[2025] NZTT 5057015

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Proprietors Of Nuhiti Q Landlord
RESPONDENT:	Michael Ferris Senior Tenant
TENANCY ADDRESS:	60 Arero Road, Mangatuna, Mangatuna 4079

ORDER

1. The application to file a rehearing application out of time and for rehearing is dismissed.

Reasons:

1. Mr Ferris Senior, the tenant, and his support person, Ms Middleton, and Ms Larsen and Mr Naden, representing the landlord, all attended the rehearing consideration hearing on 18 September 2025.
2. On 21 July 2025 the Tribunal made an order terminating the tenancy on 25 August 2025, ordering that the tenant remove his belongings from the property by 25 August 2025 and ordering the tenant to pay the landlord $19,585.70 in rent arrears. The landlord's remaining claims were dismissed.
3. On 27 August 2025, Michael Ferris Senior applied for a rehearing on the grounds that he could not carry out the Tribunal's order as he could not get access to the property to remove his belongings and that he did not have a lump sum with which to pay the rent arrears ordered. Mr Ferris Senior provided significant evidence along with his rehearing application. Mr Ferris Senior also applied for leave to file his rehearing application out of time, indicating that he

had spent time trying to find a lawyer or someone to assist him with the matter, and he had continued to negotiate with the landlord.

4. During the rehearing consideration hearing, Mr Ferris Senior added that he discovered after the original hearing that the Gisborne District Council required consents to cross the river by the property, and that he had received information after the original hearing that the property was on land owned by the Crown. Mr Ferris Senior said this was new evidence. Mr Ferris Senior did not point to any procedural issues with the original hearing.

5. The landlord said Mr Ferris Senior had not provided any new evidence that he could not have obtained and provided for the original hearing. Further, the landlord acknowledged that the property is on Crown land but said the landlord holds a 99-year lease and has permission from the Crown to sub-let the land and collect rents also. The landlord said Mr Ferris Senior would have known about the landlord's lease with the Crown long ago in any event, given he was on the Committee of Management of the landlord for many years.

The Law

6. Section 105(2) Residential Tenancies Act 1986 ("RTA") provides that an application for a rehearing shall be lodged with the appropriate Registrar of the Tribunal within 5 working days after the date of the decision, or within such further time as the Tribunal may allow.

7. Section 105(1) Residential Tenancies Act 1986 ("RTA") provides that the Tribunal has the power to order a rehearing where "*a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur".*

8. The applicant need not establish an *actual* miscarriage of justice or substantial wrong, only that it may have occurred. However, in the District Court Judgment of *Wellington City Council v McMillan* [2003] DCR 50, Judge Tuohy held that the statutory language set a high standard, and that:

> "[18] … *They most obviously apply … to cases of procedural error eg a hearing which takes place in the absence of a party who has not been given notice of it; the improper admission or rejection of evidence; misconduct by the adjudicator or by one of the parties or a witness. The words may also encompass the discovery of new and important evidence not previously available.*
>
> *[19] In my view, however, the words do not cover a complaint that the Tribunal was merely mistaken or wrong in its findings of fact or in its application of the law. There are two reasons for this. First the strength of the language in s 105 is such that*

> *something more than a mere wrong decision must be shown. The section does not speak of a decision being wrong, but of a substantial wrong or miscarriage of justice occurring. This implies obvious injustice, not merely an erroneous decision."*

9. Usually the party applying for the rehearing must show that something went wrong with the Tribunal's procedure, for example, that they did not receive notice of the hearing or they were not able to properly present their case.
10. The District Court has held that if the Tribunal was simply wrong in its findings of fact, or its application of the law, this is not sufficient to establish a miscarriage of justice: a rehearing is not an alternative to an appeal. Furthermore, a rehearing will not be granted just because a party is unhappy with the decision, or to give them a second opportunity to present their case.
11. Also as noted by Judge Christiansen in the District Court appeal of *Loh v Puri* [2019] NZDC 1993:

> *"Rehearings are about challenges to processes and procedures and are not about what the adjudicator found or the decisions the adjudicator made."*

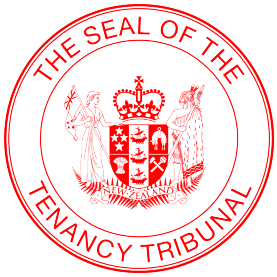
Should the Tribunal accept the rehearing application filed out of time?

12. Mr Ferris Senior filed his rehearing application and application for leave to file the rehearing application out of time on 27 August 2025, more than 5 weeks after the Tribunal's order dated 21 July 2025. He cited the reason for this being that he was trying to find a lawyer or somebody to assist him.
13. I decline to grant Mr Ferris Senior leave to file his rehearing application out of time, as he has provided insufficient grounds for me to accept how late it has been filed.
14. Even if I had granted leave to Mr Ferris Senior to file his rehearing application out of time, I would have made the following comments:
    a. the matters identified by him as grounds are appeal matters, not those relevant to a rehearing, which are procedural issues and new evidence that could not have been available at the time of the original hearing.
    b. For clarity, the issues raised by Mr Ferris Senior about him not being able to comply with the terms of the Tribunal's order are not issues that relate to procedural matters at the hearing, or to any new evidence.
    c. The evidence put forward by Mr Ferris Senior about the GDC consent information in relation to the river by the property was evidence that he could have obtained and provided prior to the original hearing. Mr Ferris

Senior was well-aware prior to the original hearing that the issue of access to the property was a key one, and he had provided significant evidence about this for the original hearing. This is not new evidence that could not have been available for the original hearing.

d. The evidence provided by Mr Ferris Senior about the property being on Crown land was also available to him before the original hearing. Information about whether land is Crown land is publicly available. He did not raise this as an issue at the original hearing, though he could have. The landlord said this is a red herring, as they have a 99-year lease from the Crown for this land and permission to sub-let the land and chattels.

e. It is important that matters come to an end in relation to this tenancy. The parties have been involved in dispute for a significant time in relation to this tenancy, and other matters outside the Tribunal's jurisdiction. All parties need to be able to move forward.



C Price
22 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.

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.