[2025] NZTT 5260067

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Harcourts Reliable Rental Management Limited As Agent For Mohammed, Jay Chauchau

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's name and identifying details.
2. Harcourts Reliable Rental Management Limited As Agent For Mohammed, Jay Chauchau must pay [The tenant/s] $2627.00.

Description	**Landlord**	**Tenant**
Filing fee		$27.00
Compensation for water overpaid		$1600.00
Exemplary damages: section 48		$400.00
Exemplary damages: section 38		$600.00
Total award		**$2627.00**
Total payable by Landlord to Tenant		**$2627.00**

Introduction

1. Only the tenants attended the hearing. There was no appearance for the landlord. There was therefore no challenge offered to the tenant's version of events, although I note that much of the evidence was the same as the information

provided to the Tribunal by the tenants at the last hearing, at which the landlord was present and offered little resistance.

2. The tenants advised me at the commencement of the hearing on 17 October 2025 that they had spoken to the landlord last Sunday (they have remained in contact as they have the same property manager for their replacement tenancy) and he was aware of the hearing on 17 October 2025.

3. The tenancy in this matter started on the 15 November 2024. At the prior hearing of this matter, I made an order by consent for the tenancy to terminate on 7 August 2025. So the tenancy has now come to an end.

4. The premises are a three bedroom, one bathroom property. The tenants lived there with their six year old. The tenants had specifically selected this property because it was near to their daughter's school, being only a five minute walk away.

5. The tenancy was a fixed term tenancy for one year. There was no mention at the outset that the landlord may want to sell the property.

6. The tenants have filed claims against the landlord for breaches of s 38 and s 48 of the Residential Tenancies Act 1986 (the RTA) arising out of the landlord's sudden wish to sell and the events that then unfolded (I refer to these events below).

7. The issues I must decide are whether the landlord breached their obligations to the tenants under these provisions and if so, whether compensation should be ordered.

Background

8. The events the subject of this application commenced on 24th of April 2025, when the tenants learned that the property was now listed for sale. The tenants found this out when they got a call from a real estate agent who had been engaged to sell the property. He was calling to advise of an upcoming open home, that very weekend. The weekend was the last weekend of the school holidays and it did not suit the tenants, so they declined.

9. The agent said from the next weekend onwards there "would be" open homes going forwards. The agent said the premises would need to be left clean and tidy for the open homes and they would need to vacate the premises. The open homes were from 11.30 to 12 noon, both Saturday and Sundays. He simply declared this as something that would be happening, there was no request for permission.

10. The tenants told the agent that the weekends were their only rest days, and asked could the open homes be during the week but the agent declined.

11. There were then three weeks of open homes. Eventually, the tenants asked for the open homes to be put on hold, because it was just too disruptive. They asked

if the open homes could be during the week and only one at the weekend. The agent replied to say he thought it was very unlikely but he would let the owner know.

12. On 8 May the tenants messaged the agent again to ask how long would the open homes go on for and if they were entitled to any rent reduction or compensation for having to leave the home for the open homes. They got no response to that.
13. On the 9th of May the tenants then messaged the agent to put all open homes on hold.
14. On 11 May the tenants got a message from the agent asking if he could have one open home during the weekend and one during the week. The tenants now declined that.
15. On 12 May the tenants sent a 14 day notice to the landlord "to sort a better agreement out" but got no response to that.
16. On 1 July, the tenants were informed by the landlord he would be coming to the property with a buyer the following day. The landlord said he had "a paper" which gave him the right, although he never showed the tenant that "paper".
17. The tenants were uncomfortable with that viewing going ahead, but felt they had no choice to agree a viewing a few days later, the following Monday.
18. On 25 July, the agent sent the tenants a text saying he wanted to bring someone to view the property. By then the tenants already had their hearing date scheduled.
19. The tenants have now moved out. It has been hugely disruptive for them. They have had to change schools for their daughter and due to the upheaval she had time off school.
20. To make matters worse, at the end of the tenancy, the tenants were asked for approximately $1600 for unpaid water. They had never received any water bills during the tenancy. They asked for the invoices for this amount but the landlord did not provide them. They say this sum was then taken from the bond. They felt pressured to sign the bond release because they did not want to have an outstanding debt on their record.
21. The tenants then received a further email from the landlord after the tenancy came to an end to say they owed $1500 in rent. This was never pursued by the landlord.

