[2025] NZTT 5265440

TENANCY TRIBUNAL AT WELLINGTON | TE TARAIPIUNARA RETIHANGA KI TE WHANGANUI-A-TARA

APPLICANT: Whaka Blondes Limited

Landlord

RESPONDENT: Kitiona Foe, Senara Aiesi

Tenant

TENANCY ADDRESS: Unit/Flat 2, 147 Onepu Road, Lyall Bay, Wellington 6022

ORDER

1. Kitiona Foe and Senara Aiesi must pay Whaka Blondes Limited $4,904.96 immediately, in accordance with the table below.
2. The Bond Centre is to pay the bond of $3,000 (3283891-019) immediately to Whaka Blondes Limited.
3. All other claims are dismissed.

Description	**Landlord**	**Tenant**
Rent arrears to 4/4/25	$7,285.71	
Advertising cost	$592.25	
Reimbursement of filing fee	$27.00	
Total award	**$7,904.96**	
Bond	$3,000.00	
Total payable by Tenant to Landlord	**$4,904.96**	

Reasons:

1. Both parties attended the hearing. Mr Knowles represented the landlord company, Mr Foe represented the tenants.
2. The landlord has applied for rent arrears and costs associated with re-tenanting the property. He says the parties had a fixed term tenancy that was contracted to run until 14 February 2026. The tenants left in December 2024, and he had to advertise to secure a replacement tenancy. A replacement tenancy commenced on 5 April however at a rental $100 less than that agreed with these tenants.
3. He seeks rent arrears from January to April of the full rent, and $100 per week for the remainder of the contracted term totalling $11,799.99. He also seeks reimbursement of the $851.25 it cost him to advertise the property.
4. The tenants say they gave notice to terminate the tenancy at the end of the term which they thought was 15 February 2025, however later verbally agreed to end the tenancy on 13 January 2025 upon which day they handed back possession of the property to the landlord. They want their bond to be returned and dispute having to pay rent over and above what they have already paid and the advertising costs.
5. In determining what is owing, the following questions arise:
    a. Was the extension signed on 19 September 2024 valid? If it was not then the tenancy ended on 15 February 2025 with the tenants' notice.
    b. If it was valid then did the parties verbally agree to amend the end date to 13 January? If it was not then the contracted term was until 14 February 2026.
    c. What, if any, monies are owed?
6. I discuss each of these questions bearing in mind the evidential burden of proof which lies with each applicant and is the balance of probabilities, or what is more likely than not.

Was the extension signed on 19 September 2024 valid?

7. The tenancy commenced in January 2023 with Mr Foe solely. He was not actually residing in the premise but was using it to home workers at his restaurant, an arrangement Mr Knowles consented to. Mr Aiesi was subsequently added to the tenancy as a joint tenant. He was a worker of Mr Foe's however formally signed onto the tenancy in order to obtain funding from Work and Income New Zealand to pay the rent. He was living there at the time with other workers but wished his family to join him.

8. The agreement to join Mr Aiesi's family was made on the conditions that the term be extended until 14 February 2026 and only Mr Aiesi's family resided in the property. Mr Knowles says he specifically required these conditions and Mr Aiesi and Mr Foe agreed to them.

9. Mr Foe says he felt pressured to agree to the conditions as a verbal arrangement had already been made for Mr Aiesi's family to join him in the home before the formal conditions were presented. Accordingly, their arrangements to relocate were already underway. He was busy at work and he says he felt coerced into signing the amended conditions by Mr Knowles who he says communicates intensively. He says it is stressful dealing with him and so easiest to just do what he was told.

The law & discussion

10. Section 78(1)(g) of the RTA gives the Tribunal jurisdiction to vary or set aside an agreement if it considers that it has been induced by fraud, misrepresentation, or mistake, or that any writing purporting to express the agreement between the parties does not accord with their true agreement.

11. The High Court and Court of Appeal have specifically considered the law relating to duress in *Shivas v Bank of New Zealand* [1990] 2 NZLR 327 (HC) and in *Haines v Carter* [2001] 2 NZLR 167 (CA). Relevant to the current case, in determining whether pressure is legitimate or not, both the nature of the alleged pressure and nature of the demand have to be considered. The threshold is whether or not a person has been compelled by the duress to such an extent as to vitiate their consent.

