TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [the tenants]

Tenant

RESPONDENT: [the landlord]

Landlord

TENANCY ADDRESS: [redacted]

ORDER

1. There is no tenancy agreement between the parties in this case and therefore the Tribunal does not have jurisdiction to determine these applications.
2. The Bond Centre must pay the bond (00110330) to [the tenants] immediately.
3. The parties' names and identifying details are suppressed.

Reasons

1. Both parties attended the hearing.

Claims

2. The tenants claim compensation for the landlord's breach of a tenancy agreement by not giving them possession of the premises under a periodic tenancy.
3. The landlord claims rent arrears and reletting costs arising from the tenants repudiating a fixed term tenancy agreement before taking possession of the premises.
4. The main issue in this case is whether there was an enforceable tenancy agreement between the parties.
5. I have decided that there was no enforceable tenancy agreement between the parties and therefore the Tribunal does not have jurisdiction to determine these applications. My reasons are as follows.

Background

6. The tenants applied for a tenancy of the premises to [redacted] who were acting on behalf of the owner. I will call [redacted] the landlord in this decision for convenience.
7. The application form was not provided to the Tribunal, but I was told that it specified a periodic tenancy for one year. I note that is somewhat contradictory, but that is how the application was completed. Apparently, that is not unusual.
8. The landlord then followed its usual procedure, and the key events took place between 12 and 16 June 2025.
9. It sent the tenants an email on 12 June informing them that their application was approved. That email is set out in full below, redacted to comply with the suppression order.

Name: a02 Application 530027[redacted]ribunal Prep Source: Internal Date: 28/07/2025

On Thu, 12 Jun 2025 at 2:33 PM [redacted]

Hi [redacted]

Your application has been approved for [redacted]. Below are the details of the tenancy and account details for deposit:

- *Lease Start Date:* 26th of June 2025
- *Lease to:* 28th of June 2026
- *Rent amount:* $545.00 per week
- *Bond amount:* $2180.00 (4 weeks)
- *Rent in advance:* $545.00 (1 week)
- *Total move in costs:* $2725.00

[redacted] requires the first weeks rent immediately as a deposit to secure the property for you, so we can withdraw any advertising and advise other applicants the property has gone.

Please note: Receipt of such deposit by [redacted] is deemed acceptance of the tenancy as per the details outlined in this email. This deposit is non-refundable should you withdraw your application for this tenancy, once deposit has been received by [redacted]

Deposit can be paid into:

Westpac

[redacted]

$2725.00

Reference [redacted] Please ensure you write a reference on deposit slip if depositing at the bank

Any other form of transfer, e.g phone or internet banking, please use the reference [redacted]

Please advise when this has been paid, and it's all yours. In the meantime simply reply to this e-mail acknowledging you are happy to proceed with tenancy as outlined above and we can get the tenancy agreement written up for you to sign.

Kind regards,

[redacted]

10. On 13 June the tenants requested that the tenancy start date be brought forward by three days.

11. On 14 June the tenants sent the landlord proof of payment of one weeks rent and the bond. I note that the tenants had not been asked to pay the bond at that time.
12. On 16 June the landlord sent the tenants a fixed term tenancy agreement. It contained terms such as no smoking and no pets and occupation limited to four people.
13. On 17 June the tenants asked the landlord to change the tenancy agreement to periodic.
14. There was then some toing and froing between the parties. Ultimately, the landlord insisted on a fixed term and the tenants were not willing to accept that. The landlord then resumed marketing the tenancy and found another tenant.

The Parties' Arguments

15. The tenants say that their application, along with their conversations with the landlord (they intended to buy a house for their occupation), made it clear that they wanted a periodic tenancy. The landlord's email on 12 June did not state that the tenancy was for a fixed term and they, reasonably they say, took that to mean that they were being offered a periodic tenancy. On that basis they paid the deposit and bond monies.
16. The landlord says that the email gave a start and an end date for the tenancy and that made it clear that it was for a fixed term. They point out that a periodic tenancy does not have an end date.
17. The landlord says that the email and the tenants' payment of the weeks rent, and bond constitute offer and acceptance and the formation of an enforceable tenancy agreement. They rely on a Tribunal decision as support for that.

