[2025] NZTT 5193031

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	Slpm Limited As Agent For R Jha Landlord
RESPONDENT:	[The respondent/s] Tenant
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 application for rehearing is dismissed.

Reasons:

1. Both parties attended the rehearing hearing.
2. On 20 August the Tribunal made an order for compensation payable to the Landlord but dismissed most of the Landlord's claims.
3. On 25 August 2025, the Landlord applied for a rehearing on the grounds that a miscarriage of justice had occurred, and in particular:
    a. The Tribunal took too long to issue its decision;
    b. The decision incorrectly records the dates of the tenancy;
    c. The Tribunal had not considered all of the evidence;
    d. Or, if all evidence had been considered, the Tribunal had reached the wrong decision;
    e. Fresh evidence is available, and the Tribunal should have granted an adjournment request on 18 June to allow that evidence to be obtained.

Legal Principles

4. Section 105(1) Residential Tenancies Act 1986 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".

5. In this context, a substantial miscarriage of justice refers to errors of process. So, 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.

6. 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. See *Wellington City Council v McMillan* [2003] DCR 50, where the District Court stated:

> *[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.*
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> *[20] Secondly, if a mere erroneous decision is enough, whether the error is factual or legal or both, it would enable parties to in effect appeal any decision twice: once to the very Tribunal which made it by way of an application for rehearing, and then again to the District Court against the grant or refusal of the application for rehearing. Not only does that offend the general hierarchical nature of the appeal system, it would also make the time limit for filing notice of appeal against an original decision nugatory.*

7. 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.

8. A rehearing may also be granted where there is new evidence ***that was not reasonably available at the first hearing, if it could have affected the outcome***.

9. In *Jemma Trust v Rutherford* (DC North Shore, CIV-2009-044-2056, 11 December 1999), the District Court quoted an extract from the Court of Appeal outlining the relevant considerations:

> *The principles upon which further evidence is admitted are designed to balance the interests of the person seeking to adduce such evidence on the one hand with the interests of the opposite party is on the other. They are also designed to reflect the public interest in ensuring, so far as is possible, that parties put up their best case at trial. Any other approach would be very wasteful of public resources. The conventional requirements are that the further evidence must be fresh, it must be credible and it must be cogent.* ***Evidence is not regarded as***

> ***fresh if it could with reasonable diligence have been produced at the trial*** *(emphasis added)….While the absence of freshness is not an absolute disqualification, the criteria for admission in such circumstances must be very strict. In our view, when the evidence is not fresh it should not be admitted unless the circumstances are exceptional and the grounds compelling.*

10. For the following reasons the Landlord has failed to establish the grounds for a rehearing.

Time to Issue Decision

11. The hearing took place on 26 June 2025. The decision was issued on 20 August 2025.
12. The Tribunal endeavours to release decisions promptly. Sometimes that is not possible.
13. The delay in this instance is regrettable but does not demonstrate an error in the Tribunal's process.
14. The Landlord's information was not presented concisely. Following the hearing, the Tribunal was required to review a large volume of documents to assess whether the Landlord had discharged its onus of proof. In contrast, the tenants submitted comprehensive submissions in response the claims which clearly set out their position.

"Incorrect" Dates

15. The Landlord claims that the decision incorrectly records the dates of the tenancy. The landlord says that the incorrect dates are an example of evidence not being properly considered.
16. The Order records that the tenancy started on 16 January 2023 and ended on 23 January 2025.
17. The Landlord says the correct dates were 10 January 2023 to 31 January 2025.
18. There is an evidential basis for the dates recorded in the Order. Those are the dates provided at paragraph 2b. of the Tenant's submissions.
19. Further, nothing turns on the dates. They were provided by way of background to record a tenancy of two years duration, a week either way does not change the substantive findings.

Consideration of the Evidence

20. The Landlord says that the Tribunal cannot have properly considered the evidence because, if it had, it would have reached a different decision.

