[2025] NZTT 5303139

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] Tenant
RESPONDENT:	Raine & Horne Realty Limited As Agent For Wuruhi Murray Trust Landlord
TENANCY ADDRESS:	[Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant name and identifying details.
2. The Bond Centre is to pay the bond of $3,400.00 ([Bond number suppressed]) to [The tenant/s] immediately.
3. By way of declaration, the term of the fixed-term tenancy of [The tenant/s] at [Tenancy address suppressed] ended at 11.59pm on 28 July 2025.
4. Raine & Horne Realty Limited As Agent For Wuruhi Murray Trust must pay the tenant $28 being the filing fee on the application.

Reasons:

1. Both parties attended the hearing with Mr Holman representing the landlord.
2. The parties entered a fixed term tenancy for the premises starting on 5 October 2024 and due to expire on 5 October 2025.
3. The tenant has applied for an order declaring that the fixed-term tenancy has ended and refund of the bond. The tenant says the landlord agreed that the tenancy could be ended on 21 days' notice in writing by the tenant and she gave such a notice ending the tenancy on 28 July 2025. She then vacated the

premises and handed the keys back to the landlord. Rent is paid up to 1 August 2025.

4. The landlord says that a mutual agreement to end the tenancy was not reached and the tenant remained liable under the tenancy agreement after she vacated. The premises have not been re-let as the owner intends to sell them. However, the owner agrees to release the tenant from the tenancy with effect on 1 September 2025. Given that rent is paid up to 1 August 2025, the landlord would accept the bond to cover rent owed up to the proposed release date.

Evidence of the parties

5. On 7 July 2025, Mr Holman sent the tenant a 90 day notice advising that the owner wished to terminate the tenancy at the end of the fixed term on 5 October 2025. The notice also advised her that the owner intended to put the premises on the market for sale in mid-August and would offer her a $50/week rent reduction to offset the inconvenience caused by the sale process and open homes. The notice also stated:

   "Below is data from Tenancy Services relating to early termination. It would be unrealistic and unfair of an owner to expect you to stay to the very last day of the tenancy fixed term which may not harmonise with the availability of new accommodation, so it is likely that you may find a place that will see you wishing to vacate earlier which can be done by this way by mutual agreement.

   Landlords and tenants can agree to end the tenancy early

   Fixed term tenancies can only be changed if the landlord and all the tenants listed in the tenancy agreement agree. The agreement should be in writing and should include what has been agreed to. Both the landlord and tenants should keep a copy of this.

   (This clause isn't applicable in this instance at the closing portion of the fixed term unless of course potentially if you wanted out next week?)

   The landlord may charge a fee for ending the fixed term early. These fees should only be their actual and reasonable costs. For example, the cost to advertise for new tenants.

   If you have any questions, please reach out to me and I will clarify as best I can. We don't currently have any comparable properties for rent but will keep you foremost in mind if something does free up."

6. The tenant explained that prior to this tenancy she and her family (4 children) had been homeless for many years and when she had signed this tenancy agreement she had a conversation with the landlord about wanting a long term tenancy. She had expected that all going well, the tenancy would be renewed at the end of the term.

7. The 90-day notice caused the tenant significant stress and panic. She immediately called Mr Holman to discuss the matter. She asked whether she could stay in the tenancy under new owners. Mr Holman explained that the premises were being sold with vacant possession and there was no option for her to stay.

8. After being homeless for many years, the tenant knew that it could take time to find a new home and, anxious to secure a tenancy, she started applying for homes immediately. She attended a viewing the next day on 8 July. The agent handling the viewing indicated that she may be offered the property and asked her how much notice she would need to give her current landlord. The tenant then rang Mr Holman around 4pm on 8 July advising him of the situation and asked him how much notice she would need to give to end this tenancy.

9. Mr Holman confirmed in evidence at the hearing that he told the tenant in this telephone call that she would need to give 21 days' notice. However, he says that he also advised her to take her time, because time was on her side, to make sure she found a nice property. The tenant advised the agent of what Mr Holman had said about notice. The agent said that she would call Mr Holman for a reference and if that went well they would offer her a tenancy. Mr Holman confirmed that the agent called him for a reference which he gave.

10. The tenant was advised by the agent that Mr Holman had given her an outstanding reference and she was offered the new tenancy. That night, 8 July at 7.03pm the tenant emailed Mr Holman her 21 day notice to end the tenancy, which would be effective 28 July. However, she also asked whether it was possible to end the tenancy sooner on 24 July.

11. Mr Holman replied the next morning, 9 July at 9.20am, advising that he would pass the request onto the owner. The tenant says she was confused by this reply because she only ever dealt with Mr Holman. She also interpreted that Mr Holman would ask the owner whether the tenancy could be ended before the 21 days' notice expired, not for consent to the 21 days' notice. Then, at 9.59am Mr Holman sent the tenant another email asking whether she had already signed a tenancy agreement on the new property. At 4.13pm, the tenant replied apologising for the delay because she had been at work and advised she hadn't signed a new tenancy agreement "just yet". However, a few minutes after this email, she received the agreement for the new tenancy and signed it.

12. After signing the tenancy agreement, the tenant received another email from Mr Holman at 4.46pm. In this email Mr Holman advised that the owner requested time until 28 July to make a decision on the tenant's early departure. It was apparent from this email and subsequent communications that the landlord/owner believed that they had not mutually agreed to end the tenancy and were still considering the tenants request. However, the tenant believed that she had been given clear advice by Mr Holman that she was able to give

21 days' notice to end the tenancy and she had done so in reliance on that advice.

