[2025] NZTT 5326322

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Kāinga Ora–Homes And Communities Landlord
RESPONDENT:	KEN EDWARD RYDER-DUZEVICH Tenant
TENANCY ADDRESS:	Unit/Flat Unit 103, 29 Beach Road, Te Atatu Peninsula, Auckland 0610

ORDER

1. The tenancy of KEN EDWARD RYDER-DUZEVICH at Unit/Flat Unit 103, 29 Beach Road, Te Atatu Peninsula, Auckland 0610 is terminated, and possession is granted to Kāinga Ora–Homes And Communities, at 6.00pm on Thursday 16 October 2025.

Reasons:

1. The landlord attended the hearing by phone call.
2. The tenant was telephoned on the phone number provided but the phone call was not answered. I am satisfied the tenant was properly served with notice of the hearing to his address for service (the tenancy address). The hearing proceeded in his absence. The tenant has not provided the landlord with an email address for service.
3. The landlord has applied for termination for a breach of the tenancy agreement.
4. The issue I must determine is whether the tenancy should be terminated.

Relevant legal considerations

5. The relevant law that applies is found in the Residential Tenancies Act 1986 (**RTA**).

6. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations: That includes a requirement that the applicant, establish their claims on the balance of probabilities. The balance of probabilities means more likely than un-likely, or in mathematical terms, has a fractionally more than 50% likelihood.

7. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely. This obligation carried by the applicant is referred to as the "burden of proof". Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

8. As noted by the District Court in *Kaipo v Clarke & McCarthy* (DC) TT233/02, in practical terms this means that: … "[L]ike anyone who brings an application before a Tribunal or Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to provide the necessary evidence. It is not up to the other parties, and it is certainly not up to the Tribunal to extract evidence."

Relevant law - Termination under section 56

9. The Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate.[1]

10. Where the breach is capable of remedy the landlord is required to serve a 14-day notice to remedy the breach on the tenant and prove that the tenant has not remedied the breach.

11. The issues I need therefore to consider therefore are:

    a. Has the tenant breached any obligation to the landlord,[2] and

    b. If the breach is capable of remedy, the landlord issued a 14-day notice to remedy which the tenant has not complied with,[3] and

    c. That the breach was of such significance, that it would be inequitable (unfair) not to terminate the tenancy. [4]

[1] See section 56(1) of the RTA.
[2] See section 56(1)(a) of the RTA.
[3] See section 56(1)(b) of the RTA.
[4] See section 56(1)(a) of the RTA.

Has the tenant breached any obligation to the landlord?

12. Clause 14 and 15 of the tenancy agreement says:

> 14. You must live at the home at all times. The home must only be used by you and the other people who were named in your housing application.
>
> 15. If you are going to be away from the home for more than 30 days (for example, if you are on holiday or sick), you need to let us know.

13. The landlord says the tenancy commenced on 23 December 2024. The landlord says that there has been a number of issues in relation to the tenancy however crucially it appears the tenant has not been residing at the tenancy premises. The landlord attempted to contact the tenant a number of times in May and June 2025. The tenant did not attend arranged meetings with the landlord to discuss the tenancy. Its clear that the landlord believed the tenant may not be living at the address as they served a 14 day breach notice, on 1 July 2025. I refer to this further below.

14. A request for information from the Police was made by the landlord and information obtained on 8 August 2025 says the tenant has been living at a different address according to the Police records since April 2025.

15. I find it more likely that not that the tenant has breached clauses 14 and 15 of the tenancy agreement.

Is the breach capable of remedy?

16. Where a breach is established and the breach is capable of remedy, the landlord must give the tenant a notice to remedy, which the tenant does not remedy within 14 days.

17. The breach is capable of remedy because the tenant can recommence residing in the premises.

18. Due to a lack of communication from the tenant the landlord issued a 14 day notice to remedy the breach on 1 July 2025.

19. The 14-day notice said the landlord required the tenant to live at the property. The landlord says on 22 July 2025, a house visit was attempted but the tenant did not respond to the door. The landlord says a letter was affixed to the front door advising of a scheduled inspection on 29 July 2025, noting that a locksmith would attend due to ongoing lack of engagement from the tenant.

20. The landlord says on 29 July 2025 the inspection took place; however another person was at the property. The tenant was not at the property.

21. The landlord as attended at the property on 23 September 2025, and no one answered the door. A call card was left at the door and a photograph was provided as evidence of this.

22. The landlord has made a number of attempts to confirm the tenant is residing at

the property and the lack of communication or evidence that he is living at the property indicates that it is likely he continues to not reside at the property. The information obtained from the Police also indicates the tenant has been residing at a different address.

23. I therefore find that the tenant did not remedy this breach within the required period or by 23 September 2025.

Inequitable to refuse to terminate a tenancy

24. In *Vincent Dean Huff v City Central Property Management*[5] the Court set out a range of factors that are relevant to the consideration of whether a breach is of such a nature or of such an extent that it would be inequitable to refuse to make an order terminating the tenancy, these factors are:

    a) The history of the tenancy.

    b) Whether there had been a persistent failure after repeated warnings.

    c) Whether the history of breaches was such it was unlikely the tenant would comply with their obligations in the future.

    d) Whether the breach was inadvertent or deliberately committed.

    e) The conduct of the landlord.

    f) The gravity of the breach.

    g) Whether termination is a proportionate response to the breach.

25. Having determined that the tenant has breached a term of the tenancy agreement, and the breach has not been remedied I will address each factor below:

(a) the history of the tenancy:

26. The tenancy commenced in 2024. It is therefore very short but numerous issues have arisen in relation to the tenancy in the short period.

(b) whether there had been a persistent failure after repeated warnings:

27. I consider there has been a persistent failure by the tenant to comply with the 14-day breach notice, given it has been nearly three months since the 14-day notice was issued and the landlord confirmed on 23 September 2024 that the tenant does not appear to be living at the premises.

(c) whether the history of breaches was such it was unlikely the tenant would comply with their obligations in the future:

28. I consider that there is a risk on ongoing non-compliance, given the history of non-compliance.

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[5] *Vincent Dean Huff v City Central Property Management* [2020] NZDC 19229 at [61].,

(d) whether the breach was inadvertent or deliberately committed:

29. I consider the breach is most likely deliberate, in the sense that the tenant makes decisions around whether he lived in the property. However, I am unsure if the tenant has set out on a deliberate course intending to breach his obligations.

(e) the conduct of the landlord:

30. There is no evidence that the landlord has acted inappropriately.

(f) the gravity of the breach:

31. I consider the breach is serious breach of the tenants' obligations, given the high demand for social housing and the tenant not appearing to be living in the house that has been provided for him.

(g) whether termination is a proportionate response to the breach:

32. I consider that termination is a proportionate response to the breach. The landlord is a social housing provider and the premises ought to be available for tenants who will not persistently breach their obligations as the tenant has in this case. The premises is currently a resource being wasted.

Outcome

33. For reasons above I consider it would be inequitable to refuse to terminate the tenancy. The tenancy is terminated.

34. The landlord did not seek the filing fee or name suppression.

35. This order will be sent to the address provided by the Police to the landlord and tenancy address, and I have delayed the termination date to allow the Order to be received by the tenant.

N Bradley
25 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.