Discussion and Decision

18. I don't agree that the email on 12 June and the tenants' payment resulted in the formation of a tenancy agreement.
19. My impression of the email is that it requires the payment of a non-returnable deposit of one weeks rent in return for the landlord agreeing to suspend marketing of the premises pending the completion a full written tenancy agreement.
20. It states that a deposit is required "to secure the property for you" and so the landlord can withdraw advertising the property and advise other applicants that it has gone. It goes on to say that the deposit is non-refundable should the tenants withdraw their application. No other consequences are mentioned. To my mind, that suggests an offer to hold the premises for the tenants pending the

completion of a tenancy agreement. The reference to withdrawing the application is telling.

21. The email also states that if the tenants are happy to proceed with the tenancy, the landlord will write up a tenancy agreement for the tenants to sign. This suggests that a written agreement is required to complete the agreement.

22. The email also says that that receipt of the deposit is deemed acceptance of the tenancy as per the details in the email. The details in the email are enough for an enforceable agreement to be created. I agree that this points to a binding agreement but viewed as a whole, I find that the email proposes an interim situation. In other words, the reference to a deemed acceptance of the tenancy, does not reflect the realty of the situation.

23. If I am wrong about that, there is another reason why the email and payment does not create a final agreement. I asked the landlord whether they would have given possession of the premises to the tenants without a signed tenancy agreement. Their answer was somewhat equivocal, but I find that they would not have accepted that the bare terms in the email of 12 June constituted a binding agreement between the parties.

24. I pointed out that the written agreement that was sent to the tenants included such terms as no smoking, no pets and a maximum of four people to occupy the premises and those terms are not mentioned in the email. If those terms did not apply to the tenancy, the tenants would be free to have pets, smoke in the premises and allow smoking and there would be no contractual limit on the number of occupants.

25. The response was that the tenants' application stated that they were not smokers, they had no pets and there were four people who intended occupying the premises. But it does not follow that the tenants were agreeing to those terms being included in the agreement.

26. The tenants also relied on their application for their argument that the agreement was for a fixed term. But I do not accept that the application is a contractual document. Any contract would be formed by the terms of the offer and its acceptance and would not incorporate pre contractual documents unless the parties expressly or by implication agreed to that. That was not the case here.

27. I find that the landlord would not have accepted that there was a binding tenancy agreement without their full tenancy agreement being signed by the tenants. It would have been extremely risky for them to do so given the absence of terms that were no doubt important to the owner.

28. If the landlord would not have completed the tenancy based on the email, it can hardly expect to hold the tenant to an agreement based on it.

29. For completeness I record that the Tribunal case relied on by the landlord does not assist them. These types of cases are fact dependent and the facts of the two cases are materially different. I note particularly that the other case involved an offer that was more detailed than the one in this case. It included no smoking and no pet terms as well as a maximum number of occupants. That is not recorded in the decision, but it is in the documents which I have viewed.

30. Because I have found that the parties did not agree terms amounting to an enforceable tenancy agreement, it follows that there was no relationship of landlord and tenant between them, and therefore the Tribunal does not have jurisdiction to determine these applications.

31. Although my finding would normally preclude the Tribunal making any order in relation to the tenancy, practicality requires me to make an order in relation to the bond. Without it, the bond could sit at the Bond Centre indefinitely. Having found that there is no tenancy agreement, the bond must be returned to the tenants, and I have so ordered.

32. I note that had I found that there was an enforceable tenancy agreement, any award of compensation to the tenant would have been modest. Apart from there being little evidence of loss or expense arising from the loss of the prospective tenancy, the types of losses that the tenants claimed, such as loss of earnings, are too remote from the alleged breach to be recoverable.

33. The landlord has retained the payment of one weeks rent and for what it's worth, in my view the landlord should be entitled to retain that money. It was paid to secure the tenancy pending completion of a full written tenancy and when that was not possible, the term that it is not refundable is reasonable and takes effect.

34. Both parties have requested name suppression and in all the circumstances that is appropriate. The parties have acted in good faith and their arguments have been reasonable. I have not accepted them and so there has been failure and success on both sides. I can see negligible public interest in identifying the parties.

THE SEAL OF THE TENANCY TRIBUNAL

R Armstrong
20 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.