[2025] NZTT 5329400

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT:	[The applicant/s] 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 applicant and respondent's name and identifying details.
2. There is no residential tenancy between the parties.
3. [The applicant/s] is granted possession of the premises at [Tenancy address suppressed] 11.59pm on 30 November 2025.
4. [The respondent/s] must pay [The applicant/s] $28.00 immediately, being the filing fee.
5. The Tribunal does not have jurisdiction to hear the trust's claims for rates and insurance arrears so they are dismissed.

Reasons:

1. Both parties attended the hearing that took place by telephone.
2. [Applicant 1] attended for the trustees. [The respondent/s] also attended. She is both an applicant by virtue of her position as a trustee and a respondent in her own individual capacity. [Applicant 1] also had a support person.
3. With no disrespect to the parties, as many of them share the same family name, for ease of reading this decision, I will refer to them by their first names which were also used with the parties' permission at the hearing itself.

4. The applicant trust seeks possession of the property from [The respondent/s] who they say remains there.

5. I heard how the premises is the sole asset in a family trust. The trust was established in 2006 by [The respondent/s late husband]. The trust gives the trustees the power to distribute the trust assets on a discretionary basis.

6. [The respondent/s] previously lived in the premises with [The respondent/s late husband]. [The respondent/s late husband] had lived in the premises from the 70s or 80s onwards and [The respondent/s] and [The respondent/s late husband] were married in or about 2012.

7. In 2012, [The respondent/s] was added as a trustee to the trust. She became a trustee alongside [The respondent/s late husband] and [Applicant 2](who I heard was [The respondent/s late husband] long-time good friend). The trust deed of appointment has been provided. After [The respondent/s late husband] died in 2013 [Applicant 1] and [Applicant 3] became additional trustees with [The respondent/s]and [Applicant 2]. The deed of appointment has been provided.

8. [Applicant 1] is [The respondent/s late husband] son and [Applicant 3] is [The respondent/s late husband] brother.

9. The present position therefore is that [The tenant/s], [Applicant 1], [Applicant 2] and [Applicant 3] are the trustees. They are all named on the title documentation for the premises provided to the Tribunal.

10. [Applicant 1]'s position is that [The respondent/s] lived in the premises under a licence to occupy because the trustees were following a statement of desire signed by [The respondent/s late husband] and [The respondent/s] in 2012 which set out how the assets in the trust were to evolve.

11. This document set out that [The respondent/s] was to be able to live in the property for life on the condition that she paid the rates, insurance and maintain the property.

12. However, [Applicant 1] says that [The respondent/s] has not, in more recent times, done these things.

13. [The respondent/s] agrees that the rates are likely outstanding to the sum of $12,500. The insurance position and the extent of any required maintenance was not clear although [The respondent/s] admitted that [Applicant 3] had been paying for some of the insurance instalments.

14. The trust document sets out that if the trustees are not unanimous in their decision how to exercise their powers, the decision of the majority of the trustees is final (section 9.01, Appendix 1).

15. On 8 January 2025 lawyers for [Applicant 3], authorised by [Applicant 1] and [Applicant 2] wrote to [The respondent/s] about her not paying rates, insurance

and not maintaining the property. [The respondent/s] says she did not get this document at this time. However, she was later served with it on 24 January.

16. On 16 April 2025 meeting minutes of the trust record that [Applicant 1], [Applicant 2] and [Applicant 3] seek to revoke [The respondent/s] life interest and surrender vacant possession due to the non-payment. [The respondent/s] was sent notice of this decision in a "notice to cancel life interest and occupation licence" document dated 16 April 2025. This gave [The respondent/s] until 31 May 2025 to leave the premises.

17. [The respondent/s] says she is now renting an apartment, but I heard how she still in possession of the property as she is returning to sort through many items that remain there. [The respondent/s late husband] had lived there for decades and I heard how there were many items to go through. [The respondent/s] says she needs to 30 November 2025 to complete this work. She does not want to cause difficulties. She accepts that she needs to move. She is willing to do this as the trust wants it, but she needs this extra time.

Is there a residential tenancy?

18. Neither party asserted that a residential tenancy is in place. The landlord's application is made on the basis that there is none. The tenant also firmly takes this view. The focus has been the statement of desire and the occupation licence.

19. Even if I am to assume that there is a residential tenancy, I am satisfied it would in any event, be excluded by the RTA.

20. [The respondent/s] is a trustee and has been a trustee since 2012 (before [The respondent/s late husband] death). This means she has been a part owner of the premises since 2012 and remains one. This means, if there was a residential tenancy, [The respondent/s] would be both the landlord and the tenant.

21. Section 4 of the RTA provides that the RTA applies to all residential tenancies unless specifically excluded in section 5.

22. One such exclusion is found in section 5(1)(n) which provides that the RTA will not apply where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord's or owner's family.

23. Given the circumstances set out above, I find that section 5(1)(n) would exclude the application of the RTA. In the circumstances, [The respondent/s] is using the property principally as a place of residence and she would be her own landlord. Further, two of the other trustees, who would, if there was a residential tenancy, also be her landlord, are family members through her marriage to [The respondent/s late husband].

