

**TENANCY TRIBUNAL AT** Christchurch

APPLICANT: Paul Wakefield  
Tenant

RESPONDENT: Otautahi Community Housing Trust  
Landlord

TENANCY ADDRESS: Unit/Flat Flat 1, 25 Mooray Avenue, Bishopdale,  
Christchurch 8053

**ORDER**

1. The application is dismissed.

**Reasons:**

1. Both parties attended the hearing. Ms Foster and Mr Pearce represented the landlord.
2. The tenant, Mr Wakefield, applied for exemplary damages for breach by the landlord of his right to quiet enjoyment. He claims that his right to quiet enjoyment is being interfered by noise from his neighbour's television and stereo/radio. The neighbour lives in the adjoining unit and is also a tenant of the landlord.
3. Section 45(1)(e) of the Residential Tenancies Act 1986 (the Act) provides that a landlord shall 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.
4. A breach of section 45(1)(e) of the Act is not declared to be an unlawful act and therefore exemplary damages are not available. However, even if they were I am not satisfied that Mr Wakefield has provided sufficient evidence to support his

claim for breach of section 45(1)(e) of the Act. This is because the interference must be *unreasonable*. While I fully accept that, subjectively (that is from Mr Wakefield's point of view), the noise from his neighbour's television and/or radio is unreasonably interfering with his right to quiet enjoyment, the test is not wholly subjective. Whether the interference is unreasonable must be considered objectively, that is from the point of view of the hypothetical reasonable ordinary person.

5. After carefully considering all of the evidence provided, I find that the evidence does not support Mr Wakefield's claim that the noise from his neighbour's television and/or radio is sufficient to constitute an *unreasonable* interference with his right to quiet enjoyment. My reasons follow.
6. Ms Foster said that she had been to the premises twice, in August and then in September 2019, after Mr Wakefield complained about the noise. She said that while she could hear the neighbour's radio was on she did not consider it to be at an unreasonable level.
7. Mr Pearce and Ms Foster also provided an email dated 9 January 2020 from Mr Kaur (Noise Control at the Christchurch City Council), who confirmed that Mr Wakefield made one noise complaint in May 2019 and the officer who investigated considered the noise not to be excessive. After this application was filed, Ms Foster wrote to Mr Wakefield on 18 December 2019 advising Mr Wakefield that Noise Control had asked that he report any excessive noise to it over the next two to three weeks and they will investigate and assess whether the noise is considered unreasonable. Unfortunately, Mr Wakefield did not take up this offer.
8. I also consider important the evidence from Ms Foster regarding a conversation she had with the tenant who lives in the unit adjoining the other side of Mr Wakefield's neighbour's unit. In a note of the conversation, Mr Foster wrote that this tenant said that while she could hear some noise coming from the neighbour's unit it was not loud and was not bothering her at all and the noise was just "normal living next to someone noise."
9. I have taken into account the evidence provided by Mr Wakefield in support of his application, including the three undated previous tenants of the complex who said that they had complained about noise from Mr Wakefield's neighbour. However, on balance, I find that the evidence from the landlord outweighs the evidence provided by Mr Wakefield.

10. I therefore find that Mr Wakefield has not established his claim and the application is dismissed.



R Merrett  
3 February 2020

## **Please read carefully:**

Visit [justice.govt.nz/tribunals/tenancy/rehearings-appeals](https://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](https://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](https://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](https://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.

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If you require further help or information regarding this matter, visit [tenancy.govt.nz/disputes/enforcing-decisions](https://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](https://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](https://tenancy.govt.nz/disputes/enforcing-decisions), pe fesoatai mai le Tenancy Services i le numera 0800 836 262.