[2025] NZTT 5241712

TENANCY TRIBUNAL AT WAITAKERE | TE TARAIPIUNARA RETIHANGA KI WAITĀKERE

APPLICANT: Wayne David Kai-aruna

Tenant

RESPONDENT: Kāinga Ora–Homes And Communities

Landlord

TENANCY ADDRESS: Unit/Flat Unit 6, 7 Riversdale Rd, Avondale, Akl 1026

ORDER

1. The application is dismissed.

Reasons:

1. Both parties attended the hearing on 21 August 2025.
2. Wayne Kai-aruna entered into a tenancy with Kainga Ora Homes and Communities for unit 6, 7 Riversdale Rd, Avondale, Auckland on 8 September 2006. He has been living in the property for 19 years without issue, but claims he has experienced difficulties with a neighbouring tenant since July 2024. The neighbouring tenant is also a tenant of Kainga Ora Homes and Communities'. Mr Kai-aruna claims the neighbouring tenant has intimidated and harassed him since they first moved into the neighbouring property in July 2024. Mr Kai-aruna claims Kainga Ora Homes and Communities have not done enough to manage the new tenant's behaviour, which has affected Mr Kai-aruna's quiet enjoyment.
3. The issues I must determine are:
    a. To what standard must Mr Kai-aruna prove his claim?
    b. Has the neighbouring tenant breached Mr Kai-aruna's quiet enjoyment?

c. Has Kainga Ora Homes and Communities taken all reasonable steps to ensure that the neighbouring tenant does not interfere with Mr Kai-aruna's quiet enjoyment?

To what standard mu Mr Kai-aruna prove his claim?

4. As the applicant, Mr Kai-aruna must prove his claim to the civil law standard of proof, on the balance of probabilities. This means that he must establish that what he is claiming is more likely than not. This is referred to as the "burden of proof." Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

5. As noted by the District Court in *Katipo v Clarke & McCarthy* (DC) TT233/02, in practical terms this means that:

> …[L]ike anyone who brings an application before a Tribunal or Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit of not because it is up to the applicant to provide the necessary evidence. It is not up to the other parties, and it is certainly not up to the Tribunal to extract evidence.

6. I do not need to be completely certain, but I need to be more certain than uncertain. In deciding any particular claim, I must consider all the evidence presented (including oral evidence at the hearing). I must weigh this evidence to decide what is more likely.

Has the neighbouring tenant breached Mr Kai-aruna's quiet enjoyment?

The law

7. Section 45(1)(e) Residential Tenancies Act 1986 (RTA) states that a landlord shall take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.

Evidence and submissions of the parties

8. Mr Kai-aruna claims that the neighbouring tenant has engaged in intimidating, threatening and disruptive behaviour. For example, Mr Kai-aruna claims the neighbouring tenant has:

   a. Purposefully set his dog on Mr Kai-aruna and recalled it at the last minute before it can attack.

b. Yelled at his dog not to go near Mr Kai-aruna in case it catches aids.

c. Threatened Mr Kai-aruna by stating “I’ll come to your house and I’ll damage you.”

d. Sworn at Mr Kai-aruna and called him a “F*****g c**t”.

e. Wrongly accused Mr Kai-aruna of entering his premises and placing a chair in his garage. Mr Kai-arun claims Mr Ashby swore at and threatened him, before chucking the chair onto Mr Kai-aruna’s property.

f. Thrown a handful of rocks at the roof of Mr Kai-aruna’s premises.

g. Thrown a piece of marble approximately the 6.5cm x 6.5cm in size at Mr Kai-aruna and his friend.

h. Attempted to run Mr Kai-aruna over.

9. All of these alleged incidences and more have been reported to the Police and Kainga Ora.

10. No criminal charges have been laid against the neighbouring tenant.

11. Kainga Ora issued the neighbouring tenant with a formal breach notice on 18 October 2024 under section 40(2)(c) RTA. Other than this, Kainga Ora have not taken any formal action.

