TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: The applicant

Tenant

RESPONDENT: The respondent

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made by both parties in this case, and the Tribunal orders suppression of the parties' names and identifying details.
2. The tenant must pay the landlord $1,348.00 immediately.
3. The amount to pay is calculated as follows:

Description	**Landlord**
Rent to 19 September 2025	$2,200.00
Filing fee reimbursement	$28.00
Total award	**$2,228.00**
Less Bond	$880.00
Total payable by Tenant to Landlord	**$1,348.00**

4. The Bond Centre is to pay the bond of $880.00 ([Bond number suppressed]) to the landlord immediately.

Reasons:

5. Both parties attended the hearing to present their applications.

Background

6. The tenancy premises is the residential accommodation above a café. The tenant responded to an advertisement and viewed the premises on a Sunday afternoon when the café was operating. The tenant signed a tenancy agreement for the

premises. The tenancy commenced on 19 April 2025 for a fixed term until 19 April 2026.

7. On 1 August the tenant emailed the landlord stating that she had been woken at 4:30am by activity associated with the café. She referred to other ongoing disruptions to her sleep from loud music, the constant beat of music from the café and deliveries to the café between 2am and 4am. She also referred to a gate that was being left open. The tenant expressed her frustration with the situation she was in and requested a time to discuss this with the landlord.

8. The landlord responded the next day offering to release the tenant from her tenancy agreement if that is what she wanted. When the landlord did not receive a response the landlord sent a further email on 6 August. In a phone conversation that followed the tenant stated that she wanted to leave and wanted compensation from the landlord. The email from the landlord on 9 August stated that the landlord agreed to release the tenant from the fixed term provided the tenant gave two weeks notice of her final day. The landlord declined to pay compensation.

9. The tenant stopped paying rent after 15 August.

10. The tenant informed the landlord by voicemail on 5 September that she had ended the tenancy that day. She handed back the key on 6 September.

11. The issues to be considered in the tenant's application are:

    a. Was the landlord required to disclose that there would be noise from the café to the premises above?

    b. Was the landlord required to inform the tenant of the hours of café activity?

    c. Did the landlord breach the obligation not to interfere with the tenant's peace and comfort. (section 38 Residential Tenancies Act 1986)?

    d. Did the landlord fail to take reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises? (ss 45(1)(e) Residential Tenancies Act 1986)

    e. Should the Tribunal order the tenant's claim for a refund of half the rent she paid to the landlord and her costs of moving?

12. The issues to be considered in the landlord's application are:

    a. Should the tenant pay rent arrears from 16 August 2025 to 5 September 2025?

    b. Should the tenant pay 14 days rent in lieu of notice to 19 September?

    c. Should the tenant pay advertising and other costs the landlord has incurred to find a new tenant?

A. The tenant's issues.

Was the landlord required to disclose that there would be noise from the café to the premises above?

13. The tenant has claimed that the landlord misled her by not disclosing that there was excessive noise from the café that could be heard in the premises. The tenant believes that the landlord had a responsibility to disclose that there was noise even if she didn't ask about noise.

14. I have considered whether the landlords knew there was a significant level of noise at the premises and had a duty to warn the tenant of that fact, even if the tenant did not ask about noise during the visit there.

15. The landlord's submission is that noise from the café had not been an issue since they became owners of the building and therefore they did not feel that noise was an issue for a prospective tenant. They stated that there had been several tenancies at the premises since the company purchased the building about 12 years ago and none of the tenants had complained about noise. One tenancy had been for five years and one for three years. The directors of the company had also lived in the premises for eighteen months. All tenancies were while a café was operating below.

16. The landlord said that the tenant visited the premises when the café was busy on a Sunday afternoon and did not raise any concern about noise at that time.

17. The tenant suggested that there had been a recent change in the building structure through seismic strengthening work resulting in noise being transferred up through steel beams. However seismic strengthening work was completed in 2012, not 2025.

18. There was a change of operator of the café in March 2025. It is possible that this operator is more noisy than previous operators however there was insufficient evident pointing to the landlords being aware of a change in noise levels from the time that they and other tenants lived there. The landlords said that the hours of operation of the café are now less than café hours for previous tenancies. They expected there would be less time where noise could be heard from the café.

19. I have considered the evidence regarding what was known about by the landlord about noise from the café. I do not find it proved that the landlord concealed information from the tenant that should have been disclosed.

20. That is not to say that there was a significant amount of noise from various sources that were understandably frustrating to the tenant and affected her ability to enjoy the living at the premises. It was helpful that the landlord allowed the tenant to end the tenancy and find other accommodation after the tenant was so stressed about living there.

Was the landlord required to inform the tenant of the hours of café activity?

21. The tenant claimed that the landlord failed to inform her of the hours that the café was operating.

22. There is little that needs to be said about that. Where a party to a contract can be informed by their own due diligence, there is no requirement for the other party to pass on that information. There was nothing stopping the tenant from reading the café hours of operation that is written at the entrance to the café. The tenant could have had a conversation with the café owner about their operation before deciding to sign the tenancy agreement.