Analysis and law

13. Mr Holman concedes that he advised the tenant that she could give 21 days' notice to terminate the tenancy. However, he says that he gave her that advice in the context of the information in the 90-day notice in which he had advised that the fixed term tenancy could only be ended early "by mutual agreement". I asked Mr Holman whether he mentioned the notice in this conversation or advised her that a mutual agreement was required before she could give notice in the telephone call. He confirmed that he did not mention the 90 days' notice or the need for a mutual agreement in this telephone discussion, but he says that this was made clear in the notice.

14. Mr Holman's position and communication with the tenant do not make sense. He told the tenant she could give 21 days' notice but says he still believed she had to reach a mutual agreement with the landlord to end the tenancy early. Those two positions are inconsistent. Either she could give 21 days' notice or she could not. If 21 days' notice was not acceptable, then the landlord should not have told her that she could 21 days' notice. He should have told her that he would need to obtain the owner's agreement to end the tenancy early on a certain date.

15. After this critical phone call with the tenant, Mr Holman was contacted by the agent seeking a reference for the tenant and he provided it. He later advised the tenant that he got the impression from this agent that she didn't really care about the tenant and just wanted to let the property. Therefore, at that point he had advised the tenant that she could give 21 days' notice; he knew that she had applied for another tenancy and understood that the agent wanted to let the property to the tenant quickly. If his position was that the tenant could not give 21 days' notice then it was incumbent on him to tell her so.

16. Mr Holman was the agent acting for the owner and the only person dealing with the tenant. She reasonably relied on his advice and gave 21 days' notice to end the tenancy.

17. Mr Holman's communications immediately following the notice did not correct any misunderstanding he thought the tenant was under. He did not contact her that night to warn her not to sign any new tenancy agreement. The day after notice was given on 9 July, he asked the tenant by email at 9.59am if she had already signed a tenancy agreement. He did not tell her not to do so. When she replied later in the day that she had not signed it "just yet" he did not take any immediate steps to advise her not to do so.

18. I find that the landlord encouraged the tenant to believe right from the giving of the 90-day notice that she would be able to terminate the fixed term early. The wording of the notice is explicit: "*It would be unrealistic and unfair of an owner to expect you to stay to the very last day of the tenancy fixed term which may not harmonise with the availability of new accommodation, so it is likely that you may find a place that will see you wishing to vacate earlier which can be done by this way by mutual agreement."*

19. When Mr Holman told the tenant she could give 21 days' notice to end the tenancy, I find that this was the mutual agreement reached.

20. The tenant's claim here is that the landlord encouraged her to give 21 days' notice to end the tenancy early. This came about because the owner intended to sell the property and not renew the tenancy at the end of the fixed term. To that end, and knowing the tenants previous homelessness, they wanted to give her as much notice as possible.

21. The tenant's argument raises the principle of law known as estoppel. Estoppel is a principle of law which prevents a person, who has led another to believe in a particular state of affairs, from going back on the words or conduct which led to that belief, because to do so would be unjust, inequitable or unconscionable. This area of law is complex but for the present case it is sufficient to refer to *Equity and Trusts In New Zealand*[1]which states that the party alleging an estoppel must show:

    a. A belief or expectation has been created or encouraged through some action, representation, or omission to act by the party against whom the estoppel is alleged;

    b. The belief or expectation has been reasonably relied on by the party alleging the estoppel;

    c. Detriment will be suffered if the belief or expectation is departed from; and

    d. It would be unconscionable for the party against whom the estoppel is alleged to depart from the belief or expectation.

22. In the present case, and adopting an objective approach, I find that in the course of the communications between the parties (extensively set out above) Mr Holman's conduct gives rise to an estoppel. Mr Holman prefaced the idea that the tenancy could be ended early in the 90-day notice by mutual agreement. However, later when specifically asked by the tenant he confirmed that she could give 21 days' notice to end the tenancy. This advice was also given at a time when he knew that she had attended a viewing and may be offered a new tenancy. Therefore, I find that by his words and conduct he

[1] Equity and Trusts in New Zealand (2nd Ed, 2009, General editor Dr Andrew Butler) at [19.2]

represented to the tenant that she could give 21 days' notice to end the tenancy.

23. I am also satisfied that the tenant reasonably relied on Mr Holman's representation when giving the notice to end the tenancy and signing a new tenancy agreement. She will suffer detriment if the belief is departed from as she will be liable for rent until the landlord releases her from the tenancy. In this case the bond money is at stake. Overall, if the landlord is permitted to resile from the representation given, this would be an unjust, unfair and unconscionable result for the tenant.

24. For the above reasons, I find that the landlord's conduct in this matter gives rise to an estoppel. Therefore, I find that the tenant was entitled to give 21 days' notice to end the tenancy and the tenancy so ended on 28 July 2025. Rent is paid up to date and the landlord has made no other claim against the bond following the end of the tenancy. Therefore, the bond of $3,400 is to be refunded to the tenant. Orders are made accordingly and the Bond Centre will be instructed to refund the bond to the tenant. I note that the tenant may need to contact the Bond Centre and provide them with her bank account details to enable quicker disbursement of the bond.

25. As the tenant has wholly succeeded with her application she is entitled to reimbursement of the filing fee and suppression of her name and identifying details.

K Stirling
24 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.