2016. He says that he discussed constructing the porch with Kāinga Ora's housing manager before he moved in. He says that the housing manager checked his plans and agreed to the construction of the porch. The Tenant says that he then employed a builder, and the housing manager "effectively supervised" the construction of the porch.

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1 Residential Tenancies Act 1986, s 42(1).
2 Residential Tenancies Act 1986, s 42B(1).
3 Residential Tenancies Act 1986, s 78(1)(e).

12. The Tenant says that Kāinga Ora did not raise any concern about the porch until late 2024. He agrees that Kāinga Ora inspected the porch in July 2020, but says that he was told that the inspection was just to determine whether the structure was safe.

13. Kāinga Ora says that it did not consent to the construction of the porch. It says that its records contain no evidence of consent being provided. Its earliest record of the porch is a Property and Tenancy Inspection Report dated March 2017 (the March 2017 Report). In that report, the housing manager notes:

    Tenant has professionally got a builder to build a small patio area in front of the unit for privacy and he will remove it when he leaves? Will follow up with the form for the tenant to sign. Photos attached.

14. Three photographs of the recently constructed porch were attached to the March 2017 Report.

15. I find it likely that Kāinga Ora did verbally consent to the construction of the porch. I found the Tenant's evidence to be clear and consistent and I accept what he told me.

16. The premises were also inspected at least annually, and I have seen no record of any concern about the porch raised by Kāinga Ora during the first three years of the tenancy. Indeed, the use of the words "will follow up with the form for the tenant to sign" in the March 2017 Report indicates that Kāinga Ora knew of and consented to the porch and would provide a consent form to the Tenant for him to complete. It does not then appear to have sent that form to the Tenant, but in my view that comment is consistent with Kāinga Ora agreeing to the construction of the porch.

17. Kāinga Ora's inaction is also telling. Despite knowing about the porch, at no time between March 2017 and July 2020 did Kāinga Ora raise any concern whatsoever about the porch. In my view, Kāinga Ora's inaction is also evidence that it knew of and had verbally consented to the construction of the porch.

What orders should I make?

18. The Tenant has not obtained Kāinga Ora's written consent to the construct the porch. That is a breach of section 42 of the RTA and the tenancy agreement, both of which require written consent. But that breach is technical at most, because although there was no written consent, Kāinga Ora nonetheless consented verbally to the construction of the porch.

19. Under section 85(2) of the RTA, I am required to determine each dispute according to the general principles of the law relating to the matter and to the substantial merits and justice of the case. I am not bound to give effect to strict legal rights or to legal forms or technicalities.

20. After weighing the strict legal rights and technicalities with the merits and justice of the case, I decline to make the orders sought by Kāinga Ora. Kāinga Ora consented to the structure more than seven years ago and it would not be fair to order that the Tenant now remove, or pay for the removal of, the structure solely on the grounds that Kāinga Ora's consent was verbal only and not given in writing.

21. Kāinga Ora's claim is therefore dismissed. In dismissing the claim, I expressly note that this decision relates only to whether Kāinga Ora consented to the construction of the porch. I have made no findings as to whether the structure complies with relevant building, health and safety or other legal requirements, and nothing in this decision therefore prevents Kāinga Ora bringing a further claim if it has any concerns that the porch does not comply with those requirements.

Name suppression

22. Neither party sought name suppression, so I make no orders.

B Carter
19 August 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.