12. Kainga Ora claim they have investigated Mr Kai-aruna’s complaints, but the neighbouring tenant denies they have acted in the way alleged. Kainga Ora claim they have reminded the neighbouring tenant of the importance of being a good neighbour and being respectful however, in the absence of any additional evidence supporting Mr Kai-aruna’s claims, they do not feel able to take any formal action.

13. Kainga Ora have approved Mr Kai-aruna’s request for a transfer and are actively looking for another property for him. Mr Kai-aruna has declined two properties offered. Mr Kai-aruna wants a garage but is only eligible for one-bedroom dwellings, which do not usually have garages.

Analysis

14. Mr Kai-aruna submitted numerous copies of Police reports and complaints he has made about encounters with the neighbouring tenant. The number of reports and complaints tends to suggest there is some credibility to Mr Kai-aruna’s claims, otherwise why would he go to such trouble if it was not true? On the other hand, I must consider the fact that the neighbouring tenant denies acting in the way alleged and no further evidence supporting Mr Kai-aruna’s claims has been provided.

15. Mr Kai-aruna says his family, friends and at least one neighbour have witnessed the neighbouring tenant's behaviour however, no witnesses attended the hearing to give evidence. No written statements or affidavits from any witnesses were submitted either.

16. Mr Kai-aruna claims he has passed on the names and contact details of potential witnesses to Kainga Ora and they have failed to follow up. Kainga Ora deny this and no written evidence was submitted by Mr Kai-aruna confirming he has passed on these details.

17. Kainga Ora gave evidence that the neighbouring tenant has been a tenant with them for 20 years since 2005. With the exception of one disagreement with a former neighbour in 2020 about parking, Kainga Ora claim they have not received any complaints about them. This suggests that the neighbouring tenant does not have a propensity to act in the way claimed by Mr Kai-aruna and reinforces the need for there to be additional evidence supporting Mr Kai-aruna's claims.

18. None of the complaints to Police have resulted in charges being laid against the neighbouring tenant.

19. In these circumstances, I consider something more is needed than just the bare assertion by Mr Kai-aruna that the neighbouring tenant has acted in the way alleged. The absence of any corroborating evidence means I am not convinced on the balance of probabilities that the neighbouring tenant has breached Mr Kai-aruna's quiet enjoyment in the ways alleged.

Has Kainga Ora Homes and Communities taken all reasonable steps to ensure the neighbouring tenant does not interfere with Mr Kai-aruna's quiet enjoyment?

20. Kainga Ora issued the neighbouring tenant with a formal breach notice on 18 October 2024. It is understandable why they have declined to take any further formal action. The lack of evidence corroborating Mr Kai-aruna's version of events limits what Kainga Ora can do. This is because Kainga Ora owe the neighbouring tenant a duty not to breach their quiet enjoyment. If Kainga Ora issue the neighbouring tenant further breach notices in circumstances where there is insufficient evidence to support Mr Kai-aruna's claims, they risk breaching this duty.

21. The reasonableness of Kainga Ora's actions must be weighed against the strength of the evidence supporting Mr Kai-aruna's claims. In this case, it is not very strong. Kainga Ora have discussed Mr Kai-aruna's complaints with the neighbouring tenant, reminded them of their obligation to behave in a neighbourly manner and issued them with one formal breach notice. I find this to be a reasonable response in the circumstances.

Conclusion

22. Mr Kai-aruna has not proven on the balance of probabilities that the neighbouring tenant has breached his quiet enjoyment or that Kainga Ora have failed to take reasonable steps to ensure the neighbouring tenant does not breach Mr Kai-aruna's quiet enjoyment.

23. For these reasons, the application is dismissed.

Filing fee

24. Mr Kai-aruna has not been wholly or substantially successful in his claim. Therefore, I do not order Kainga Ora to reimburse the filing fee.

L Ryken
21 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.