21. As noted in the 20 August decision, a party who brings a claim to the Tenancy Tribunal must prove on the balance of probabilities (more likely than not) that their version of events took place. They must prove that the other party has breached its obligations ***and*** the loss (or consequence) they have suffered because of that breach.

22. In this instance, after assessing all of the evidence of both parties, the Tribunal found that the Landlord had not discharged the onus of proof. The Landlord's rehearing application is an attempt to relitigate those findings. Incorrect findings of fact or law do not provide grounds for rehearing. See *Wellington City Council v McMillan* referred to above.

23. The Landlord's rehearing application also appears to overlook that it is required to prove both the tenant's breach of its obligations ***and*** the loss suffered as a result. An example of this is in relation to the cleaning and oven cleaning claimed.

24. This tenancy ended in January 2025. The application was made in March and the hearing took place in June. In submissions filed before the hearing, the tenant's acknowledged that some cleaning could have been required and requested an invoice from the Landlord (given the lapse of time since the tenancy ended). None was provided. See para 11 Tenant submissions.

25. The 20 August decision records:

> *8. The tenants did not leave the premises reasonably clean and tidy and did not remove all rubbish. The landlord claimed $632.50 for cleaning but did not provide any evidence of the cost incurred. The landlord provided a quote for cleaning dated 28 April 2025, three months after the tenancy ended.*
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> *9. The landlord did not establish that it incurred the costs claimed. If it did incur those cleaning costs more than three month after the end of the tenancy, I am not persuaded that they relate to any breach by these tenants.*

26. Put simply, while the Landlord established a breach of the tenant's obligations, it did not establish that it has incurred any cost because of that breach. If that finding was wrong, it may have been a matter for appeal, but is not grounds for rehearing.

27. I have referred to the cleaning claim as an example only. I do not respond to all alleged erroneous findings, as these are not grounds for rehearing.

Fresh Evidence

28. As noted, the tenancy ended in January 2025. The application was made in March 2025.

29. A hearing was scheduled for 21 May 2025, but was adjourned at the Landlord's request.

30. The hearing was rescheduled to 26 June 2025. The parties were advised of the new hearing date on 21 May 2025. On 18 June 2025, the Landlord applied for an adjournment on the basis that an insurance claim had made been made after 21 May 2025.

31. The Tenants opposed the adjournment request. The adjournment was declined.

32. The Landlord claims that had the adjournment request been granted, it would have had further evidence which would have "quite dramatically" altered the outcome of the first hearing.

33. The "new" evidence is confirmation of an insurance settlement dated 30 June 2025. The settlement records that 7 excesses have been applied to a claim by the Landlord for accidental damage to the premises on 1 February 2025. There is no evidence as to what the damage was, or what the Landlord claimed.

34. The tenants say that this evidence could have been obtained, with reasonable diligence, before the first hearing. I accept that submission. An insurance claim was not made until after 21 May 2025. It was settled by 30 June 2025. That is, it took less than 6 weeks for information regarding an insurance settlement to be obtained. It could have been done before the application was made, or before the hearing on 26 June 2025.

35. The Tribunal is required to exercise its jurisdiction to ensure the fair and expeditious resolution of claims. For the Tribunal to do that, parties must also act in a timely manner; they must obtain their evidence and provide it to the Tribunal and other party promptly and efficiently. The Landlord did not do that in this case.

36. The evidence now relied on is not "new"; it could and should have been obtained by the Landlord before making the application, or before the 26 June hearing.

37. The tenants also say that the insurance information is unlikely to have altered the outcome because the Landlord did not establish that the work claimed for amounted to "damage". I also accept that submission.

38. The insurance information goes to quantum (the maximum amount that might be awarded if liability is established). Liability was not established; the Landlord did not prove that "damage" occurred during the tenancy. See paragraph 22 of Order dated 20 August 2025.

39. Even if liability had been established, the insurance information now provided would have been of limited use in assessing quantum, as it simply records that 7 excesses were applied, and does not provide any breakdown of the claims or alleged damage. There is no evidence of what alleged damage each excess relates to.

40. The application for rehearing is dismissed.

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.