[2025] NZTT 4616752, 4635449, 4635351 and 4532670

TENANCY TRIBUNAL AT PAPAKURA | TE TARAIPIUNARA RETIHANGA KI PAPAKURA

APPLICANTS / RESPONDENTS:	Waimaria Hamiora AKA Waimaria Whakarau and Brent William Harry McLeod Tenants
APPLICANT / RESPONDENT:	Amy Zhang For Upartner Ltd Acting Agent For Leo Yang Landlord
TENANCY ADDRESS:	88 Elliot Street, Pahurehure, Papakura 2113

ORDER

1. The application for rehearing filed by the tenant is dismissed.

REASONS

1. The Tribunal must consider an application for rehearing filed by the Tenant. The Tribunal directed the application for rehearing be considered on the papers, and this decision sets out the Tribunal's decision on that application.

BACKGROUND

2. The background in these applications are involved.

3. These matters have been the subject of a number of earlier decisions of the Tribunal and case conferences. The matter has also been to the District Court where the tenant challenged a declined rehearing request; that appeal was successful. The District Court returned the matter to the Tribunal to be heard afresh. When the matter returned to the Tribunal, the Tribunal convened two

case conferences, from which the matters to be determined were confirmed, as were the questions to be considered at the rehearing.

4. A rehearing was then scheduled for a full day in Pukekohe, on 9 September 2025, with an interpreter, starting at 9:30 am. The landlord attended the hearing, but neither tenant appeared. The tenants have applied for a rehearing, claiming they had been wrongly advised that the hearing start time was 2:30 pm.

5. I now backtrack with the history, to look at how the hearing was scheduled.

6. On 11 August 2025, the parties were notified of a full-day hearing to be convened in Pukekohe on 9 September 2025, at 9:30 am. The hearing notice sent to the tenant by email at waimaria@outlook.co.nz and also wwhakarauwaho@gmail.com, and is as follows:

MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

MINISTRY OF JUSTICE
Tāhū o te Ture

Tenancy Tribunal - Notice of Hearing – Adjournment

Residential Tenancies Act 1986, sections 77 and 91

11 August 2025

Application Number: 4616752

An adjournment has been granted and a new date and time is set to hear this matter.

The Tribunal will consider the below noted section(s) of the Residential Tenancies Act 1986 and any other matters raised by the application.

Application Number	4616752		
Applicant	Waimaria Hamiora		
Respondent	Amy Zhang For Upartner Ltd Acting Agent For Leo Yang		
Tenancy Address	88 Elliot Street, Pahurehure, Papakura 2113		
Hearing Details	Location: Pukekohe District Court,Family DT,25 Stadium Drive, Pukekohe, Pukekohe 2120	Start Date and Time 09 September 2025 9:30 AM	End Date and Time 09 September 2025 4:30 PM

7. Also on 11 August 2025, the Tribunal sent a text message to the tenant stating:

> Tenancy App: 4616752 A Tenancy Tribunal hearing has been scheduled for 09/09/2025 9:30 AM It will be held at 25 Stadium Drive, Pukekohe, Pukekohe 2120…

8. In the days prior to the hearing (including the day before the hearing), the Tribunal also sent reminders to the tenant by email and text message.

9. The email reminders were sent on 4 September 2025 and 8 September 2025, sent to waimaria@outlook.co.nz and wwhakarauwaho@gmail.com saying:

> This is a reminder that a Tenancy Tribunal Hearing is scheduled for you on 09/09/2025 9:30 AM It will be held at 25 Stadium Drive, Pukekohe, Pukekohe 2120.

10. The text messages were also sent on 4 September 2025 and 8 September 2025, sent to 0272471948, 02040622979, 0225103628 and 02046403328 saying:

> Tenancy App: 4616752 Reminder: A Tenancy Tribunal Hearing is scheduled for 09/09/2025 9:30 AM …

11. There was no appearance by the tenant at the hearing on 9 September 2025. As the Tribunal was satisfied that the tenant had been notified of the hearing, it proceeded. The landlord was in attendance.

12. After hearing from the landlord, the hearing was closed, and the Tribunal proceeded to consider and draft the decision, which was issued later that same day (9 September 2025).

13. On 13 September 2025, the tenant filed an application for rehearing stating:

> A) Tenancy Services provided incorrect time to attend (2pm 9/09/2025) before I departed my address in Palmerston North, to attend TT hearing on Monday morning.
>
> B) I drove up and arrived District Court Pukekohe at 12pmish, to which Court attendees advised of 9am hearing completion:
>
> 1) Tenancy Accounts queried: The Order again does not confirm the validity of my Tenancy.
>
> 2) The landlord has claimed 2 Residential Tenancies Act Bond payments for a `Healthy homes non-compliant' property which is then unlawful

> 3) a) I attended on Tuesday with Zane Whakarau to make claim to the 3rd Bond and Rent Advance paid which is also not returned when the second tenant Brent McLeod trespassed Zane Whakarau from my residence. These payments are documented in the account provided for the property vacation
>
> b) a claim will be lodged with this submission.
>
> 4) The rubbish removal claim made by Upartner Ltd, was forwarded to Brent McLeods boarder for payment so why is Amy claiming she is owed if the council removed/searched/posted bill to the boarder.
>
> 5) This disruption in work-accommodation has caused a loss of $83,000.00 business fund while undetermined for the past 3 years.

