TENANCY TRIBUNAL AT TAURANGA | TE TARAIPIUNARA RETIHANGA KI TAURANGA MOANA

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: [The respondent/s]

Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. The Bond Centre is to pay the bond of $3,000.00 ([Bond number suppressed]) to [The tenant/s] immediately.
2. The application for exemplary damages is dismissed.

Reasons:

1. Both parties attended the hearing.
2. The tenants have applied for exemplary damages for landlord breaches relating to termination of a fixed term tenancy.
3. The tenants also originally included issues relating to an overpayment of rent but advised at the hearing that this had now been resolved. However, the bond has not yet been refunded to them, despite there being no claim to the bond by the landlord and I have accordingly ordered that this be paid to the tenants.

Background

4. The fixed term tenancy commenced on 5 February 2025 and was scheduled to end on 5 February 2026.
5. In early March 2025 the landlord contacted the tenants to ask if they would agree to change the end date of the fixed-term tenancy from 5 February 2026 to 6 August 2025. Both parties have different recollections of these discussions with the tenants advising that they did not agree, and the landlord advising that there was a verbal agreement reached to end the tenancy early.
6. On 19 March 2025 the landlord sent an email to the tenant regarding the change of the fixed term to end on 6 August 2025, with a variation of the tenancy agreement to sign – however, this was not returned by the tenants, and the tenants advised that they did not receive it due to an incorrect email address being used.
7. On 13 May 2025 the landlord emailed the tenants, the subject of the email was, *90 Day Notice to Vacate*, and the email advised that it served as a notice to terminate the tenancy, confirming that the last day of the tenancy was to be 10 August 2025.
8. The landlord advised that this was sent in error and that the intention of the email was to confirm that the last day of the tenancy would be 6 August 2025 as previously verbally agreed. They say that the email was only sent because it mentioned that the tenants could give 21 days' notice to vacate in return, which gave the tenants some flexibility.
9. The tenants say they questioned the email and had queried the type of tenancy they had (and the appropriateness of the notice to terminate), and that they were previously advised they would only have to give seven days' notice. There was also some correspondence between the parties about the property manager facilitating a new property for the tenants.
10. The tenants say that they felt pressure to leave the property, that they had no choice but to find alternative accommodation and did not want to do anything that would result in a poor reference for future tenancies. They detailed the financial and time impact moving had on them.
11. On 29 July 2025 the tenants advised the landlord that they had found another property and would be moving out on 10 August 2025. The landlord confirmed to the tenants that they would cover the last week's rent as a goodwill gesture due to the fixed term tenancy being reduced.
12. On 10 August 2025 the tenant vacated and returned the keys.

Exemplary damages

General principles

13. The tenants seek exemplary damages.

14. The RTA includes specific circumstances where exemplary damages can be awarded. See Schedule 1A of the RTA.

15. Exemplary damages are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell,*[1] 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.

16. 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.

17. In *Birch v Otautahi Community Housing Trust,*[2] the Court said this:

> In considering whether an order of exemplary damages should be made, the Tribunal must first look at the intention of the person against whom the order is sought. As the Tribunal in Chief Executive, ex parte Edmondson v Walls TT548/92 said:
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> Before an award of exemplary damages can be made the threshold question for the tribunal to answer is whether the unlawful act has been committed 'intentionally'. In my view negligence does not equate to intention, and for the tribunal to be satisfied that a party has 'intentionally' committed an unlawful act evidence must exist which would justify the Tribunal in coming to the conclusion that the party committing the unlawful act has in fact turned his or her mind to the act and deliberately set about to commit it.
>
> If the Tribunal considers that the person against whom the order is sought has committed the unlawful act intentionally, the tribunal must then consider whether it would be just to require that person to pay exemplary damages, taking into account:
>
> (a) The intention of the person.
>
> (b) The effect of the unlawful act.
>
> (c) The interests of the party against whom the unlawful act was committed, and
>
> (d) The public interest.

Exemplary damages

18. The tenants claim that the landlord has committed an unlawful act, in issuing a 90-day notice to vacate during a fixed-term tenancy. The tenants say they were

[1] *Auckland City Council v Blundell* [1986] NZLR 732.
[2] *Birch v Otautahi Community Housing Trust* [2022] NZTT 4207456.

forced to look for alternative housing before the end of their tenancy, disrupting family life and causing financial and emotional strain.

19. No specific category of exemplary damages has been advanced by the tenants, however, under Section 60AA of the RTA a landlord must not give a notice to terminate the tenancy or apply to the Tribunal for such an order, knowing they are not entitled to do so. I cannot see any other specific section in the RTA that awards exemplary damages in these circumstances.

20. Breaching this obligation without a reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of $6,500.00. See section 60AA and Schedule 1A RTA.

Discussion

21. Section 13B of the RTA, states that every variation of a tenancy agreement shall be in writing and signed by both the landlord and the tenant. Reducing the term of a fixed term tenancy would be a variation.

22. Although the landlord had signed the variation, nothing had been signed by the tenants. Nothing else was provided in writing by the tenants confirming that there was an agreement to end the fixed term tenancy early. Even if, as alleged by the landlord (and disputed by the tenants), the tenants had verbally agreed, the RTA requires more. In my view, there was no valid written agreement to end this fixed term tenancy early or vary the tenancy agreement.

23. The tenants were not obligated to agree to end the fixed term tenancy early and the landlord had an option to apply to the Tribunal for an order to end the tenancy early, which it did not do.[3]

24. I consider that when the landlord issued the 90-day notice to end the tenancy, and/or confirming the tenancy end date, this was incorrectly issued to a fixed term-tenancy, where there was no valid agreement to end the tenancy early and 90-day notices do not apply to fixed term tenancies.

25. However, section 60AA of the RTA requires that a landlord know they were not entitled to terminate the tenancy. The standard is actual knowledge, not simply being mistaken or negligent and it requires evidence that the landlord was aware that they did not have grounds for termination.

26. Here, I consider that although the landlord did not have grounds to terminate or end the tenancy early, they were likely relying on a mistaken interpretation of the phone call with the tenant, and/or were negligent by not getting the written variation reducing the fixed term tenancy, signed.

[3] See section 66 of the Residential Tenancies Act 1986.

27. I do not have sufficient evidence to find that they *actually knew* they were not entitled to terminate the tenancy or end the fixed term tenancy early.

28. Accordingly, the claim for exemplary damages does not meet the standard required under section 60AA of the RTA and it must be dismissed.

29. Both parties sought name suppression, and this is granted. I consider that the interests of the parties here outweigh any public interest in publication. See section 95A of the RTA.

R Harvey-Lane
23 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.

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.