TENANCY TRIBUNAL AT TAUPO | TE TARAIPIUNARA RETIHANGA KI TAUPŌ-NUI-A-TIA

APPLICANT: Gemma Lynette McConkey

Tenant

RESPONDENT: Taupo District Council, Housing For The Elderly

Landlord

TENANCY ADDRESS: Unit/Flat 3, 190 Rifle Range Road, Taupo, Taupo 3330

ORDER

1. The tenancy of Gemma Lynette McConkey at Unit/Flat 3, 190 Rifle Range Road, Taupo, Taupo 3330 is terminated, and possession is granted to Taupo District Council, Housing For The Elderly, **at 6pm on Sunday 14 September 2025.**
2. Gemma Lynette McConkey must pay Taupo District Council, Housing For The Elderly $4,111.43 immediately, calculated as shown in the table below:

Description	**Landlord**	**Tenant**
Rent arrears to 27/8/2025	$4,111.43	
Total award	**$4,111.43**	
Total payable by Tenant to Landlord	**$4,111.43**	

4. The tenant's claims for work orders, compensation and exemplary damages are dismissed.

Reasons:

5. Both parties attended the hearing. Ms McConkey objected as she said that the Taupo District Council staff that attended the previous Tribunal hearing in April 2025, should be present and they were not.
6. After that hearing the landlord has changed its property manager.
7. The property managers attending on behalf of the new property manager Westerman's Property Solutions Ltd appeared as agents for the Taupo District Council.
8. The definition of landlord contained in s 2 of the RTA includes an agent of the grantor of a tenancy so encompasses the newly appointed property manager.
9. While the previous property managers could have attended, they were not obliged to do so.

Landlord's claim

10. The landlord has applied for termination of the tenancy due to rent arrears.
11. The rent is 24 weeks in arrears (the last rent was paid on 6 May 2025).
12. Rent was at least 21 days in arrears on the date the application was filed and the arrears are now considerably higher. The tenancy is terminated. See section 55(1)(a) Residential Tenancies Act 1986.
13. The landlord provided rent records which prove the amount owing until today.
14. The amount of rent in arrears is not disputed by the tenant. Instead, she maintains that she is not liable to pay rent because of a number of landlord breaches.
15. For the reasons that follow I do not consider that the landlord is liable to pay the tenant compensation or that there is any valid set off to the rent arrears claimed.
16. The tenant said that she does not want to continue living at the unit and has requested a transfer. She said this may take up to six months. The landlord requested the tenancy end in two weeks.
17. The high level of rent arrears means that the landlord's request is reasonable and approved.

Tenant's claims

18. Ms McConkey's application follows a Tribunal Order issued on 28/4/2025 that found the landlord in breach of a number of obligations and liable to pay $4,127 compensation as a result.
19. The landlord paid that amount in full on 2 May 2025 at Ms McConkey's request.

20. Ms McConkey claims that the Tribunal erred in its finding of 28/4/2025 that the tenancy agreement must be varied to record the correct rent of $125 per fortnight from the start of the tenancy. She continues to maintain that she should only pay the specified rent with the balance being deducted from what she now owes. She also submits that a rent increase was unlawful, and the rent exceeds market rent.

21. The order issued on 28/4/2025 had attached appeal and rehearing rights.

22. The law is quite clear that if a party does not agree with the Tribunal's finding of fact or application of the law then the correct remedy is to file an appeal.

23. What a party does not have the right to do is to continue to bring the same claims.

24. In the absence of a successful appeal decision overturning those findings, they must stand.

25. I therefore decline to relitigate or reconsider the issues previously determined. The Tribunal has no jurisdiction to do that. It follows that the claim for a rent reduction for the first part of the tenancy, for an order setting aside a rent increase or reducing the rent via the market rent provisions are dismissed for want of jurisdiction.

26. Amplifying her grounds of appeal at today's hearing, Ms McConkey submitted that the Tribunal had, in reaching its earlier substantive decisions, unfairly disadvantaged her and that she sought a "reopening of the case", to take account asserted breaches of the RTA that the Tribunal had overlooked, false statements made by the landlord representative at the previous hearing and various other grievances.

27. All of those matters, might have been relevant had an appeal been brought against the 28 April 2025 decision to the District Court but no such appeal was lodged. Instead, Ms McConkey insisted that the landlord pay the amount owing, which was duly done on 2 May 2025.

28. The second reason advanced for non-payment of rent, is the landlord's failure to notify her properly when it recently appointed a new property manager.

29. I am not satisfied that this claim can succeed as a justification for nonpayment of rent.

30. Mr Westerman explained the process it followed when Westerman Property Solutions Ltd was instructed by the Taupo District Council to manage its flats for the elderly.

31. On 9 and 25 June 2025 explanatory letters were hand delivered to all tenants explaining that there was to be a change in property manager from 1 July. The letters explained there would be a meet and greet meeting at the on site community clubhouse so any questions could be answered. That meeting

occurred on 30 June. 16 of the 28 tenants were present. Ms McConkey was not.

32. Westerman's property manager Ms Angell said she knocked on the door of the tenants who had not attended the meeting the following day. She introduced herself to Ms McConkey and explained that she was the new property manager taking over from the Council. She checked that Ms McConkey's details were correct and handed her a letter with her contact information.

33. Mr Westerman said that the tenants at the meeting were advised that the direct debit authority held by the District Council for the payment of rent, would transfer automatically to Westerman's "in the background". He said this was done on the Banks advise (Westerman's and TDC both bank with BNZ) and only to make things simple for the tenants (who would not be required to fill in new forms etc). The rent was not changing simply the account to which it would be paid.

