

TENANCY TRIBUNAL AT Tauranga

APPLICANT: Accessible Properties New Zealand Limited
Landlord

RESPONDENT: Michael Britten
Tenant

TENANCY ADDRESS: 10B Peri Street, Gate Pa, Tauranga 3112

ORDER

1. The tenancy of Michael Britten at 10B Peri Street, Gate Pa, Tauranga 3112 is terminated, and possession is granted to Accessible Properties New Zealand Limited, at **4.00pm on Thursday 22 October 2020**.
2. Accessible Properties New Zealand Limited must deliver a copy of this order to the tenancy address as soon as possible and no later than 9.00am on 22 October 2020.
3. Accessible Properties New Zealand Limited may commence enforcement of the possession order in Order 1 immediately on the termination of the tenancy, without waiting for the 48-hour period in section 138(1)(a) District Courts Act 2016 to expire.

Reasons:

1. The landlord attended the hearing; the tenant did not attend.
2. The landlord has applied for termination of the tenancy for breach of the tenant's obligations.

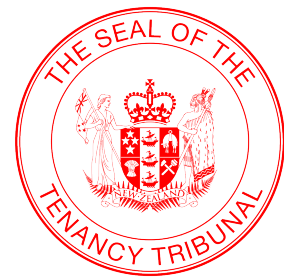
Should the tenancy be terminated?

3. The Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate (s 56(1) Residential Tenancies Act 1986).

4. Where the breach is not capable of remedy, the landlord is not expressly required to serve a 14-day breach notice on the tenant. A breach is not capable to remedy where the thing done, or its effect, cannot be undone.
5. However, unless the breach is serious, the Tribunal usually requires the landlord to warn the tenant about the likely consequences of continued breach before it will exercise its discretion to terminate.
6. The tenancy started in June 2015. The landlord took over the tenancy in April 2017.
7. The landlord says there have been numerous breaches of the tenancy agreement and RTA since 2017, including anti-social behaviour, unauthorised pets and failing to keep the premises reasonably clean and tidy. It says there have been numerous Police call-outs, mainly for domestic incidents.
8. In August 2020, as a result of numerous complaints, the landlord held a meeting with residents in the neighbourhood to discuss their concerns. The neighbours described a range of concerning behaviours from the occupants at the tenant's premises: threatening behaviour, threats to kill, indecent exposure, throwing items into the grounds and onto the roofs of neighbouring properties, wandering onto neighbouring properties, abusing contractors, and domestic disputes.
9. The landlord says that neighbours feel intimidated and, in some cases, terrified. One neighbour has stopped work because of concerns for a family member. Neighbours have sold their homes and moved away, and the landlord relocated its tenant in the adjacent unit. Some neighbours are reluctant to walk the street and some will not allow their children to walk to school.
10. The landlord says that since the meeting it has attempted to sustain the tenancy with support for the tenant and his family. However, it says problems have escalated. On 2 September it sent the tenant a breach notice about a loud domestic incident affecting the reasonable peace, comfort or privacy of the neighbourhood.
11. On 10 September the tenant was found on a neighbouring property with a machete. The Police intervened.
12. On 2 October one of the tenant's sons assaulted a neighbour. His son jumped the fence into another neighbour's property, accusing the occupant of being a 'snitch'. The victim, who intervened, was assaulted by the son, receiving broken ribs and a punctured lung.
13. The allegations are supported by numerous redacted statements from neighbours.
14. The breaches are serious and not capable of remedy. They have had a serious adverse impact on the wellbeing of the neighbours, which cannot be rectified. Because of the increasing gravity of the incidents, it would be inequitable to refuse to terminate the tenancy.

Immediate enforcement

15. The landlord has requested termination within 24 hours and immediate enforcement. It is concerned about the possibility of retaliation against neighbours. Given the two most recent incidents, its concerns are well founded. Therefore, I have ordered termination in 24 hours' time.
16. Ordinarily, Tribunal orders cannot be enforced for 48 hours (section 138(1)(a) District Courts Act 2016). However, the Tribunal can grant leave to enforce earlier (s 138(1)(b) DCA and s 106(2) RTA).
17. Waiving the 48-hour period is only appropriate in exceptional circumstances. Because, of the landlord's concerns about the safety of the neighbourhood, this is an appropriate case to do so. Therefore, the possession order may be enforced immediately on the termination of the tenancy.
18. Because the tenant does not have an email service address, I have directed the landlord to deliver a copy of this order to the tenancy address. This should be done today if possible, but in any event by 9.00am tomorrow.



J Smith
21 October 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.