

TENANCY TRIBUNAL AT HAMILTON

APPLICANT: Waikato Real Estate Limited
Landlord

RESPONDENT: Chloe Tarau
Tenant

TENANCY ADDRESS: Unit/Flat Unit 10, 182 London Street, Hamilton Central,
Hamilton 3204

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. The application is dismissed.

Reasons:

1. Ms McLean and Mr Mai of Waikato Real Estate Limited attended the hearing on behalf of the owner (*the Landlord*). Ms Tarau attended the hearing with her mother and daughter as support.
2. The Landlord has applied to the Tribunal for an order terminating the fixed-term tenancy on the grounds of anti-social behaviour from the tenant or someone on the premises with the Tenant's permission.
3. The types of anti-social behaviour the Landlord alleges against the Tenant (or persons the Tenant has permitted into the premises) are as follows:
 - a. Loud music and/or stereo bass coming from the premises (evidenced by several Hamilton City Council noise control reports);
 - b. Rubbish and littering;
 - c. Taking up carparks allocated to neighbouring tenants;

- d. Family violence incidents, loud tussles, disorderly behaviour and Police call-outs;
 - e. Drug use;
 - f. Threatening and intimidating behaviour towards other tenants.
4. The Landlord has provided clear and cogent evidence upon which the Tribunal can be satisfied that anti-social behaviour has occurred at the premises.
5. The Landlord provided video evidence of anti-social behaviour occurring at the premises.
6. The Landlord provided complaints from other tenants living in other units which adjoin the premises.
7. Even if the Tenant is not the direct cause of the anti-social behaviour in question, I am satisfied that she has allowed friends and family into the premises, and their behaviour has been anti-social.
8. Subject to certain considerations, the Tribunal must make an order terminating the tenancy if it is satisfied:
 - a. on 3 separate occasions within a 90-day period the tenant, or a person in the premises with the tenant's permission, engaged in anti-social behaviour in connection with the tenancy; and
 - b. on each occasion the landlord gave the tenant written notice—
 - i. describing clearly which specific behaviour was considered to be anti-social and (if known to the landlord) who engaged in it; and
 - ii. advising the tenant of the date, approximate time, and location of the behaviour; and
 - iii. stating how many other notices (if any) the landlord has given the tenant under this paragraph in connection with the same tenancy and the same 90-day period; and
 - iv. advising the tenant of the tenant's right to make an application to the Tribunal challenging the notice and;
 - c. the landlord's application to the Tribunal was made within 28 days after the landlord gave the third notice.
9. The Act confirms that antisocial behaviour includes harassment or any act (whether intentional or not) that reasonably causes significant alarm, distress or nuisance.
10. I have considered the evidence presented by the parties as set out above.
11. I have determined that the Landlord has established that anti-social behaviour has occurred on the premises by the Tenant or a person on the tenancy with the Tenant's permission. The Landlord has served notices on the tenant as required

in the Residential Tenancies Act 1986, and the application to the Tribunal was made within 28 days of the date of the third notice.

12. I consider it would not be unfair to terminate the tenancy given the circumstances in which the behaviour arose, and the notices that were given. I cannot see that the Landlord has acted in any retaliatory way in bringing this application.
13. I cannot consider the impact on the tenant, in making an order for termination of the tenancy.

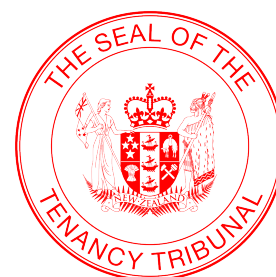
Fixed Term Tenancy

14. The statutory test is not met on one important ground however. Section 55A of the Residential Tenancies Act applies to periodic tenancies only:

55A Termination for anti-social behaviour

(1) A landlord under a periodic tenancy may apply to the Tribunal for an order terminating the tenancy on the ground of anti-social behaviour.

15. This tenancy is a fixed term tenancy, ending July 2021. Consequently, I am unable to terminate the tenancy pursuant to s 55A.
16. The Landlord's application is dismissed.



M Steens
30 April 2021

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 fesootai mai le Tenancy Services i le numera 0800 836 262.