24. I am satisfied that the Tribunal does not have jurisdiction to deal with this matter as a residential tenancy.

Tribunal's jurisdiction to grant possession when there is no residential tenancy

25. The Tribunal does not only deal with matters in which there is a residential tenancy.

26. Section 65 RTA gives the Tenancy Tribunal the power to evict squatters or trespassers or people who do not have a right of occupation from residential premises.

27. Put in simple terms, if someone is living in a property without the legal right to be there, meaning they do not have permission from the correct person then that rightful person entitled to possession can apply to the Tribunal. If the person has no lawful right to occupy the property, the Tribunal can issue an order for possession, which means that person must leave.

28. Importantly here, the Tribunal can make this decision even if there is no residential tenancy.

29. The High Court has confirmed that there are three conditions to be met before an order under s 65 can be made:

    a. The premises are residential premises.

    b. The applicant is entitled to possession.

    c. The other party is a squatter, trespasser, or is not in possession pursuant to any right of occupation granted by a person having lawful authority to do so.

30. The three-part test reflects of the wording in the section, and the third limb itself contains three alternatives that may be satisfied.

31. The High Court has confirmed that once the three-part test is satisfied, it is mandatory for the Tribunal to make the possession order. See the District Court and High Court's decisions of *Sergeant v Nigro* [2019] NZDC 1060 at [25] to [26]; and [2019] NZHC 328 at [83] to [94].

32. If the applicant can prove (a) and (b) then the onus will move to the respondent to prove on the balance of probabilities that they have a right of occupation granted by any person with lawful authority to grant it and that the right has not been terminated.

33. In *Dunn v Dunn* [2024] NZHC 2612 there was a property dispute between family in relation to a will. The District Court made order granting possession to Mr Dunn under section 65 and that was not appealed. Ms M Dunn filed application in the High Court seeking orders in relation to will. The High Court then granted an injunction of the possession order as it considered the claim in the High Court was arguable.

34. This case appears to support the application of *Sergeant v Nigro*, meaning that the Tribunal does not have jurisdiction to consider arguments such as rights under an alleged life interest or Wills Act claim. That is only for the High Court. If the occupant considers they have a right to possession here under a life interest or otherwise, then the correct approach is not for the Tribunal to decline a possession order, but for the occupant to apply in the appropriate forum and seek an injunction in that forum.

35. Both parties were satisfied that I could proceed to consider the landlord's application for possession today (although this matter was originally listed as a jurisdiction only hearing) as the full argument had been heard and there was no need to return to the Tribunal again to repeat evidence already heard for me to decide the matter of possession.

36. I am satisfied that the premises are residential. There was no indication otherwise that the premises are anything otherwise. The dispute relates to the house that [The respondent/s] previously shared with [The tenant/s late husband].

37. The evidence is that the trust is the owner of the land, and in the absence of a tenancy or lease establishing a right to a party to occupy, I find the trust has a right of possession.

38. I am not satisfied that [The respondent/s] has convinced me that she has a lawful right to remain at the property. She advanced no argument that she is so entitled on any basis. At the hearing [The respondent/s] agreed to give possession to the trust, on the proviso that she needed to stay until 30 November 2025.

39. As the owners of the property, because the licence has been revoked, the trust is entitled to possession.

40. The decision in *Dunn v Dunn* [2024] NZHC 2612 illustrates that I have jurisdiction to determine this matter on the basis of section 65 RTA but if the occupant considers she has a continued right to possession under the trust, then the correct approach is not for the Tribunal to decline a possession order, but for the occupant to apply in the appropriate forum and seek an injunction in that forum.

41. I record here that at the hearing [The respondent/s] consented to give possession to the trust on 30 November 2025 and [Applicant 1] agreed to this.

42. [Applicant 1] wanted me to proceed with a formal order, so the trust had an order if difficulties were encountered later.

43. The agreement reached concerning the possession date of 30 November 2025 is reflected in my order, but a small delay is suitable in any event because of the circumstances of the case and the comment at paragraph 40 above.

Can the Tribunal make orders relating to rates and insurance?

44. The trust seeks payment for rates and insurance. When there is no residential tenancy the Tribunal cannot make such orders. Its jurisdiction under section 65 RTA is limited to possession orders made under that section.

45. The Tribunal does not have jurisdiction to hear this part of the claim. They are dismissed. They may be heard elsewhere in the appropriate forum.

Suppression and filing fee

46. The trust has been successful and so [The respondent/s] is to pay the filing fee.

47. Both parties have requested suppression of their identifying details under section 95A RTA.

48. I grant suppression of identifying details to both parties.

49. This matter arises from a family trust following the death of a husband, father, and brother. The parties conducted themselves with a conciliatory approach during the hearing.

50. Having considered the interests of the parties and the nature of the dispute, I am satisfied that the need to protect the privacy of the parties outweighs the public interest in publication.

51. Accordingly, I order that the names and identifying particulars of both parties not be published.

M Kemp
05 November 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.