[2025] NZTT 5279619, 5121191

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT: Matthew David Haines

Tenant

RESPONDENT: Jiayin Hong

Landlord

TENANCY ADDRESS: 43 Lockheed Street, Hobsonville, Auckland 0618

ORDER

1. The application for rehearing is dismissed.

Reasons:

1. The landlord attended the hearing by video. The tenant did not attend the hearing.
2. The tenant emailed the Tribunal at 10.09pm on the evening before the hearing advising that he would not be attending due to travel commitments. The tenant provided written submissions and asked for these to be considered at the hearing. The tenant's email and submissions did not arrive for my consideration until 2 minutes before the hearing was to commence at 9.30am.
3. Section 92 of the Residential Tenancies Act 1986 provides that;

   "Where notice of a hearing has been given to a party in accordance with section 91 and that party does not attend at the hearing, the Tribunal may hear and determine, or dismiss or adjourn, the matter in the absence of that party."
4. Section 91AB of the Residential Tenancies Act 1986 provides that;

"Despite anything to the contrary elsewhere in this Act, the Tribunal may decide a proceeding on the papers if the Tribunal considers it appropriate, except in the circumstances set out in subsection (2)."

5. The tenant did not ask for an adjournment or for the proceedings to be on the papers. Instead, he requested that his written submissions were considered in lieu of his attendance at the hearing. There was very little notice that the tenant would not attend the hearing that had been allocated two months earlier on 19 June 2025.

6. While the Tribunal could dismiss the application for rehearing due to the tenant's absence given that it was his application, I have decided to consider the application on the papers with reference to the written submissions. If the tenant is in a similar position in the future, he should communicate earlier with the Tribunal as another Adjudicator may not deal with the matter in the same way.

Application for rehearing

7. The application for rehearing filed by the tenant on 13 June 2025 sought a rehearing on the following grounds;

   (a) The Tribunal erred in its interpretation and application of the precedent set in *G Sibilis v C Croft and R Byrt*[1];

   (b) That the landlord contacted his employer both during the tenancy and shortly after its conclusion which he submits formed a continued pattern of harassment; and

   (c) That the Tribunal miscalculated the rent arrears.

8. Section 105(1) Residential Tenancies Act 1986 provides that the Tribunal has the power to order a rehearing where "a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur".

9. Usually the party applying for the rehearing must show that something went wrong with the Tribunal's procedure, for example, that they did not receive notice of the hearing or they were not able to properly present their case. A rehearing may also be granted where there is new evidence that was not reasonably available at the first hearing, if it could have affected the outcome.

10. The District Court has held that if the Tribunal was simply wrong in its fidings of fact, or its application of the law, this is not sufficient to establish a miscarriage of justice: a rehearing is not an alternative to an appeal. Furthermore, a rehearing will not be granted just because a party is unhappy with the decision, or to give them a second opportunity to present their case.

[1] [2023] NZDC 26882

Breach of quiet enjoyment

11. The case of *Sibilis* was referred to in the order in relation to conduct which amounted to harassment after the tenant had left the tenancy. That conduct was a telephone call between the landlord and the tenant's employer which took place in January 2025, after the tenancy ended. The order provided for an award of exemplary damages in relation to the phone call that took place during the tenancy sometime in December 2024.

12. The tenant submitted that the harassment began during the tenancy and extended beyond it. It was also submitted that the landlord's actions constituted a serious breach of quiet enjoyment, and the award may have been underweighted. I expect that the tenant means that the award was not in proportion to the level of harassment.

13. At the hearing the landlord submitted a text message that she had received from one of the tenant's flatmates on 15 December 2024. That message states;

    "I'm going to report Matt to Bayleys…I will report him anonymously."

14. The landlord had not produced this text message at the substantive hearing because she said she forgot about it. The landlord submitted that she did not think she called the tenant's employer during the tenancy and instead it may have been one of the other tenants who made the call anonymously.

15. It is unfortunate that this evidence was not available at the first hearing, but I consider that it was reasonably available, and the landlord could have produced it earlier. That evidence does not support the tenant's application for rehearing.

16. The submission from the tenant that the Tribunal erred in its interpretation and application of the District Court decision *Sibilis* is not accepted. The District Court Judge in that decision referred to section 38(2) of the Residential Tenancies Act 1986 and confirmed that the court did not consider that there were grounds to make an award of exemplary damages where the respondents had already left the premises.

17. Section 38(2) provides;

    "*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."*

18. The relevant wording in this section is *"in the use of the premises by the tenant."* After the tenant has left there is no longer any use of the premises by the tenant. That is why an award cannot succeed after a tenant has left the premises.

19. The tenant claims that there was a continued pattern of harassment, but the reality is that the tenant had left the premises when the second call was made.

20. The tenant submitted that the award of exemplary damages was not sufficient however that is not grounds for a rehearing.

Rent arrears

21. The tenant submits that rent was charged for an additional day that should not have been included.

22. The rent arrears award was to 12 January 2025 which the parties had agreed was the day that the tenancy would end and as recorded in the Tribunal order dated 12 December 2024[2]. The tenancy terminated and possession was granted to the landlord at 11.59pm on 12 January 2025.

23. The rent arrears correctly included 12 January 2025 in the calculation. The tenant had the right to occupy the tenancy until 11.59pm on that day.

24. The calculation of rent arrears was correct and therefore there is no ground for rehearing in relation to this issue.

Rehearing and suppression

25. The tenant has failed to establish grounds for a rehearing.

26. Section 95A(1) of the Residential Tenancies Act 1986 states,

    "The Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case.s application for rehearing are not successful."

27. The tenant was not successful with his application for rehearing. While the tenant has requested suppression, I have not granted it because he was not successful with his application and after weighing the interests of the public against the tenant's interests[3] I consider that a suppression order is not warranted.

[2] 4993791
[3] Section 95A(4) Residential Tenancies Act 1986

N Walker
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.