[2025] NZTT 5266799

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Okahu Limited, Donna Miers

Landlord

TENANCY ADDRESS: Unit/Flat 4, 25 Sefton Street, Seaview, Timaru 7910

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. Okahu Limited and Donna Miers must pay [The tenant/s] $3,747.00 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Refund bond		$2,380.00
Refund rent in advance		$1,190.00
Compensation for tenants' expenses		$150.00
Filing fee reimbursement		$27.00
Total award		**$3,747.00**
Total payable by Landlord to Tenant		**$3,747.00**

3. The application for exemplary damages for the non-lodgement of the bond is dismissed.

Reasons:

1. The tenants attended the hearing which I conducted by phone. The landlord did not attend. My calls to the landlord went to voice mail.
2. The tenants have applied for a refund of their bond, rent in advance, and compensation for their expenses as well as for exemplary damages for the non-lodgement of the bond.

Background

3. The tenants entered into a tenancy agreement with the landlord company for a periodic tenancy to commence on 19 February 2025.
4. The landlord company has its registered office and address for service in Auckland. Ms Miers is the sole director.
5. The landlord had a Timaru property manager, but Ms Miers signed the tenancy agreement as the director of Okahu Limited.
6. The tenants paid a bond of $2,380.00 and 2 weeks' rent in advance of $1,190.00. The money was advanced to them from WINZ between them equally.
7. On 19 February 2025, the day the tenancy was to start, the tenants drove from Dunedin to Timaru. The premises were full of rubbish and rodent droppings. The state of the premises was such that they could not take possession.
8. The tenants had to return home. They were the advised by the landlord's property manager (its agent) not to return because the state of the premises was so bad. She told them she had quit as her attempts to clean the premises had made her unwell.
9. The landlord (Ms Miers) appears to have acknowledged the tenants' concerns, but then stopped communicating when the tenants queried whether they would receive their bond and rent back.
10. Due to the lack of any response to their (legitimate) concerns, the tenants applied to the Tribunal for relief.

Issues

11. The issue the Tribunal must determine are these:
    - Did the landlord provide the premises in a condition where the tenancy could commence?

- If not, what is the remedy?

Relevant law

12. Section 45 of the Residential Tenancies Act 1986 (RTA) sets out a landlord's responsibilities. It provides in part:

> (1) The landlord shall –
>
> (a) provide the premises in a reasonable state of cleanliness
>
> …
>
> (c) comply with all requirements in respect of buildings, health, and safety under any enactment so far as they apply to the premises

13. 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.

Discussion

Did the landlord provide the premises in a condition where the tenancy could commence?

14. It is very clear from the evidence that these premises were not in a state where they could be offered for rent. The tenants gave evidence that there was a huge amount of rubbish throughout the premises and rodent droppings everywhere.

15. The tenants relied on the text message they received from the landlord's agent who said on 25 February 2025 (one week after the tenancy was meant to start):

> Good morning, I do apologize for not returning your calls or messages yesterday. I have stepped away from being the property manager. The flat is beyond liveable as it is infested with rats, so my only advice would be to push to get your money back as I will be taking this further with the council as it has made me sick from clearing that crap out.

16. The landlord's agent provided the tenants with photos that show the dreadful state of the premises.

17. At this point I note that the tenants had a young child under the age of one.
18. Ms Miers seems to have acknowledged the situation blaming the state of the premises on the previous tenants. She said in a text message to the tenants:

> Takes time to clean up a house when people are to lazy to clean up after them.

19. The Tribunal has no hesitation in concluding that the premises were not suitable to be rented. Apart from being unclean, they were non-compliant with health and safety regulations due to the rodent contamination.
20. Simply put, the landlord was never in a position to grant possession of the premises to the tenants due to the state they were in.
21. As a consequence, the tenancy agreement was frustrated; the tenancy could not commence.
22. That aside, section 85 RTA (considering the substantial merits and justice of the case) would require the Tribunal to find that the premises that were the subject of this tenancy were not in a state to be rented.

What is the remedy?

23. Because the tenancy could not even start due to the state of the premises, the landlord cannot expect to retain the bond or the 2-weeks' rent in advance the tenants (via a WINZ advance) paid. I have ordered the landlord to refund those amounts to the tenants.
24. The tenants incurred costs travelling from Dunedin to Timaru to take possession of the tenancy. For the reasons noted, they could not take possession. I award them compensation for their time and fuel costs for the trip on 19 February 2025. I cannot award compensation for the planned second trip as it did not eventuate.
25. The tenants gave evidence that they had to live with a relative for 1 week before going into emergency accommodation, so the effects on them were significant.
26. The tenants sought exemplary damages for the landlord's failure to lodge the bond. Given the Tribunal's finding that the tenancy never came into effect, the landlord did not commit any unlawful act by not lodging the bond. The remedy is the refund of the bond.

Comment

27. I have made this order against Okahu Limited and Ms Miers personally as she is the sole director of that company and she communicated with the tenants. They understood her to be the landlord.

28. I note from the tenancy agreement the following unlawful term:

> WINZ re-direction must be set up before move-in and must stay in place, non-compliance will result in termination and forfeiture of bond

29. The landlord should be aware that section 137 RTA prohibits arrangements that contravene any of the provisions of the RTA. Requiring any person to make any contract or arrangement that contravenes the provisions of the RTA is declared to be an unlawful act for which exemplary damages of $1,800.00 can be awarded[1].

Result

30. The landlord Okahu Limited and Ms Miers will pay the tenants $3,747.00 comprising a refund of the bond, 2 weeks' rent in advance, compensation for the tenants' losses and inconvenience travelling from Dunedin to Timaru to take possession, and the filing fee they paid to lodge their application.

Name suppression

31. The tenants sought, and are entitled to, name suppression as the application is successful[2].

J Greene
15 September 2025

[1] See section 137(2) RTA
[2] See 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.