[2025] NZTT 5339315

TENANCY TRIBUNAL AT NELSON | TE TARAIPIUNARA RETIHANGA KI WHAKATŪ

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: Kāinga Ora–Homes And Communities

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 name and identifying details.
2. No other orders are made but [the tenant] is granted a period of 60 days from this order within which, if there are further instances of the next door tenant or occupants engaging in proven anti-social or threatening behaviour, and the landlord fails to take appropriate action, she can request that the application be brought back before to the Tribunal with new evidence and the matter will be re-opened.

Reasons:

1. Both parties attended the hearing and site visit on 13 November 2025 and the final hearing on 18 December 2025.
2. The applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities.
3. The applicant sought compensation for what she claimed were landlord failures to maintain in relation to draughts, mould, and insulation (lack of) at the premises. She served a notice to remedy on 8 July 2025
4. There are two main factors leading to a successful claim. The first is the burden/onus of proof which rests on the applicant; and the second is the

standard of proof. For matters, such as this, heard by the Tenancy Tribunal, the civil standard of proof is applied, being what is on balance of probability. Meaning, I seek to answer the question: Is it more likely than not that the alleged event happened? Further, the evidence must be reasonable with no probable defects such as inconsistency or improbability. The evidence must be consistent and supported by other acceptable evidence. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden of proof.

5. The issue of evidence at Tenancy Tribunal hearings was considered by the District Court in *Kaipo v Clarke & McCarthy (DC) TT233/02***.** Judge Mather stated:

> "…[the applicant] needs to be reminded that like anyone who brings an application before a Tribunal or a Court, it is incumbent upon the applicant to provide the evidence necessary to prove the case. If the applicant fails to do that, then their application will be dismissed whether it has merit or not because it is up to the applicant to providethe necessary evidence. It is not up to the other parties and it is certainly not up to the Tribunal to extract evidence."

6. In the decision that follows I may not have referred to all the oral testimony and other evidence presented, but the parties should know it has been considered.

7. Given the extent of the claims regarding the condition of the premises the hearing on 13 November 2025 was adjourned and reconvened at the premises.

8. A continuation hearing on 18 December 2025 was an opportunity to discuss the site visit observations and then conclude the hearing.

Did the landlord fail to maintain?

9. It is well settled that, the landlord's obligation under s 45 RTA is to investigate and repair a defect brought to its attention within a timeframe which is reasonable in the circumstances, and as to what that time is, depends on the gravity of the problem but also on the objective attempts made by the landlord to investigate, and put right, whatever the problem might be. Furthermore, a tenant has a statutory duty to advise of any defects under section 40(1)(d) RTA. Therefore, a tenant should promptly notify a landlord of any defects and a landlord should be given a reasonable opportunity to remedy the defect before being liable for any failure to do so.

10. The tenants claim that the landlord failed to remedy several repair issues within a reasonable timeframe. Specifically cited was the" lack of adequate flooring, the lack of cleanliness in the oven, lack of mold cleanliness and insulation has required me to spend excessive amounts on power and cleaning products in order to keep the house warm and habitable."

11. The narrative and emails from the tenant to the landlord about the issues appeared concerning. It is determined early in the hearing that a site visit would best allow an objective assessment of the condition of the premises.

12. The landlord produced its evidence of repairs completed and problems relating to access or tenant actions regarding some of the repair work.

13. The site visit was instructive. The tenant maintains the house well. My impression from the visit, compared it the stated issues, was that the tenant had overstated issues or been confused as to what she was seeing.

14. The bathroom confirmed the temporary repair as made and subsequently interfered with by the tenant. Watertightness cannot be assured until that repair is completed. There were no signs of mould and the floor appeared in reasonable condition.

15. There had been issues with the hot water cylinder in July that required some sub-floor repair work. That area is elevated and easily accessible and the site visit included that. No noticeable legacy issues appear apart from the need to reinstate a small area of insulation that was removed at that time. There were signs of water staining but no obvious swelling of the floorboards. No lack of insulation that might justify a claim of internal coldness was obvious to refute the landlord's evidence of compliance, consistent with what was observed on-site.

16. In *Xiao and Zhao v Dong* [2021 NZTT North Shore 4219619 at [26], the Adjudicator found that "generally, landlords will only be responsible for mould that arises in the course of a tenancy, if there were some defects with the tenancy, that the landlord would be responsible for. Some level of mould is a reality in residential dwellings, even dwellings that are well build, warm, ventilated and without defects", deciding that the mould was not the responsibility of the landlord because "the tenants have no identified any pre-existing problem with mould at the start of the tenancy", "no evidence before the Tribunal that there is any defect with the structure of the building" and that "the problem with the mould may have arisen as a consequence of how the tenants were living in the dwelling".

17. I do not find mould is proven as an issue in this premises.

18. There were no obvious signs of draughts, and the oven appears functional.

19. I do not find the landlord has failed to maintain to any such a level that compensation should be ordered.

Final hearing

20. The tenant acknowledged she has been busy of late she said and coordinating contractors has been neglected. She has committed to focusing on this in

January 2026 to allow the landlord to complete some maintenance tasks pending.

Other tenant problems

21. The other leg to the application regarded a neighbouring tenant. In her application the tenant stated the landlord "has allowed other tenants to harass me for months on end and threaten me and my dog".

22. By the date of the first hearing the tenant next door had been arrested and charged with assault on the tenant. Sentencing was pending but the tenant advised at the final hearing that the tenant was in prison and would not be allowed within 100m of the tenant's premises when released.

23. The landlord provided evidence of some management of the other tenancy but there are clearly behavioural issues at the property. I talked at the hearing of the evidential need of any landlord who seeks to terminate a tenancy due to complaints from others. Put another way, given some complaints about this tenant have been mentioned, she rightfully would expect the landlord to obtain appropriate evidence rather than act solely on a complaint and make an application to the Tribunal to terminate the tenancy.

24. I consider the result of the criminal process should have resolved that specific issue cited in the application. If there are further behavioural issues from that tenancy directly and adversely impacting the tenant she is encouraged to ensure the events are well documented and provided to the landlord provided as soon as possible.

25. From here, appropriate notices and provision of timely evidence to the landlord of issues arising from other tenants should occur and if necessary. after any landlord failure to act within reasonable bounds, a further application or a request for this matter to be reopened made.

26. I note here that the tenant, after the final hearing, sent further submissions and evidence regarding the event and action from the neighbouring premises. The hearing had concluded, and that information should, if not already, have been provided to the landlord. It has not formed part of this determination.

Summary

27. The tenant has been communicative with the landlord about a number of perceived failures. The dissatisfaction with expected attention led to this application but I do not find the tenant has been able to evidentially support the claims. Her evidential burden has not been met.

28. The issues with the next-door premises appear resolved at this time by other jurisdictional processes. There is provision made in this order to revisit any landlord failures to act regarding this.

Suppression

29. Section 95A RTA states regarding suppression orders 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.

30. Further, the Tribunal may, on the application of any party to proceedings or 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.

31. The tenant requested suppression in its application. While not substantially successful, tenant detail suppression is ordered based on the historic next-door problem and the justification for a "closed unless" order at this time.

M Brennan
22 December 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.