

**TENANCY TRIBUNAL AT Rotorua**

APPLICANT: Olive Oriwia Whakatihi  
Tenant

RESPONDENT: RENTASSURED NZ LIMITED  
Landlord

TENANCY ADDRESS: 5A Spinel Place, Pukehangi, Rotorua 3015

**ORDER**

1. The application is dismissed.

**Reasons:**

1. Both parties attended the hearing.
2. This tenancy is a periodic tenancy which started on 26 January 2018.
3. The applicant is required to establish the claim to the civil law standard of proof, on the balance of probabilities.
4. It should be noted that an Adjudicator has no obligation to refer to each and every aspect of the evidence presented (*Repia v Walsh Trust* DC Waitakere CIV-2011-090-56, 27 April 2011) and this decision will summarise the relevant and pertinent evidence before providing an explanation for the conclusions reached.
5. On 27 March 2019, the landlord gave the tenant a notice ending the tenancy on 26 June 2019. The tenant claims the notice is retaliatory and seeks exemplary damages.
6. For a notice to be declared retaliatory, the tenant must prove that in terminating the tenancy, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act, or by any complaint against the landlord. See section 54(1) Residential Tenancies Act 1986 ("the Act").

7. Giving a termination notice which is declared to be retaliatory is an unlawful act for which exemplary damages may be awarded, up to a maximum of \$4,000.00. See section 54(2), (3) and Schedule 1A of the Act.
8. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) of the Act.
9. Landlords also have a responsibility under section 45(1)(e) of the Act to take all reasonable steps to ensure that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
10. Ms Whakatihi started her evidence by stating she has been desperately trying to move out of the premises since she moved in, but she has nowhere to go. Ms Whakatihi says that her next-door neighbours, who are also tenants of the landlord, have been causing trouble since late last year. Ms Whakatihi says that they have pulled up behind her car in the shared driveway on multiple occasions and blocked access, deliberately revving engines, calling her racist names, swearing, drinking and partying late into the night; and deliberately annoying her dog. Ms Whakatihi first reported her concerns to her landlord in December 2018 and the landlord told her to get evidence of the behaviour. Ms Whakatihi says the landlord has failed to do anything. Ms Whakatihi says that police and noise control have also been involved. Ms Whakatihi says she received the 90-day notice because of her complaints against her neighbours.
11. The landlord says that Ms Whakatihi and the neighbouring tenants have been making complaints about each other and a 90-day notice was issued to both to end the dispute. The landlord confirmed the properties are in close proximity with a shared driveway. The landlord says that the neighbours were immediately contacted after the first complaint about parking and access and a "*he said, she said*" saga ensued. The landlord confirmed that an email was sent to both tenants asking them for evidence to back up their respective complaints. In an email dated 8 January 2019, the landlord asked a neighbour to be mindful of the sensitive nature of Ms Whakatihi. The landlord provided statements from a painter and repairman who visited the premises previously and both complained of abusive and aggressive behaviour by Ms Whakatihi. The landlord also provided statements from 3 tenants who say Ms Whakatihi is making false allegations and that she is the aggressor; not them.
12. The landlord played a recording of a verbal exchange (and provided a transcript) between Ms Whakatihi and her neighbours on 23 March. This came after an incident the previous evening where both parties say the other was being aggressive and threatening.

*Was the notice retaliatory?*

13. I find that the landlord did take reasonable steps to try to sort out the problems between the neighbours as both were reminded to be respectful given that they were living in close proximity. It was also reasonable of the landlord to request some form of evidence from each tenant to back up their respective claims. Ms Whakatihi was unable to provide any documentary evidence to corroborate her claims and there is a direct conflict of views as to who was the aggressor or instigator. I find that in the recording provided, Ms Whakatihi was the only person using aggressive and abusive language; but I am also mindful that it was only a snapshot and does not show the context or full interaction between the parties.
14. I am satisfied that the 90-day notice was not retaliatory, and it was fair and reasonable for the landlord to issue to the notice to Ms Whakatihi in the circumstances. Applicants must provide sufficient and robust evidence to establish their claim to the required standard and I am not persuaded that the landlord's motivation in giving the notice was in retaliation to legitimate complaints; rather it was a last resort to end the ongoing and seemingly intractable dispute between neighbouring tenants. The dispute seemed to be escalating and I agree that the only fair, sensible and reasonable resolution was for both parties to be given their notice to move on.
15. The claim that the notice is retaliatory and for exemplary damages is not proven and must be dismissed.



A Macpherson  
06 May 2019

**Please read carefully:**

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **TENANCY SERVICES 0800 836 262**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **TENANCY SERVICES 0800 836 262**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **TENANCY SERVICES 0800 836 262**.

**Rehearings:**

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

**Right of Appeal:**

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

**Enforcement:**

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to [www.justice.govt.nz/fines/civil-debt](http://www.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.