Relevant law

22. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See s 38(2) of the RTA.

23. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See s 38(3) and Schedule 1A RTA.

24. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds,* CIV-2009-019-001524, DC Hamilton, 26 February 2010.

25. Section 48 of the RTA deals with the landlord's right to inspect.

26. The landlord may not enter the premises during the tenancy without either the consent of the tenant or in any of the circumstances set out in subsections (2) and (3) of s 48. Relevantly, the landlord can enter the premises at any reasonable time for the purposes of showing the premises to a prospective purchaser. The landlord must still however secure the consent of the tenant first. Section 48(3) provides that the tenant may not withhold their consent unreasonably but may make the consent subject to any reasonable conditions.

27. If the landlord breaches s 38 or s 48, this is an unlawful act.

28. Breaching s 38 in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of $3,000.00. See s 38(3) and Schedule 1A RTA.

29. Breaching s 48 is an unlawful act for which exemplary damages may be awarded up to a maximum of $1,500.00. See s 48 (4)(a) and Schedule 1A RTA.

30. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) RTA.

31. Exemplary damages are designed to punish and to deter. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.

32. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

> Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish. They are like a fine, though they go to the citizen who has been the victim of conduct.

33. Section 109 of the RTA relates to exemplary damages, and confirms that exemplary damages can be awarded if an unlawful act was committed intentionally, and having regard to:

a. The intent of the person committing the unlawful act.

b. The effect of the unlawful act.

c. The interests of the landlord or tenant against whom the unlawful act was committed.

d. The public interest; and

e. Whether it is just to make the award.

Analysis

34. I accept all the evidence of the tenants, who I found to be reliable and clear witnesses.

35. The evidence establishes that the landlord has unreasonably sought to enter the premises on a number of occasions, without the effective agreement of the tenants. The landlord presented the open homes to the tenants as events that would be happening and the tenants were given very little choice in the matter. They felt they had to agree. I accept this conduct was very stressful for them.

36. The landlord would not have had the right to terminate this tenancy on the mere grounds that the premises had sold.

37. The conduct of the tenants in allowing the open homes and then consenting to an early termination of a tenancy has been highly considerate to the landlord.

38. I note that the property remains unsold and on the market.

39. Everything that unfolded was very disruptive for the tenants. They took on a fixed term agreement in the first place because they needed the security. They have a young child. It was extremely inconsiderate of the landlord to suddenly announce the open homes and the fact of a sale out of the blue and impose this on them as if the tenants had no choice in the matter.

40. I find that the landlord was in breach of their obligations under s 48 and that by a fine margin there has also been a breach of s 38. I find that the landlord's conduct amounts to harassment.

41. I also consider the attempt to secure payment of $1600, for "water" to be a harsh exercise of the landlord's right to request payment for water, especially since there had never been any invoices for water provided to the tenants. The landlord's entitlement to this sum had not been established.

42. I find that the $1600 the tenants paid "for water" must be repaid to the tenants.[1]

[1] See S 78(1) of the RTA.

43. I find that exemplary damages must be paid by the landlord to the tenants in relation to my findings under s 38 and s 48.

44. In relation to s 48, I am satisfied that this conduct would have been intentional. The landlord is a property manager and so would know what the law was. The effect of the conduct has been that it caused huge disruption for the tenants. They had to move with their young child. They did not want to do that. Their only time to relax was the weekends. They were actually willing to host open homes during the week, but the landlord initially declined that reasonable offer.

45. Likewise, I am satisfied that the breach of s 38 was intentional, for much the same reasons. The conduct was persistent and harassing for the tenants.

46. I take into account the landlord has not sought to pursue the tenants for any further rent and that the landlord arranged for them to find alternative accommodation.

47. I consider that $600 is an appropriate sum to award the tenants in regard to s 38 and $400 a suitable sum for s 48. These sums must be paid by the landlord to the tenant.

48. Because [The tenant/s] have succeeded with the claim I award them the filing fee.

49. I also consider it appropriate to award them name suppression as they have succeeded.

D Watson
20 October 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.