[2025] NZTT 5296800

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: McGrath & Associates Limited and Penny McGrath

Landlord

TENANCY ADDRESS: 384 Ilam Road, Bryndwr, Christchurch 8053

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the tenants' names and identifying details.
2. McGrath & Associates Limited and Penny McGrath to pay [The tenant/s] $1,528.00 immediately as calculated below:

Description	**Landlord**	**Tenant**
Compensation – retaliatory notice		$1,000.00
Compensation –HHS non-compliant sleepout		$500.00
Filing fee reimbursement		$28.00
Total award		**$1,528.00**
Total payable by Landlord to Tenant		**$1,528.00**

3. The landlord must either consent to the refund of the remaining bond to the tenants or make an application for costs from the bond (if any) by 18 September 2025 failing which the tenants may request an order for the bond to be paid to them.

Reasons:

1. Both parties attended the hearing.

2. I have amended the proceedings to show the landlord as Penny Mcgrath

Background

3. The background to this tenancy is confusing. The landlord (McGrath & Associates Ltd) entered a periodic tenancy with 3 named tenants in March 2023. Since then, the original tenants have vacated the tenancy, although at different times. As each left, they were replaced by other tenants. However, no new tenancy agreement was entered, nor were there any signed variations of the original tenancy agreement.

4. The upshot is that the current tenants have no signed tenancy agreement with the landlord. They consider the landlord to be Penny McGrath and it was she they had dealings with. I have therefore named both the company and Ms McGrath as the landlord party. The original tenancy agreement did not state that McGrath & Associates Limited was the agent for the owner.

5. The Tribunal records from the outset that the landlord's practice was sloppy. When one tenant leaves and is replaced by another tenant there should be a signed variation of the tenancy agreement to record the new parties. And when all the tenants leave (even if over time) and the remaining tenants are totally different from the original tenants, there should be a new tenancy agreement.

6. That said, the parties agreed that there was a residential tenancy between them; that the tenancy started on 18 February 2025; and the tenancy ended when the tenants returned the keys on 21 July 2025.

7. The premises comprises a house and a sleepout attached to a garage. One of the tenants used the sleepout as a bedroom, the others had bedrooms in the main dwelling.

8. The tenant in the sleepout raised issues early on with the landlord about water leaking through the door causing the carpet there to be wet resulting in the room being cold and damp and mouldy.

9. The landlord arranged for a handyman to assess the room. The landlord decided that the repairs that would be required were significant. Ms McGrath suggested that the tenant in that room move out leaving the other tenants in the tenancy. That suggestion, while possibly well-intentioned, caused division among the tenants.

10. The landlord then served 2 separate 90-day termination notices, dated 4 and 15 June 2025. One was addressed to one tenant ‘and your friend’, the other to 3 named tenants.
11. Consequently, all tenants vacated the tenancy. The landlord then undertook some renovations and has since re-tenanted the premises not including the sleepout.
12. The tenants consider that the premises (by which they mean only the sleepout) were not compliant with the Healthy Homes Standards (HHS) and they consider that the landlord’s notice to terminate the tenancy was in retaliation for them raising the issues about the sleepout.

Issues

13. The Tribunal must determine these issues:
    - Was the sleepout non-compliant with the HHS? If so, what should the remedy be?
    - Was the landlord’s notice to terminate the tenancy retaliatory? If so, should the Tribunal award the tenants exemplary damages?

Relevant law

14. Section 45 RTA sets out a landlord’s responsibilities. Included among them are the responsibility to provide the premises in a reasonably clean state; to provide and maintain the premises in a reasonable state of repair (having regard to the age and character of the premises); and to comply with the Healthy Homes Standards (HHS).
15. Section 51 RTA allows a landlord to terminate a periodic tenancy by giving 90 days’ notice without reason. That is a recent statutory amendment, but it applies in this case.
16. Section 54 RTA provides that the Tribunal may declare a termination notice retaliatory if it is satisfied that, in giving the notice, the landlord was motivated wholly or partly by the exercise or proposed exercise by the tenant of any right, power, authority or remedy conferred on the tenant by the tenancy agreement or by this or any other Act or any complaint by the tenant against the landlord relating to the tenancy.
17. If the Tribunal finds the notice to be retaliatory it can (subject to time frames) declare the notice to be of no effect. Section 54(6) RTA provides that the giving

of a notice terminating a tenancy is an unlawful act if the notice is declared to be retaliatory.

18. Section 85 RTA is important in this case, so I will set it out in full:

> **85 Manner in which jurisdiction is to be exercised**
>
> (1) Subject to the provisions of this Act and of any regulations made under this Act, the Tribunal shall exercise its jurisdiction in a manner that is most likely to ensure the fair and expeditious resolution of disputes between landlords and tenants of residential premises to which this Act applies.
>
> (2) The Tribunal shall determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.

Compensation and exemplary damages

19. The Tribunal may award compensation to a party for losses arising from a proven breach or breaches by the other party of their statutory responsibilities.
20. Compensation is generally awarded for actual losses and sometimes for less tangible effects of proven breaches such as a loss of enjoyment of the tenancy and the accompanying stress and anxiety.
21. In *Birch v Otautahi Community Housing Trust*[1] the District Court confirmed that the Tribunal must consider the following factors when deciding to award compensation:
    - The nature of the breach;
    - The duration of the breach; and
    - The effect of the breach on the party.
22. Exemplary damages are different. They are designed to punish and to deter. They are like a fine.
23. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.
24. In *Birch,* the Court said this:

> In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in *Chief Executive, ex parte Edmondson v Walls* TT548/92 said:

[1] [2020] NZDC 17667

> Before an award of exemplary damages can be made the threshold question for the Tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the Tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.
>
> If the Tribunal considers that the person against whom the order is sought has committed the unlawful act intentionally, the Tribunal must then consider whether it would be just to require that person to pay exemplary damages, taking into account:
>
> (a) The intention of the person;
> (b) The effect of the unlawful act;
> (c) The interests of the party against whom the unlawful act was committed; and
> (d) The public interest.

