TENANCY TRIBUNAL AT AUCKLAND | TE TARAIPIUNARA RETIHANGA KI TĀMAKI MAKAURAU

APPLICANT:	[The applicant/s] Tenant
RESPONDENT:	Barfoot & Thompson Limited As Agent For Wakatu Trust Landlord
TENANCY ADDRESS:	Unit/Flat 5, 13 Queens Avenue, Mount Eden, Auckland 1024

ORDER

1. The tenants name is suppressed.
2. The application for rehearing is dismissed.

Reasons:

3. Both parties attended the hearing.
4. On 6 July, the Tribunal made an order in favour of the applicant, requiring the respondent to pay the applicant $3,492.75 in compensation.
5. The applicant seeks a rehearing.
6. Section 105 provides:

   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.
7. The applicant seeks a rehearing on two grounds.
8. In considering those grounds, the relevant question is whether a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. In

relation to the first ground, the applicant says that a claim she was entitled to advance was not considered by the Tribunal.

9. I have therefore considered the claim the applicant says ought to have been determined. I do so because, on the evidence and the applicable law, the claim so plainly could not succeed that its non-determination could not have resulted in a substantial wrong or miscarriage of justice. The assessment that follows is undertaken for the purpose of determining whether a rehearing should be granted under s 105, rather than as a determination of the claim itself.

First ground: section 137

10. The applicant's first ground is that the Tribunal failed to consider her claim for exemplary damages arising from an alleged breach of s 137.

11. The claim relates to a full and final settlement offer made by the landlord in March 2025, ahead of the Tenancy Tribunal hearing.

12. At the hearing, I clarified that claims for unlawful acts were subject to the limitation period in s 109(2)(b), which provides for an application to be made within 12 months after the date of commission of the unlawful act.

13. The applicant says, in effect, that this clarification prevented her from pursuing her claim under s 137. She points out that the alleged unlawful act was the settlement offer made in March 2025. That claim was therefore within the 12-month period and, she says, should have been considered.

14. The Tribunal did provide a clarification at the hearing as to the applicable limitation period. That clarification was given so that the Tribunal could be transparent as to its understanding of the applications before it and so that the parties had an opportunity to clarify the claims they were advancing. Ultimately, it remained for the parties to identify and clarify the claims they sought to pursue.

15. However, for the reasons already given, the question for present purposes is whether the non-determination of the proposed s 137 claim has or may have resulted, or is likely to result, in a substantial wrong or miscarriage of justice. I therefore turn to the substance of that claim.

16. Section 137(1) provides that no person shall:

    (a) enter into any transaction, or make any contract or arrangement, purporting to do, whether presently or at some future time or upon the happening of any event or contingency, anything that contravenes or will contravene any of the provisions of this Act; or

    (b) enter into any transaction or make any contract or arrangement, whether orally or in writing, or do anything, for the purpose of or having the effect of, in any way, whether directly or indirectly, defeating, evading, or preventing the operation of any of the provisions of this Act.

17. The District Court considered the application of this provision to settlement offers in *Oliwer v University of Otago* DC Dunedin CIV-2007-012-759, 27 May 2009. The Court held that an offer to settle a claim in consideration for a release from liability is not an attempt to defeat, evade, or prevent the operation of the provisions of the Act.

18. That is consistent with the statutory framework. The framework provides for, and encourages, landlords and tenants to resolve disputes between themselves. It encourages the use of mediation, with recourse to the Tribunal where the parties are unable to resolve their dispute. To construe an offer made to settle a claim as itself defeating, evading, or preventing the operation of the Act would undermine the ability of landlords and tenants to resolve disputes by agreement and the good faith that the system seeks to promote between them.

19. There is a further and independent difficulty with the applicant's claim.

20. For a breach of s 137 to constitute an unlawful act for which exemplary damages may be considered, s 137(2) provides:

    Requiring any person to enter into any transaction, or to make any contract or arrangement, in contravention of subsection (1) is hereby declared to be an unlawful act.

21. Accordingly, subsection (2) requires that the person be required to enter into the transaction, contract, or arrangement.

22. To “require” means more than making an offer that another person is free to accept or reject. It imports an element of necessity or compulsion. To meet that threshold, the tenant would need to establish that she had little or no real choice in entering into the arrangement.

23. That plainly did not occur here.

24. The landlord made an offer. The tenant was never required to accept it. She was free to reject the offer, she did reject it, and the matter proceeded to the Tribunal. There was no compulsion to enter into the proposed settlement.

25. Accordingly, even if the settlement offer were capable of engaging s 137(1), the requirement in s 137(2) is not met. The proposed claim could not therefore result in an award of exemplary damages.

26. For those reasons, the applicant's proposed claim under s 137 could not succeed. Its non-determination therefore did not result, and could not have resulted, in a substantial wrong or miscarriage of justice for the purposes of s 105.

27. The first ground for rehearing is not made out.

Second ground: sections 45 and 45B

28. The applicant's second ground concerns several alleged breaches of s 45 relating to the landlord's management of the tenancy, including an alleged breach of s 45B concerning the landlord's responses to maintenance requests.

29. The applicant says that, because her claims for unlawful acts were time-barred, had she known of the applicable limitation period she would instead have advanced these matters as claims for compensation. She also says that the manner in which she framed her application was based on advice she received from Tenancy Services.

30. That does not meet the requirements of s 105.

31. Tenancy Services advisers provide general advice based on the information provided to them. Ultimately, however, the application presented to the Tribunal is made by the applicant. It is for the applicant to identify and advance the claims and remedies they seek.

32. The fact that, with hindsight, the applicant may have framed or advanced an additional or alternative claim does not engage the requirements of section 105.

33. It is also important to note that the concerns raised by the applicant in relation to these matters were considered by the Tribunal and were reflected in the award. The fact that those matters might now have been framed under a different cause of action does not mean that the underlying concerns were overlooked.

34. Accordingly, the second ground for rehearing is also not made out.

35. For these reasons, the application for rehearing is dismissed.

Suppression

36. The tenants suppression continues from the first order.

H Ben Fayed
18 August 2026

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.