12. These decisions have been summarised in Stephen Todd and Matthew Barber *Commercial Law in New Zealand* (online ed, LexisNexis) at [5.2.1]):

> *Whether an illegitimate threat actually constitutes duress must be determined by reference to its coercive effect in the particular case. In Pao On v Lau Yiu Long [1979] 3 All ER 65 (PC) Lord Scarman said that there should be a "coercion of the will, which vitiates consent". In deciding this question it was material to enquire whether the person alleged to have been coerced protested, whether he or she had an alternative course open to him or her such as an adequate legal remedy, whether he or she was independently advised and whether after entering the contract he or she took steps to avoid it.…*
>
> *Decisions in New Zealand have given further consideration to the gravity of the threat and its effect on the victim. In Haines v Carter [2001] 2 NZLR 167 (CA) at 190 … Young J maintained that at the very least a party must show that the duress alleged was an appreciable factor in influencing that party to enter into the bargain in question. He said also that the courts look for a significant degree of actual coerciveness, at a level sometimes described as having left the victim with no practical choice but to submit.*

13. Clear evidence of duress is required to enable the Tribunal to set aside an agreement on that basis. The evidence here does not meet the required threshold. Mr Foe himself says he knew what he was agreeing to but did not have the time to challenge it. He could easily have entered into conversation with Mr Knowles regarding his conditions, but did not; there is no evidence he even attempted to do so. He was not compelled to sign the amendments as the tenancy was still continuing and Mr Foe was already residing in the property.

14. The evidence establishes that Mr Foe had the amendments for some time before he signed them,[1] therefore it was up to him to take the time he needed to fully consider the situation before committing.

15. Along with the signed amended agreement are clear emails from Mr Knowles stating what the terms were to be. As discussed at the hearing, if a fixed term tenancy is amended, it is not a legal requirement that a whole new agreement be entered into. It is sufficient if amendments are made to the original agreement provided both parties initial or sign to show their consent to them.

16. In summary, on the basis of the evidence provided I find that Mr Foe agreed to extend the term of the tenancy to February 2026 knowingly and willingly. He clearly subsequently regretted agreeing but such remorse is not a ground for nullifying an agreement. Accordingly, I am satisfied that the amendment to the fixed-term tenancy to extend it to 14 February 2026 was valid.

Did the parties verbally agree to amend the end date to 13 February?

17. There is disagreement over the discussions that occurred after Mr Aliesi's family moved out.

18. On 20 December Mr Foe sent Mr Knowles an email saying he was ending the tenancy on 15 February 2025, the previous end of the term. Mr Knowles says he immediately called him and emailed, but got no response. He therefore gave notice of an inspection on 27 December.

19. On 27 December Mr Knowles, Mr Foe and Mr Drummond met at the property. Mr Knowles' recollection of this meeting was that they agreed that Mr Foe would do the required repairs, tidy up the property, continue paying the rent and pay for the advertising costs. In exchange Mr Knowles would replace the flooring and advertise the property to replace the tenancy.

20. Mr Foe said he would have done the advertising and in fact had two more workers ready to move in, but this was not accepted by Mr Knowles who wanted to do the advertising himself. He says there was no agreement they would pay the advertising costs.

[1] There was three days between Mr Knowles sending the agreement and Mr Foe sending it back signed and there had been emails prior to that discussing the situation.

21. They met again on the 6th of January at which point there was still more work required by the tenants. Mr Drummond recalls that at this meeting Mr Knowles said that if they were all done by the 13th that would end their obligations. Their trade therefore rushed to get the job done.

22. Mr Drummond's evidence of this meeting was that this was the meeting where it was agreed the tenancy would end early in exchange for them removing all of their belongings and getting the property up to a lettable standard.

23. Mr Knowles disagrees and says this discussion was purely about what needed to be done to get the house ready to advertise. He says they never suggested moving their employees in or wanting to advertise themselves. They had previously discussed doing so in 2024 and he had agreed to them advertising themselves at that point although they did not go ahead then.

24. On 13 January Mr Foe and Mr Knowles met at the property and agreed that the repairs and cleaning Mr Foe was responsible for were complete. Mr Foe says Mr Knowles wanted the keys back and agreed that the property was to return to Mr Knowles' control as Mr Foe had met his obligations. Mr Knowles says Mr Foe left the keys for him, but he did not ask for him and he reminded him he needed to keep paying the rent until there was a replacement tenancy.

25. Mr Foe says that he was surprised when Mr Knowles subsequently demanded rent because he had thought his obligations had ended on the 13th.

26. Mr Knowles says Mr Drummond called on 21 January and said the tenancy would end on 15 February in line with the fixed term but when Mr Knowles pushed back on that he said it had actually ended on the 13th when the keys were returned. Mr Drummond does not recall this conversation.

The law and discussion

27. The parties had a signed written contract that ended the tenancy in 2026. To amend or end such an agreement both parties would need to clearly agree to the conditions of the amendment. Usually in such a situation where a term would be reduced by such a significant amount, such agreement would be in writing. The fact that it is not is not fatal, however to uphold an amendment the Tribunal would need clear evidence of agreement.

28. Having considered the oral and written evidence I do not find it proven that the parties agreed to end the tenancy early on 13 January. There is no corroboratory documentation, and it would be a significant departure from usual practice for a landlord to make such an agreement to their detriment. Mr Knowles also gave evidence of completing a similar process with another tenant which is in line with usual arrangements to end a fixed term tenancy early.

