

TENANCY TRIBUNAL AT North Shore

APPLICANT: Linda Teri (Tere) Davies
Tenant

RESPONDENT: Kāinga Ora–Homes and Communities
Landlord

TENANCY ADDRESS: Unit/Flat Flat 5, 21 Centreway Road, Orewa, Orewa 0931,
Palm Court

ORDER

1. Kāinga Ora–Homes and Communities must pay Linda Teri (Tere) Davies \$1,500.00 immediately, being compensation for its failure as a landlord to ensure that another of its tenants does not interfere with the reasonable peace, comfort or privacy of this tenant in the use of the premises she rents.
2. The tenant's rent will reduce by \$20.00 per week from the beginning of the next rent period until the resolution of the issue concerning the interference with her reasonable peace, comfort or privacy.
3. The hearing is adjourned.

Reasons:

1. Both parties attended the hearing. Mr Khor appeared for Kāinga Ora – Homes and Communities.
2. The tenant has applied for compensation for interferences with her reasonable peace comfort or privacy in the use of the premises.
3. I heard the application following a similar application brought by another tenant.

4. This tenant, and the other tenant whose application I heard, live either side of two tenants who, since around August 2018 have significantly interfered with the peace, comfort and privacy of these tenants. The three units are adjoined.
5. The evidence I heard was quite disturbing. The tenants at Unit 4 regularly bang on the walls including late at night; frequently set off their fire alarms causing considerable noise; and exhibit other disturbing and dangerous behaviours. She said the police had been called out on at least 15 occasions and the fire service on 5 occasions.
6. Ms Davies gave evidence that the disturbances are such that she must either sleep in the front lounge or move to her daughter's place. She described being terrified on occasion. She played a sound file of the tenants banging on walls late at night and of them setting off their fire alarms.
7. Mr Khor gave evidence that Kāinga Ora had tried everything to try and resolve the situation. It had involved the police, the fire service, had issued breach notices; contacted the offending tenants' GP; and had verbal discussions with those tenants. Despite that, he said the tenants refused to engage.
8. Mr Khor explained that Kāinga Ora policy was not to issue 90-days notices, nor to terminate tenancies.
9. Kāinga Ora policy cannot over-ride the provisions of the Residential Tenancies Act 1986 (RTA). This is clearly a situation that cannot continue. Though I cannot make an order directing Kāinga Ora to terminate the tenancy of the tenants who are causing these disturbances, I can strongly indicate that these are breaches that cannot be remedied given the length of time they have been occurring. The tenants causing these disturbances should either be relocated, or their tenancy should be terminated for breaches that cannot be remedied because they have been on-going and have continued despite the landlord serving 14-day breach notices.
10. The tenant sought compensation for the loss of enjoyment of her tenancy which has been considerable. I have decided to deal with this in two ways. Firstly, Kāinga Ora must pay compensation of \$1,500.00 immediately for its failure to comply with its responsibilities as a landlord. This covers the period from August/September 2018 to the present. Kāinga Ora has failed to ensure that the tenants in Unit 4 do not interfere with the reasonable peace, comfort or privacy of this tenant in the use of her premises. The RTA provides mechanisms for dealing with issues such as this, but Kāinga Ora has declined to take appropriate action for policy reasons.
11. Secondly, I award the tenant on-going compensation of \$20.00 per week by way of a rent reduction until the problem is rectified. This will take effect from the beginning of the next rent period.

12. Until the landlord resolves the issue caused by the totally inappropriate behaviour of the tenants in Unit 4, I strongly suggest that it takes steps to ensure the safety of this tenant and the other tenant whose application I heard. Mr Khor suggested that Kāinga Ora liaise with the local police (who, Ms Davies said, had been very supportive). I suggest that a copy of this order be provided to the police. Kāinga Ora should also consider providing some sort of security presence at night.
13. I have adjourned the application for 2 months to come back before me in case there has been no resolution of this issue. Should the matter resolve (as I expect it will) the application can be withdrawn.



J Greene
09 January 2020

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 \$200. 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 for the payment of less than \$1000
- a final order to undertake work worth 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 fesoatai mai le Tenancy Services i le numera 0800 836 262.