[2025] NZTT 5264179

TENANCY TRIBUNAL AT WHANGAREI | TE TARAIPIUNARA RETIHANGA KI WHANGĀREI-TERENGA-PARĀOA

APPLICANT: Donald Mitchell Hedges

Landlord

RESPONDENT: Paul Findalay, Jackie Cook-Farnham

Tenant

TENANCY ADDRESS: 21 Limeburners Street, Morningside, Whangarei 0110

ORDER

1. Donald Mitchell Hedges is granted possession of the premises at 21 Limeburners Street, Morningside, Whangarei 0110 at 8.00am on **MONDAY 8 SEPTEMBER 2025**.

Reasons:

Background

1. Mr Hedges lives at 21 Limeburners Road. He rents out rooms in the house to boarders.
2. Mr Findalay is one of those boarders. He is supposed to pay $150.00 per week. He lives in the downstairs part of the house.
3. There is no written agreement. I understand that Mr Hedges gave Mr Findalay an “eviction notice”. I was not given a copy of that document. Mr Findalay stopped paying rent. By his own admission, he is about $1800.00 in arrears.
4. Mr Hedges’ application seeks termination, possession, and rent arrears.
5. The hearing took place in Whangarei today. Mr Hedges and Mr Findalay attended the hearing. Ms Cook-Farnham did not appear, and it is not obvious what connection that person has to these proceedings.

Jurisdiction

6. The Tenancy Tribunal has jurisdiction to determine disputes between landlords and tenants in respect of tenancies that the Residential Tenancies Act 1986 ("RTA") applies to.

7. The RTA does not apply where, during the tenancy, the premises are principally used as a place of residence by the landlord.[1]

8. This exclusion does not apply if the premises is a boarding house. The RTA does apply to boarding house tenancies. A boarding house is defined as residential premises that are occupied, or are intended to be occupied, by at least 6 tenants at any time.[2]

9. In this instance:

    a. The premises were principally used as a place of residence by Mr Hedges.

    b. This was a house sharing / boarding arrangement, not a residential tenancy.

    c. The premises do not meet the definition of a boarding house. Mr Hedges had, at most, 3 boarders at any time.

10. Therefore:

    a. The RTA does not apply to this tenancy.

    b. The Tenancy Tribunal does not have jurisdiction, except to make a possession order as discussed below.

Possession

11. The Tribunal may make an order for possession where:[3]

    a. The person bringing the application is entitled to possession of the premises; and

    b. Someone else is occupying the premises "otherwise than pursuant to any right of occupation".

12. The Tribunal can make such a possession order even where there is no tenancy in place.

13. In this instance:

    a. Mr Hedges owns all of 21 Limeburners Street and he is entitled to possession of it.

---

[1] Section 5(1)(n) RTA
[2] Section 66B RTA
[3] Section 65 RTA

b. Mr Hedges granted Mr Findalay the right to occupy part of the premises under the terms of a verbal agreement. There were no agreed terms about termination of the arrangement. One of the agreed terms was that Mr Findalay would pay rent of $150.00 per week.

c. Mr Findalay's insistence that he is entitled to 90-days' notice of termination is without legal basis. The RTA does not apply.

d. Mr Hedges was entitled to cancel the contract, not least because Mr Findalay was in breach of an essential term by not paying the agreed rent.

e. Mr Findalay has no continuing legal right to occupy the premises.

14. Therefore, Mr Hedges is entitled to an order for possession, and I have made such an order.

15. Any other disputes between Mr Hedges and Mr Findalay must be brought to a forum that has jurisdiction, such as the Disputes Tribunal which has jurisdiction to hear contract based disputes up to a limit of $30,000.00.

Power

16. Mr Findalay said that Mr Hedges intentionally cut the power to his part of the property.

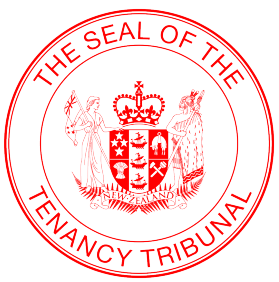
17. Mr Hedges (through Mr Smith, who assisted him at the hearing) denied this and said that the power has gone off because Mr Findalay's fridge has overloaded the circuit.

18. Mr Findalay insisted that I make an order requiring Mr Hedges to reinstate the power for the remainder of his occupancy. I am unable to make such an order because:

    a. The Tribunal does not have jurisdiction, so I cannot make a work order; and

    b. It is not proven that Mr Hedges intentionally cut the power.

19. However, I will affirm Mr Findalay's argument that Mr Hedges has no legal right to cut the power. It is appropriate to imply a term in the verbal boarding agreement that Mr Hedges will take reasonable steps to ensure the on-going supply of services (power, water etc) to the property.



N Blake
27 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.