[2025] NZTT 5312661

TENANCY TRIBUNAL AT HUTT VALLEY | TE TARAIPIUNARA RETIHANGA KI TE AWAKAIRANGI

APPLICANTS:	Brent Tuara Henry And Bailey Ingham Trustees Ltd As Trustees For The Brent Henry Family Trust Owner
RESPONDENT:	Robert Pihema – previous owner
TENANCY ADDRESS:	7 Waterlow Street, Fordlands, Rotorua 3015

ORDER

1. Brent Tuara Henry And Bailey Ingham Trustees Ltd As Trustees For The Brent Henry Family Trust are granted possession of the premises at 7 Waterlow Street, Fordlands, Rotorua 3015, immediately.
2. To avoid doubt, the order in para 1 above means that any person/s occupying 7 Waterlow Street, Fordlands, Rotorua 3015, who is/are there without the applicants' permission, is/are a squatter/s and may be evicted by an officer of the Ministry of Justice following an application for enforcement of this order.
3. The respondent and his whanau who are currently residing at the property are squatters.

Reasons:

4. The landlord has applied for possession of the premises under section 65 of the Residential Tenancies Act 1986 (RTA). That section gives jurisdiction to the Tenancy Tribunal as follows:

> ***65 Eviction of squatters***
> (1) Where, on the application of any person entitled to possession of any residential premises, the Tribunal is satisfied that any other person is in possession of the premises as a squatter or trespasser, or otherwise than pursuant to any right of occupation granted to

> that person by any person having lawful authority to grant that right to that other person, the Tribunal shall make a possession order granting possession of the premises to the applicant.
>
> (2) Nothing in subsection (1) shall limit or affect the provisions of the Trespass Act 1980, or any other remedy that may be available to the person lawfully entitled to possession of the premises.
>
> (3) To avoid doubt, the Tribunal has jurisdiction under this section even though the premises are not subject to a tenancy agreement.

5. The applicant has applied for possession of the property at 7 Waterlow Street, Fordlands, Rotorua 3015 because the property is being occupied by the previous owner/s or family of the previous owner/s.
6. The property was offered for sale by tender by the ANZ Bank New Zealand Limited. The applicants became the successful Tenderers and Purchasers of the property on 12 May 2025. The applicants have provided a copy of the Memorandum of Agreement setting out the sale and purchase details. The applicants have also provided the RECORD OF TITLE UNDER LAND TRANSFER ACT 2017 recording the applicants as the 'Registered Owners'.
7. Section 65 was considered by the High Court in *Sergeant v Nigro and Tapsell [2019] NZHC 328.* The Court held [at 74] that there are three conditions which have to be met before a possession order can be made:
    a. *The premises the subject of the application are residential premises.*
    b. *The applicant for possession is entitled to possession of those premises.*
    c. *Another person or persons are in possession as squatters, trespassers, or otherwise than pursuant to any right of occupation granted by a person having lawful authority to do so.*
8. There is no dispute that the premises are residential premises.
9. The evidence provided by the applicants is sufficient to prove entitlement to possession of the premises.
10. Robert Pihema and/or his family are occupying the premises. Robert believes that he and his daughter are still the rightful owners of the property, and that the property was sold unlawfully. He has submitted that the mortgagee failed to serve proper notice of the mortgagee sale.
11. Robert Pihema has challenged the Tribunal's jurisdiction to hear this case because he is contesting that the applicants are the rightful owners of the property. He claims that the Tribunal cannot proceed with a claim under section 65 RTA because the Tribunal does not have jurisdiction to hear a challenge to the ownership of property. The respondent is correct regarding the Tribunal not having jurisdiction to determine a dispute about ownership of property. The

jurisdiction for that dispute comes under the provisions of the Property Law Act 2007. A claim must be made in the High Court regarding a dispute about property ownership.

12. Robert Pihema submitted that the Tribunal could not proceed with the case about possession because the applicants had failed to lodge a claim in the High Court once they were advised that ownership of the property was in dispute. However it is the respondent who is challenging the established legal status regarding property ownership and therefore it is the respondent who must begin proceedings in the High Court, not the applicants.

13. At the date of hearing this application in the Tenancy Tribunal, there were no proceedings that had been commenced in the High Court. If proceedings had commenced in the High Court, the proceedings in the Tenancy Tribunal would have been adjourned until the High Court case was concluded.

Conclusion

14. Section 65 of the RTA gives the Tribunal jurisdiction to hear an application for possession where an occupant or occupants are in possession of a property as squatters, trespassers, or otherwise than pursuant to any right of occupation granted by a person having lawful authority to do so. The applicants have proved that they are the legal owners of the property and have the right to occupy the property. The respondent has not proved a right to occupy following the sale of the property to the applicants and has not provided evidence of a legal challenge regarding the ownership of the property.

15. Therefore the Tribunal must order immediate possession of 7 Waterlow Street, Fordlands, Rotorua 3015 to the applicants.

THE SEAL OF THE TENANCY TRIBUNAL

B Smallbone
1 September 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.