[2026] NZTT 5519146

TENANCY TRIBUNAL AT TAURANGA | TE TARAIPIUNARA RETIHANGA KI TAURANGA MOANA

APPLICANT: Dwayne Paul Sisson

Tenant

RESPONDENT: Eves Realty Limited As Agent For Miller Family Trust

Landlord

TENANCY ADDRESS: Unit/Flat 4, 20 Terrace Avenue, Mount Maunganui, Bay of Plenty Tauranga 3112

ORDER

1. Eves Realty Limited As Agent For Miller Family Trust must pay Dwayne Paul Sisson $37,159.43 immediately, calculated as shown in table below:

Description	**Landlord**	**Tenant**
Rent refund		$37,131.43
Filing fee reimbursement		$28.00
Total award		**$37,159.43**
Total payable by Landlord to Tenant		**$37,159.43**

Reasons:

1. This application was scheduled to be heard at the Tenancy Tribunal in Tauranga. The landlord did not attend the hearing and so it proceeded in their absence.
2. The tenant has applied to the Tribunal seeking a full refund of the rent he paid for the period 21 July 2022 to 11 July 2024 ($46,414.29) and reimbursement of the filing fee. He says that he makes this claim because the premises rented to him were unlawful.

Were the premises unlawful?

Law

3. The Tribunal may declare premises to be unlawful residential premises. See section 77(2)(ac) Residential Tenancies Act 1986. Residential premises are unlawful if they cannot be lawfully occupied for residential purposes, and the landlord has caused or contributed to the unlawful occupation by failing to comply with sections 36 or 45(1)(c) RTA. See section 78A(2) RTA.

4. Where the Tribunal declares the residential premises to be unlawful, the Tribunal may order the return of all rent paid by the tenant, although it may deduct an amount from that sum if, in the special circumstances of the case, it would be fair to do so. See section 78A (4) RTA.

5. Section 36 RTA states that the landlord should take all reasonable steps to ensure that, at the commencement of the tenancy, there is no legal impediment to the occupation of the premises for residential purposes.

6. Section 45(1)(c) RTA provides that a landlord must comply with all requirements in respect of buildings, health and safety under any enactment so far as they apply to the premises.

7. In this case s45(1)(c) requires consideration of whether the landlord has complied with the provisions of the Building Act 2004. Section 40 of that Act states that a household unit, being a building intended for residential occupation, must have a building consent. A building or unit should be certified as being compliant by having a code compliance certificate. If it has neither, or a building consent only, then pursuant to the RTA, it is an unlawful residential premises.

Burden of proof

8. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations. That includes a requirement that the applicant establish their claim on the balance of probabilities.

9. The balance of probabilities means more likely than unlikely, or in mathematical terms, has a more than 50% likelihood.

10. In this case that would mean that the tenant has to show that more likely than not, the premises he rented were unlawful.

The tenant's claim

11. The tenant says that the premises he rented were unlawful residential premises because it lacked the building consent it was required to have. His evidence to support this claim includes:

    (a) Upon enquiry at the Council in July 2024 he was provided with all the documents relating to this property; and

    (b) A document from the Council dated 9 November 1999 evidences the Council advising that no building or planning approval had been obtained for the downstairs unit – the unit that the tenant rented; and

    (c) A document from the Council dated 17 November 1999 advised that the Council cannot issue a retrospective building consent for the conversion of this downstairs area into a flat. The Council would require a report carried out by a Private Building Certifier to ascertain whether the building work is structurally safe, not insanitary, and that it complied with the Building Code; and

    (d) On 23 November 1999 Council advised that the property can only be occupied as one dwelling; and

    (e) On 26 January 2000 the Council advised the owner that the basement flat, which is the subject of this claim, must not be used for residential purposes; and

    (f) In all the documentation supplied to the tenant by Council, there was no evidence of a building consent for the downstairs unit ever having been obtained.

Findings

12. Given that the Council determined that a building consent was required and not obtained, I consider that the landlord has not complied with the Building Act 2004, and consequently the landlord has failed to comply with s45(1)(c) RTA.

13. The tenant has therefore proven, to the required standard, that the premises are unlawful.

What is the appropriate remedy?

14. Section 78A(4) RTA provides that in determining the appropriate remedy or rent refund, the Tribunal must take into account the nature of the premises and any special circumstances.

15. The nature of these premises is that the unit occupies the ground level of a house that has two levels. The upper level is occupied by others. There are two other separately rented units behind this two level building.