25. Even if the Tribunal finds an act to be an unlawful act, but decides not to award exemplary damages, it can still award compensation for the breach – see *Cavanagh v Kainga Ora*[2].

Discussion

Was the sleepout non-compliant with the HHS? If so, what should the remedy be?

26. The landlord in this case relies on the fact that the premises were assessed as HHS compliant in a professional assessment undertaken by a previous property management company in January 2021. Ms McGrath thought she/her company took over the management of the tenancy about 2 years ago.

27. A HHS assessment is not a one-off compliance measure. While the legislation imposes no regulations about frequency or the need for a professional assessment, landlords who rely on an earlier report do so at their own risk. Here, the assessment was done when none of the current tenants resided at the premises. The sleepout issue arose about 4 years after the date of the report.

28. Things change over time. For example, insulation settles and over time requires a top up. Gutters can become clogged and might no longer meet the HHS drainage standard. Windows can develop gaps as premises age. A prudent

[2] [2022] NZDC 7003

landlord should be alert to these things. Complacency can result in liability if later non-compliance is established.

29. Ms McGrath said she relied on the HHS assessment completed in 2021. But the tenants' photographic evidence shows that some things had changed. The gaps around the external sleepout door are evident as is the ingress of moisture. I find on the balance of probabilities, that the sleepout was not HHS compliant while the tenant who resided in that room was there.

30. Non-compliance with the HHS is an unlawful act under section 45(1)(1A) RTA.

31. However, this is not a case where the Tribunal is persuaded to award exemplary damages for the landlord's breach. Having heard Ms McGrath's evidence, I find that she acted negligently rather than intentionally. In other words, she did not turn her mind to the unlawful act (HHS non-compliance in the sleepout) and then deliberately decide not to comply. She acted on the tenant's complaint, had the sleepout assessed, and then decided that the issue would either be costly to repair or could not be repaired to an extent where the sleepout could be used as a bedroom. So, she terminated the tenancy.

32. Following *Cavanagh*, I nevertheless award compensation for the effects on the tenant living in that room. She experienced the room being cold, wet and draughty. The period she was affected by that was limited. Because the application has been made by the joint tenants, the award is made to them. But the Tribunal's expectation is that as among them, they will agree to the affected tenant receiving that award.

Was the landlord's notice to terminate the tenancy retaliatory? If so, should the Tribunal award the tenants exemplary damages?

33. The Tribunal must be careful to ensure that Parliament's intention to allow landlords to terminate a periodic tenancy without reason on 90 days' written notice is upheld. That said, the Tribunal must consider every case on its facts. The RTA allows for a notice to be set aside if retaliatory.

34. Here, I find that the proximity between the tenants raising the HHS issue (and other issues) repeatedly and the landlord's action (twice) issuing the termination notices was retaliatory. The landlord appears to have given something of an ultimatum – either the affected tenant move out, or they all go. That was not an appropriate response.

35. Given that the HHS issue only involved gaps around the door and leaking from the door into the sleepout, a resolution could easily have been found. I have concluded that the landlord thought the easier option was just to end the

tenancy, do some repairs to the premises, and then re-tenant the premises, minus the sleepout, which is what has happened.

36. Again though, I do not find that the threshold for exemplary damages is met. The landlord acted negligently, not intentionally. It/she thought the 90-day termination option applied as a matter of course. The Tribunal has observed that many landlords believe they have an absolute right to end a tenancy by giving 90-days' notice, forgetting that there still exists a right to challenge the motivation for that.

37. Following *Cavanagh*, I award the tenants compensation for the landlord ending the tenancy in retaliation for the complaints they made. They had to find a new tenancy; the close bond they had as 4 tenants who enjoyed living together (an arrangement they wanted to continue) was shattered; and their friendships became strained.

38. For the tenants' losses, the result of the landlord's action, I award them compensation of $1,000.00. This award acknowledges that the landlord reduced the rent after the tenant in the sleepout vacated.

39. In making these awards I have taken section 85 RTA (set out above) into account to give effect to the substantial merits and justice of the case.

The bond

40. Ms McGrath has refunded the tenant in the sleepout her share of the bond. The bond belongs to the tenants until a landlord proves a claim against it. If the landlord has claims against the bond it/she must file a Tribunal application by 18 September 2025, failing which the tenants can notify the registry and I will make a bond order refunding the balance of the bond to them.

Result

41. The landlord will pay the tenants $1,528.00 comprised of compensation of $1,000.00 for the retaliatory termination of the tenancy; $500.00 for the loss of enjoyment of the sleepout due to water ingress and mould; and the filing fee of $28.00.

Name suppression

42. Both parties applied for name suppression. The tenants are entitled to name suppression as the application is successful. The landlord is not entitled to name suppression as its/her defence to the application is unsuccessful[3].

J Greene
05 September 2025

[3] Section 95A RTA

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.