23. I am not satisfied that the landlord breached any obligation regarding information of café operating hours.

Did the landlord breach its obligation not to interfere with the tenant's quiet enjoyment of the premises? (section 38 Residential Tenancies Act 1986)

24. The tenant has claimed that the landlord interfered with her peace and comfort by the noise coming from the café.

25. If it was determined that the landlord was interfering with the tenant's peace and comfort, the breach would be one that could be remedied. Under the Residential Tenancies Act 1986 (RTA) a landlord would be required to remedy the breach.

26. In the present case it would be a stretch to conclude that the noise from the café was the landlord interfering with the tenant's quiet enjoyment of the premises. However, if it was determined that the noise from the café was the landlord interfering with the tenant's quiet enjoyment, the landlord met its obligation to remedy by granting the tenant's request to end the tenancy. No compensation would be due because the breach was remedied by a reduction of the fixed term tenancy.

Did the landlord fail to take reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises. (ss 45(1)(e) Residential Tenancies Act 1986)?

27. Although not raised by the tenant in her application I have also considered whether the landlord took reasonable steps to ensure that its café owner tenant did not interfere with the comfort and peace of its residential tenant.

28. After the landlord received the letter from the tenant on 1 August, the landlord met with the café owner to discuss the matters raised in the tenant's letter. Some decisions were made that could reduce the noise from the café.

29. I am satisfied that the landlord did take reasonable steps to address the tenant's concerns.

Should the Tribunal order the tenant's claim for a refund of half the rent she paid to the landlord and her costs of moving?

30. The tenant has claimed half the rent be refunded to her because the landlord failed to disclose information about the cafe that resulted in her agreeing to a tenancy that she would not have agreed to if that information had been disclosed to her.

31. I have not found it proved that the landlord misled the tenant about the premises prior to the agreement being signed. The tenant was granted relief promptly when she informed the landlord of the difficulty she was having living there. There is insufficient reason for rent to be refunded.

32. The tenant would be entitled to compensation such as moving costs if the landlord was in breach of the tenancy agreement or the RTA. The tenant has demonstrated that she could not tolerate the noise at the property however she has not proved that the landlord breached her quiet enjoyment or misled her about the premises.

33. The tenant's claim for compensation is therefore dismissed.

B. **The Landlord's issues**.

Should the tenant pay rent arrears from 16 August 2025 to 5 September 2025?

34. The landlord has claimed rent up to the time the tenant left the premises.

35. I am satisfied that when the parties discussed the tenant's concerns about noise, they reached an agreement about how the tenancy would end. That agreement is the email dated 9 August sent by the landlord to the tenant. The tenant acted on that letter and by her actions indicated that she was in agreement with the terms of the tenancy coming to an end.

36. There was no agreement that the tenant would not pay rent to the end of the tenancy. Therefore, the tenant is liable to pay rent to 5 September 2025.

Should the tenant pay 14 days rent in lieu of notice to 19 September?

37. As stated above, the landlord agreed to a reduction in the fixed term provided the tenant gave 14 days notice prior to ending the tenancy.

38. The tenant did not give 14 days notice. She left giving no notice. She was in breach of the termination agreement. The landlord did not tenant the property before 19 September. Therefore, the tenant must pay rent to 19 September which equates to the 14 days notice.

Should the tenant pay advertising and other costs the landlord has incurred to find a new tenant?

39. In its application the landlord has claimed costs associated with ending the fixed term tenancy.

40. In the email dated 9 August, the landlord referred to costs that would arise for the landlord because the fixed term was being reduced. The landlord's position in that email was that each party should meet their own unexpected costs.

41. As stated above, I view this email as the parties' agreement to end the tenancy. The tenant could assume from this email that the landlord would not be making a claim for costs. It would be inappropriate for the Tribunal to order these costs when the landlord had informed the tenant that the parties should meet their own costs.

Filing fee

42. Because the landlord has been partly successful with the claim the filing fee of $28.00 must be ordered to be paid by the tenant. The tenant was not partly successful with her claim.

Suppression

43. Both parties have requested name suppression.

44. Section 95A(1) of the Residential Tenancies Act 1986 provides that the Tribunal must, on the application of a party that has wholly or substantially succeeded in proceedings, order that the party's name or identifying particulars not be published, unless the Tribunal considers that publication is in the public interest or is justified because of the party's conduct or any other circumstances of the case.

45. The landlord has substantially succeeded with the claim and therefore name suppression is granted.

46. The Tribunal may, on its own initiative, having regard to the interests of the parties and to the public interest, order that all or part of the evidence given or the name or any identifying particulars of any witness or party not be published. (s.95A(4).

47. I am satisfied that there is no public interest that requires the publication of the tenant's name in this case and therefore order that her name and identifying details also be suppressed.

B Smallbone
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.