14. In that application, the tenant recorded her email address as waimaria@outlook.co.nz, and her phone number as 0272471948 – those are the same contact details at which the hearing notice and reminders noted above were sent. I also note that the tenant has emailed the Tribunal on 12 October 2025 using wwhakarauwaho@gmail.com which was also used to notify the tenants of the hearing and for reminders.

15. On 3 October 2025, the Tribunal issued a direction that the application for rehearing would be considered on the papers. Timetabling was issued for the parties to file any written submission on that matter. The direction also included the relevant legal considerations that apply for rehearings to assist the parties.

16. The tenant has applied for an appeal of the 9 September 2025 order also.

TENANT'S POSITION

17. The Tribunal has not received any submission from Ms Hamiora; however a written submission has been received from Brent McLeod, a co-tenant.

18. In terms of non-appearance at the hearing, Mr McLeod states:

> The argument of the applicant for rehearing is that:
> A discussion had occurred with Waimaria and a tenancy service worker by phone; (because the applicant had lost their phone at the supermarket) which responded that "if she arrived in Pukekohe (from

> Palmerston North) at 12pmish, she would have time to be ready for the hearing at 2:30pm”
> This information was locked in schema of action for attendance.
>
> However this plan did not provide an appropriate outcome for this hearing, and I arrived beyond the time allocated for the hearing; around 12pmish which was too late

19. A handwritten consent for her to represent her son, Zane Whakarau was also provided, but the relevance of that for this rehearing request is not clear.

20. I will consider Ms Hamiora’s position to be that as set out in her rehearing application.

LANDLORD’S POSITION

21. The landlord filed a written submission, opposing the application for rehearing, noting:

    a. The landlord has complied with the directions around attending the hearing, and had the same opportunities as the tenant.

    b. The landlord considers this to be a further delay applied by the tenant.

    c. Approving the rehearing would be a misuse of public resources.

    d. “For these reasons, I respectfully request that the Tribunal decline the tenant’s application for a rehearing, as there has been no procedural error, no miscarriage of justice, and no new evidence that could not have been presented at the original hearing.”

RELEVANT LAW

22. Section 105 of the Residential Tenancies Act 1986 relates to rehearings. Subsection 1 confirms that:

> The Tribunal shall in all proceedings have the power to order a rehearing of the whole or any part of the proceedings on the ground that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur.

23. The applicant need not establish an actual miscarriage of justice or substantial wrong, only that it may have occurred. However, in the District Court Judgment of *Wellington City Council v McMillan* [2003] DCR 50, Judge Tuohy held that the statutory language set a high standard, and that:

> [18] … They most obviously apply … to cases of procedural error eg a hearing which takes place in the absence of a party who has not been given notice of it; the improper admission or rejection of evidence; misconduct by the adjudicator or by one of the parties or a witness. The words may also encompass the discovery of new and important evidence not previously available.
>
> [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.
>
> [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."

24. 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. 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....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.

25. As noted by Judge Christiansen in the District Court appeal of *Loh v Puri* [2019] NZDC 1993:

> In this Court's view the Tribunal's reasons for refusing a rehearing are correct. Rehearings are about challenges to processes and procedures and are not about what the adjudicator found or the decisions the adjudicator made.

ANALYSIS

26. I have set out the relevant law that applies to rehearings above. In short, re-hearings are a safety measure, should something have gone wrong with the hearing, normally on a procedural basis, in which case a rehearing can be approved so that the matter then returns to the Tribunal for a further hearing.

27. I have considered the submissions from the tenants, and find that no procedural issues have been identified, and I cannot see any potential for a substantial wrong or miscarriage of justice to justify a rehearing, for these reasons.

Non-attendance at the hearing

28. The tenant was properly notified of the hearing. I have set out the communications to the tenants, which advised of the hearing arrangement, confirming that the hearing commenced at 9:30 am. The tenants were also advised by way of text message, and then subsequent email and text reminders on the week of the hearing, including the day before the hearing. All of those communications clearly state the hearing started at 9:30 am.

29. It is relevant to note that there are in fact four applications that were heard on 9 September 2025, and that means that four separate hearing notices were sent, and a total of 12 text messages would have been sent, all confirming the hearing start time of 9:30 am.