16. Various Tribunal decisions have identified several factors as relevant to determining the appropriate remedy. These include:

    (a) *The landlord's motivation for renting the premises, conduct during the tenancy and the benefits obtained by the landlord.*

    (b) *The tenant's motivation for renting the premises and bringing the claim, the length of occupation and the benefits obtained by the tenant.*

    (c) *The seriousness of the breaches rendering the premises unlawful.*

    (d) *Any other breaches by the landlord.*

    (e) *Any detriment or loss suffered by the tenant.*

    (f) *The purpose of s78A.*

    (g) *The public interest.*

17. With reference to paragraph 16(a), the landlord did not attend today's hearing and so did not speak to their motivation. The benefits of renting out the premises, however, are obvious – rent payments are received.

    During the tenancy the landlord conducted inspections and must have noticed, both at the beginning of the tenancy and during it, that the condition of the premises was poor, including rotten window and door frames, water marks on the ceiling and mould.

18. With reference to 16(b), the tenant advised at the hearing that he and his daughter had been in emergency accommodation for 17 months. He was unable to find rental accommodation because he did not have any references, this being the first time he had rented property on his own account. He said that this landlord was the only landlord who would rent to him without having a reference and he said that WINZ advised him that if he didn't take it then he would not be given an accommodation supplement which meant that emergency housing would not be available to him.

    The tenant rented the premises for approximately 24 months.

    He said he brought the claim because he did not think that landlords should be able to benefit from providing unsafe and unhealthy accommodation for profit and because he and his daughter suffered significant physical and mental health issues as a result of the condition of this property.

    Apart from the already recorded condition of the property, the tenant advised that he feared for his and his daughter's safety during his residency because he knew there was no firewall as required.

19. With reference to paragraph 16(c), the failure to have a building consent is a serious and significant breach. It means that there has been no regulation as to whether the premises are safe or healthy. For instance, from what I understand from the tenant's evidence, there has been no firewall installed between the upper and lower units.

    I also heard and saw evidence of the significant water ingress issues and the considerable amount of mould which had purportedly been painted over.

20. With regard to 16(d), at the hearing the tenant advised that he has chosen not to make claims regarding any other possible breaches because he recognises that he is out of time for claiming awards of exemplary damages. Further to this I note that the tenant did not issue any "14 day notices to remedy" to the landlord during his tenancy. I have therefore not taken into account the possibility of any other breaches by the landlord.

21. With reference to 16(e) the tenant spoke of the significant detriment to his and his daughter's well being as a consequence of the unit being unlawful, both physically and mentally. He says he was constantly concerned as to how he could protect himself and his daughter from possible fire, given that there was no fire wall. He says that the lack of soundproofing significantly impacted his quiet enjoyment of the premises and he also said that the water ingress and mould ruined much of his and his daughter's property.

    Further to this, the lack of a letterbox for the unit meant that he could not get deliveries to his door, or post, and that any emergency services required would have difficulty locating his unit.

22. With regard to paragraph 16(f) the Tribunal is obliged to take a strict approach in these situations because of the serious risk involved. The public policy behind s78A RTA is to discourage landlords from renting out properties that are unconsented or unlawful and had therefore never been subject to meeting the legal requirements to ensure safe and healthy occupation by tenants.

    In tenanting a property that cannot be lawfully occupied for residential purposes a landlord is not only profiting from illegal conduct but is potentially placing a tenant's health and safety at risk. The obvious example of putting a tenant's safety at risk is the lack of a firewall between units.

    This kind of danger indicates that the Tribunal must approach these kinds of claims seriously and is no doubt why Parliament has set severe sanctions for renting out premises that are unlawful.

23. The public interest referred to in para 16(g) above is evident. To reiterate, there is considerable public interest in landlord's abiding by their obligations and responsibilities under the Residential Tenancies Act 1986 so as to ensure safe and healthy homes are available to rent by tenants.

24. Pursuant to s78A(4) RTA the Tribunal has a discretion to order a refund of the entire amount of the rent paid but may deduct from that an amount that would be fair to deduct, based on any special circumstances.

25. In this case I consider that an 80% rent refund should be made to the tenant. In coming to this amount I have not only taken into account the seriousness of this breach, but also the fact that during the tenancy the tenant did not complain to the landlord regarding this illegality.

26. Having said this, I am in no doubt that the landlord ought to have been aware of the unlawfulness of the premises given the obvious nature of its defects, including the lack of a letterbox. At the very least the condition of the premises ought to have alerted them to the fact that an enquiry ought to have been made of the owner, or the Council, as to the unit's lawfulness for residential purposes.

27. I am also mindful that the landlord did not demur, and immediately accepted, the one weeks' notice of termination the tenant gave to the landlord citing the illegal nature of the premises,

Filing fee reimbursement

28. I am also ordering the landlord to reimburse the filing fee to the tenant because the tenant was wholly successful with this claim made against them.

THE SEAL OF THE TENANCY TRIBUNAL

C ter Haar
19 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.