[2025] NZTT 5308730

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Divya Jain, Gaurav K Goyal Landlord
RESPONDENT:	Cheyenne Herbert Tenant
TENANCY ADDRESS:	51 Koura Drive, Red Beach, Red Beach 0932

ORDER

1. The application for termination is dismissed.
2. It is declared that the notice for termination for physical assault by tenant dated 15 August 2025 is void and of no effect.

Reasons:

1. Both parties attended the hearing by video.
2. The tenancy began on 18 June 2025 and is for a fixed term due to end on 18 June 2026.
3. The landlord has applied for termination of the tenancy due to anti-social behaviour (section 55A) and physical assault (section 55AA).
4. In the application the landlord stated that she served on the tenant three notices for anti-social behaviour on 18 July 2025. These notices were not submitted to the Tribunal. There is no evidence that the landlord has complied with section 55A(2) of the Residential Tenancies Act 1986. The application for termination due to anti-social behaviour is dismissed.
5. The application for termination due to physical assault relates to an incident that occurred on 18 July 2025.

6. On that day the landlord attended at the premises to repair a toilet seat. From the evidence produced there was already tension between the parties because of several issues arising in the short period of the tenancy and because the landlord wanted the tenant to sign an inspection report, that she was not willing to sign.

7. After repairing the toilet, the landlord used the tenant's soap and towel to wash and dry her hands. The tenant was not happy with this because she said her son has low immunity. While repairing the toilet the landlord put a piece of cardboard on the toilet bowel to stop tools falling into the toilet. The landlord put that cardboard into the tenant's recycling bin. The tenant was not happy with that because her son had accidentally dropped a significant family item into the bin, and it had yet to be retrieved. The tenant said that she had explained this to the landlord, but she did not listen to her.

8. As a result, the tenant asked the landlord to remove the cardboard from the bin. At the same time the landlord had left her jacket upstairs and the tenant agreed to retrieve it if the cardboard was removed. Apparently, the landlord had asked the tenant to assist by holding the bin down so she could reach inside to get the cardboard. The landlord said that she had the cardboard in her right hand when she noticed that there were pizza boxes in the bin. She had her phone in her left hand and began to take photographs of the contents of the bin. It was then that the tenant shut the bin and the landlord's right hand was jammed under the lid.

9. The disagreement between the parties continued with the landlord knocking on the doors of two neighbours and then putting the cardboard in one of the neighbour's bins. It is not clear why the landlord didn't just take the cardboard with her.

10. During this altercation the landlord had called the Police who advised that it was a civil matter but for her to retrieve the cardboard so that the tenant would get her jacket for her.

11. Later the landlord complained to the Police and two weeks later the tenant was charged with assault.

12. On 15 August 2025, almost a month after the incident, the landlord issued the tenant with a termination notice for physical assault. That notice advised that the last day of the tenancy would be 30 August 2025.

13. It is for the landlord to prove that the physical assault occurred and that the notice met the requirements of section 55AA(3) of the Residential Tenancies Act 1986 which states;

    A notice to terminate a tenancy under this section must—
    (a) be in the approved form and include the prescribed information; and

(b) be accompanied by qualifying evidence of the matters in subsection (1)(b); and

*(c) advise the tenant of the tenant's right to make an application to the Tribunal challenging the notice (*see *sections 77(1) and 78(1)(a) regarding the Tribunal); and*

(d) be signed by the landlord or the landlord's agent.

14. I am satisfied that the notice complies with section 55AA(3).

15. The remaining issue is whether the physical assault occurred.

16. Section 55AA(6) of the Residential Tenancies Act 1986 provides that *physical assault* means:

> *the act of intentionally applying force to the person of another, directly or indirectly*

17. It is not clear that the tenant had intentionally applied force to the landlord.

18. The evidence is conflicting. The landlord produced a video that was taken on the day, but which does not include the alleged assault. The tenant says that she did video the incident but has not been able to produce the video due to technical issues but plans to produce it in the criminal court where she is defending the assault charge.

19. The landlord has produced a medical certificate which appears to overstate what occurred because it states, *"Got attacked last Friday in an argument with her tenant."* The consultation with the doctor was four days after the incident. The tenant produced photographs of her forearm and finger which appear to be bruised.

20. The tenant's evidence is that on one occasion the landlord attended with an arm brace on her right arm due to an injury to her wrist. The landlord denied this.

21. The applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities. I accept that there was an ongoing altercation between the parties and a clear lack of trust between them. But I am not satisfied that the tenant has assaulted the landlord because there is a lack of intent to do so. On the evidence the tenant is likely to have closed the lid of the bin because the landlord had retrieved the cardboard which was the purpose for the tenant holding the bin for her. The landlord had continued to have her hands in the bin for the purpose of taking photographs of the contents of the bin. As the tenant did not agree to this action, she appears to withdraw her assistance of holding the bin for the landlord.

22. As a result the applicant has not satisfied me that it is more likely than not that the tenant assaulted the landlord. The claim is dismissed.

N Walker
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.