29. I find it more likely than not that Mr Foe misunderstood the arrangement and thought that by removing all their belongings and cleaning the property, that he was returning the property to Mr Knowles and ending the tenancy. The

evidence supports the contention that the parties had agreed to work together to get the property ready for advertising but that did not mean possession was being returned to the landlord and the tenancy was ending.

30. The oral evidence, supporting emails and witness letters all indicate that the meetings were primarily discussing what work needed to be done to get the property to a state where it could be re-let. This would not have needed to occur if Mr Foe wished to continue with the tenancy (with alternate occupants). The evidence is also clear that significant work was required before it could be re-let.

31. Mr Foe does contend that Mr Knowles wanted the property back to undertake renovations. There is no evidence of this and I accept the evidence that it was only minor maintenance undertaken when he had possession back of the property. This is supported by the fact that it was advertised less than two weeks after the tenants had completed their work.

32. In this respect I prefer Mr Knowles' evidence regarding the advertising. This is because he has provided text messages in January offering to allow the tenants to advertise themselves if they wanted. Further, they had been in a similar situation in 2024 and the arrangement had been for the tenants to advertise themselves. There are also texts from Mr Knowles advising when the property would be listed and the price which were not responded to by Mr Foe.

33. Accordingly, I find that the tenancy ended the day before the replacement tenancy was commenced on 5 April 2025.

What monies are owed?

34. The landlord's claims are as follows:

    a. $851.25 in advertising costs.

    b. $7,285.71 rent to 4 April 2025.

    c. $4,514.28 lost rent April 2025 to February 2026.

35. Parties enter into a fixed term tenancy for reasons of security. For tenants this is security of tenure; they can be sure they have a home for at least the agreed term. For landlords it is security of income; they can rely on a set amount of income from their investment.

36. If a tenant defaults on that contract, and the landlord accepts the repudiation, then the tenancy ends on the terms agreed. In such a situation of surrender the landlord does not have to agree and can stipulate terms provided they are reasonable.

37. The requirements around recovery of expenses incurred by a landlord when agreeing to end a fixed term tenancy early are set out in section 44A of the

RTA. S44A states that a landlord is entitled to recover from an outgoing tenant any expenses reasonably incurred by the landlord in respect of the agreement.

38. There are two schools of thought on the legitimacy of rent difference in such situations. On the one hand such a loss could be considered an expense reasonably recoverable pursuant to s44A of the RTA because it is a cost the landlord is incurring because of the break. Alternatively, the loss can be considered as damages to reinstate the victim, being the landlord, on the repudiation to the position they would have been in had the breach in contract not incurred.

39. In entering the fixed term tenancy, the tenants were agreeing to pay weekly rent of $750 per week for the duration. It therefore follows that the landlord was entitled to rely on that income. In agreeing to the tenants repudiating the contract, the landlord was entitled to ensure they were not in a financially worse of situation.

40. I consider it is an implied term of the agreement that the landlord would make reasonable efforts to obtain a replacement tenancy on the same terms, any reduction in rent would be reasonable in the circumstances and the process would be transparent.

41. Mr Knowles initially advertised the property for rent at $790, $40 higher than this rental. It was later reduced to $750.

42. Having considered Mr Knowles' evidence I am satisfied that he did act reasonably in advertising the property as quickly as possible. The carpets did have to be replaced in the nine day time gap which is reasonable. He has provided evidence of a number of viewings. He did however commence advertising at a higher rental but I accept his evidence he reduced it relatively quickly.

43. Having considered the evidence very carefully, I find it more likely than not that Mr Foe did agree to Mr Knowles advertising the property and in incurring the cost of doing so given they were repudiating on the agreement. The costs incurred are established in evidence however only to the amount of $592.25. This amount is the two My Rent listings which include the TradeMe listing. Accordingly, I award $592.25 in advertising costs, an amount considered reasonable in the circumstances.

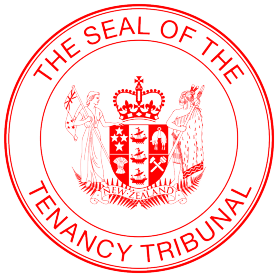
44. As the tenancy ended on 4 April, I find the tenants liable for the rent to this date. Had they wished to mitigate this cost they were entitled to advertise for themselves, as offered by Mr Knowles, and their legal right. Unfortunately, it was a slow time in the Wellington rental market.

45. I do not consider it reasonable that the tenants pay the $100 per week sought for the remainder of the term. They were not advised that Mr Knowles was

dropping the advertised cost and had no say in the amount it was advertised for. Accordingly, this claim is dismissed.

Other orders

46. Because Whaka Blondes Limited has substantially succeeded with the claim I have reimbursed the filing fee.



K Lash
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.