34. Mr Westerman said the change happened seamlessly for all tenants except Ms McConkey, and all rent has been paid to the Westerman's account from that date, by the other tenants.

35. Mrs McConkey's rent ($340) was paid to the Westerman's account on 28 July in accordance with that instruction regarding the change in direct debit to Westerman's rental account.

36. Ms McConkey took issue that she had not been properly advised about the change and laid a complaint with her bank (alleging that the rent money had been paid without authority and requesting that it be repaid to her).

37. The bank reversed the payment on 15/8/2025.

38. Ms McConkey has not paid rent since then (and had not paid rent for some time prior) either to Westerman's or the Taupo Dictrict Council.

39. I do not accept her submission that the landlord has failed to notify her of the change of landlord/property manager as required. I am satisfied that she was notified of the change by general letter and then specifically on 1 July when she was visited.

40. I accept that she was not specifically provided with the new landlord's account number, but not that she did not know of the transfer of management to Westerman's or of that account number. She is clearly well aware of the requirement that she pay rent and the account to which it needed to be paid. She has been served with a number of breach notices in that regard and was aware this application was to terminate her tenancy for nonpayment of rent. Despite this she is now 24 weeks in arrears.

41. Even if she did not receive the letters Ms McConkey was advised in person of the change of property manager on 1 July.

42. It was a specific written term of her tenancy agreement that she pay the rent by direct bank transfer to the landlord's account. Ms McConkey signed those bank forms as required at the start of the tenancy. She reversed the payment made by the Bank and has not paid rent since early May to any bank account.

43. It follows that I find the rent is owing and decline to award exemplary damages.

Failure to comply with Healthy Homes Standards and failure to maintain property.

44. The tenant claims that the landlord has not complied with the draught stopping, ventilation and insulation requirements in the Heathy Homes Standards.

45. The decision issued on 28/4/2025 specifically advised that it was a global award that covered all breaches until then.

46. Subsequent to this the landlord has obtained an updated report Healthy Homes assessment. The initial report confirmed that additional draught stopping was required. The final report dated 19 June 2025, confirms compliance with all standards. While Ms McConkey disputes aspects of that report, she has not provided any evidence to support her claims that the landlord remains in breach.

47. The landlord provided confirmation of invoices dated 31 May 2025. They confirm that windowsills were replaced, and door seals installed in May 2025.

48. Ms McConkey's further claims that the draught stopping work performed is not adequate have not been investigated as she has been unwell and not permitted access for this inspection to occur. The correspondence on the file confirms the landlord's willingness to investigate any further issues.

49. Ms McConkey request for compensation as the colour of the blinds installed does not match cannot succeed. It is not a requirement of the HHS or s 45 and providing and maintaining blinds is not a specific requirement of the tenancy agreement. The photographs provided in the Healthy Homes report confirm that the glass in the bathroom is frosted. Evidence was provided at the previous hearing that all electrical work was compliant with required electrical standards. The Healthy Homes Report confirms again that the ventilation standards are met.

50. Mr Westerman said that the property manager has not been able to access the property to assess whether there is further work that needs doing or whether the blinds installed are in fact working.

51. Ms McConkey provided no evidence of her claim that the unit is unsafe because of asbestos. The landlord said it had no knowledge that there was asbestos at the flat.

52. That claim cannot succeed in the absence of any evidence to support it.

53. Ms McConkey claims that the landlord has not notified the Bond Centre that the landlord has changed. Mr Westerman said the notification was sent on 24/6/2025. The bond centre had advised that the records had not been updated due to the claims lodged in the Tribunal.

54. Ms McConkey alleges the landlord has not provided an insurance statement on the tenancy agreement. That breach was raised at the previous hearing and considered when the previous compensation was ordered.

55. Mr Westerman said an updated tenancy agreement had been prepared and included insurance and healthy homes standard disclosure statements (amongst other matters). It was reasonable to allow some limited time for those requirements to be met.

56. The final matter raised by both parties was the parking arrangements at the flats. Ms McConkey confirmed that she has a designated parking spot. It is the use and policing of the shared parks that is her concern.

57. I am not satisfied that the landlord has breached its obligations in regard issues with the maintenance or parking plan for communal parking spots or its obligations with respect to ensuring occupants are able to quietly enjoy their units without undue interruption.

58. The previous order noted that both parties have rights and obligations with respect to communal facilities. Both have obligations with respect to maintaining the reasonable peace and privacy of all occupants.

59. In summary I am not satisfied that the landlord is liable for any further compensation or exemplary damages. Ms McConkey's persistent failure to pay her rent is the basis for terminating the tenancy. S 55 (1) (a) stating that the Tribunal must terminate a tenancy where the rent is more than 21 days in arrears at the date of the Tribunal application (unless satisfied that the rent has been paid by the date of the hearing and the Tenant is unlikely to breach the obligation to pay rent going forward).

60. If the rent is paid in full, prior to 14 September 2025, the Council may at its discretion allow Ms McConkey to stay, at least until she finds alternative accommodation.

61. Given the nature and extent of the rent breach, that is solely a matter that is now at the landlord's discretion.

62. The landlord's application is successful, the landlord's initial request for name suppression was approved. The landlord then requested that name suppression be removed in the interests of public transparency.

63. The name suppression previously approved is therefore lifted.

64. The order is not amended in any other way.

J Maher

29 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.