30. The tenants have not suggested that they did not receive these hearing notices or text messages, rather the tenants assert that there was a phone call

with the Tribunal, or Tenancy Services, who said that the hearing start time was in fact at 2:30 pm. I do not accept that as likely for these reasons:

a. As indicated above, for hearing notices were emailed to the tenants, and 12 text messages sent, all recording a 9:30 am start time. It is very unlikely that the tenants would not have received those communications to be aware that the hearing started in the morning.

b. In the case conference minute from 7 August 2025, the Adjudicator confirmed that the hearing was to be a “full day in person hearing”, so plainly if the tenants had been told the hearing started at 2:30 pm, that would not be consistent with the Tribunal’s direction. Any reasonable tenant in that situation would carefully check that the start time was in the later afternoon.

c. I do not accept that the tenants contacted Tenancy Services and were given the wrong time for this hearing. Tenancy Services operate as the Registry for the Tribunal, and are well aware of the importance of hearing dates and times. I cannot imagine circumstances where they would give such wrong information as alleged.

d. Similarly, there are no records in the electronic notes supporting that Ms Hamiora contacted Tenancy Services in relation to any of these applications. Normally, a reference to a call is made by the call taker in the electronic case notes, here, there are none.

e. There is however an application that the tenant had where she was the applicant against Kāinga Ora, and that had been scheduled for a telephone case conference on 12 September 2025 (not an in person hearing), and that was scheduled at 2:00 pm. The electronic records confirm that the tenant phoned Tenancy Services to update her phone number on 27 August 2025, but there is no further record of contact until 11 September 2025 when the tenant requested that the application be withdrawn (as the dispute was settled) but that was after the 9 September hearing that is the subject of this order. I am not persuaded this shows a sufficient reason for not attending the 9 August 2025 hearing for these reasons:

    i. There is insufficient evidence to support a conclusion that Tenancy Services had misled the tenant about the hearing on 9

September 2025 if there was a call in relation to the 12 September hearing.

ii. The matter on 12 September 2025 was a one-hour telephone case conference, it would be unlikely that the tenant would have been confused between that and a full day hearing where she needed to travel such a long distance.

iii. The parties are different.

iv. There is no record of any contact with tenancy services between 27 August 2025 and 9 September 2025 (the hearing date). I note after the 27 August 2025 contact, the tenant would have received 8 email and 8 text message reminders that the hearing was in Pukekohe on 9 September, starting at 9:30am, so it must be unlikely that if the confusion arose on 27 August, that would would have continued to 9 September.

f. If Ms Hamiora had been told that the hearing was at 2:30pm, it would seem odd that she would be told to be in Pukekohe 2 ½ hours earlier at '12 ish', as she claims was the case.

g. The tenants have a history of not attending all hearings in this dispute, such as not attending the hearing on 27 November 2023, the case conference on 7 August 2025, so not appearing at the hearing was not out of keeping with that history.

31. I note for completeness that at the prior case conference, Ms Hamiora advised that she did not know the contact details for Mr MacLeod. However given Mr MacLeod's statement or submission that he provided for the rehearing, plainly Ms Hamiora did know his details at least by that time, given Mr MacLeod indicates what he was told by Ms Hamiora, and also where he states that he had also arrived at the Courthouse at '12 ish'.

32. Section 92 of the Residential Tenancies Act 1986 (RTA) relates to a party not attending hearings following notice, and confirms:

> 92 Non-attendance at hearing after due notice
> (1) Where notice of a hearing has been given to a party in accordance with section 91 and that party does not attend at the hearing, the Tribunal may hear and determine, or dismiss or adjourn, the matter in the absence of that party.

33. Finding as I do that the tenants have been properly notified of the hearing, the Tribunal correctly proceeded to hear and determine the matter. I do not accept that the tenants have been given incorrect advice regarding the hearing start time, and no adequate reason has been provided for failing to attend the hearing.

34. I have also considered the other grounds raised for a rehearing by the tenants.

35. The tenant states that the "order again does not confirm the validity of my tenancy". I presume that this reference is to paragraph 15 of the appeal decision from Judge Forrest. I am satisfied that those matters have been addressed in the decision. I note that I have particularly focused on answering the questions that were confirmed at the case conference before Adjudicator Prowse, but I consider the concerns Judge Forrest raised, have all been addressed.

36. In relation to the other matters raised by the tenant's those relate to the Tribunal's findings. If the tenants wish to challenge those findings, they need to be done by way of appeal to the District Court, they cannot be revisited by way of a rehearing request.

37. I am satisfied that the tenants have had a fair opportunity to attend and be heard by the Tribunal.

38. I find for those reasons that the tenant has not established a substantial wrong or miscarriage of justice, or potential for either situation, so the application for rehearing is declined.

R Woodhouse
24 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 $200. 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 for the payment of less than $1000
- a final order to undertake work worth 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.