**[2025] NZTT 5254299**

**TENANCY TRIBUNAL AT [Event location suppressed]**

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

## ORDER

1. The application for rehearing is dismissed.

**Reasons:**

1. Both parties attended the rehearing consideration hearing.
2. On 17 June 2025 the Tribunal made an order to reduce a fixed term tenancy, award rent in lieu of notice and refund the bond. All other claims were dismissed.
3. On 24 June 2025, the tenant(s) applied for a rehearing on the grounds that they considered that some of the evidence was missed by the Tribunal or not adequately considered and that therefore parts of the decision were substantially wrong.
4. They have provided significant submissions in support of the rehearing application. In summary the tenant(s) submit:
    a. That the order wrongly determined the date that rent in lieu should have been awarded until.
    b. That the order wrongly determined matters relating to the validity and provision of the health homes exemption.

c. That there should be reconsideration of a penalty for treatment of the bond on receipt and that the order wrongly determined not to consider the bond issue.

d. That the decision included some incorrect statements and had email discrepancies (for example, the decision wrongly concluded that the tenants had stopped communicating).

e. That they disagreed with aspects of the decision.

f. The landlord has had previous similar cases before the Tribunal that may be relevant.

5. The rehearing request also sought consideration of additional matters such as reimbursement of utilities and issues with the tenancy agreement (not raised in the original application).

*The law*

6. Section 105(1) Residential Tenancies Act 1986 (RTA) 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".

7. In the District Court judgement of *Wellington City Council v McMillan* [2003] DCR 50, His Honour Judge Touhy confirmed that the words "substantial wrong or miscarriage of justice", set a high standard, stating:

> *"They most obviously apply … to cases of procedural error e.g. a hearing which takes place in the absence of a party who has not been given notice of it; the improper admission or rejection of evidence; misconduct by the adjudicator or by one of the parties or a witness. The words may also encompass the discovery of new and important evidence not previously available.*
> *…*
> *In my view, however, the words do not cover a complaint that the Tribunal was merely mistaken or wrong in its findings of fact or in its application of the law.*
>
> *There are two reasons for this. First the strength of the language in s 105 is such that something more than a mere wrong decision must be shown. The section does not speak of a decision being wrong, but of a substantial wrong or miscarriage of justice occurring. This implies obvious injustice, not merely an erroneous decision. Secondly, if a mere erroneous decision is enough, whether the error is factual or legal or both, it would enable parties to in effect appeal by way of an application for rehearing, and then again to the District Court against the grant or refusal of the application for rehearing. Not only does this offend the general hierarchical nature of the appeal system, it would also make the time limit for filing notice of appeal against an original decision nugatory."*

8. The High Court in *Angelo v Lehr* [2022] NZHC 3033 confirmed that it was not a miscarriage of justice to decline a rehearing just because evidence was not considered at the original hearing, when that evidence could have been produced at the original hearing.

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 findings 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.

*Has a substantial wrong or miscarriage of justice occurred?*

11. For the following reasons the tenant(s) have failed to establish the grounds for a rehearing:

    a. The fact that the tenant(s) disagree with the decision, or that they wish to have the same matters considered again, is not a ground for a rehearing.

    b. The tenant(s) were notified of the hearing, they were able to present their case at the hearing and all evidence was accepted by the Tribunal.

    c. The interests of justice require parties to put their best foot forward at the hearing and both parties had ample opportunity to do this.

    d. The tenant(s) have not provided any new evidence not available at the hearing that may have changed the outcome of the Tribunal's order.

    e. Some of the issues raised in the rehearing consideration hearing were not included in the original application or discussed at the original hearing. Having additional matters of dispute not included in the original application, hearing or order are not grounds for a rehearing.

12. In short, the grounds advanced by the tenant(s) for a rehearing suggest errors or a disagreement with the decision issued and the findings (both factual and legal) within that decision.

13. None of these grounds are grounds for a rehearing, they are instead grounds for an appeal to the District Court.

14. The application for a rehearing is dismissed.

15. For the avoidance of doubt, the Order of the Tribunal dated 17 June 2025 remains in full force and effect.

R Harvey-Lane
26 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.

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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.