

TENANCY TRIBUNAL AT [Event location suppressed]

APPLICANT: [The applicant/s]

Tenant

RESPONDENT: James Francis

Landlord

TENANCY ADDRESS: 79A Waimauku Station Road, Waimauku, Waimauku 0812

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant name and identifying details.
2. The landlord's 90-day notice dated 15 March 2021 is declared retaliatory and is set aside.
3. James Francis must pay [The tenant/s] \$1,520.44 immediately, calculated as shown in table below:

Description	Landlord	Tenant
Exemplary damages: Breach of quiet enjoyment		\$1,200.00
Exemplary damages: Failing to give a receipt		\$100.00
Filing fee reimbursement		\$20.44
Exemplary damages: Tenancy agreement not in writing		\$200.00
Total award		\$1,520.44
Total payable by Landlord to Tenant		\$1,520.44

Reasons:

1. Both parties attended the hearing. The tenant also had the assistance of a representative and a support person.

2. The tenant claims exemplary damages in respect of a breach of her quiet enjoyment, the landlord not ensuring the tenancy agreement is in writing, the landlord failing to issue receipts for rent and a retaliatory notice.

Quiet enjoyment

3. [The tenant/s]claims the landlord has harassed her.
4. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) Residential Tenancies Act 1986.
5. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of \$3,000.00. See section 38(3) and Schedule 1A RTA.
6. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds*, CIV-2009-019-001524, DC Hamilton, 26 February 2010.
7. The landlord lived in a separate premise on the same property. He was able to keep an eye on the tenant coming and going from the premises and he had CCTV cameras which assisted his ability to keep an eye on things.
8. The landlord approached the tenant and was verbally abusive to her and her visitors on several occasions including the following incidents:
 - (a) The tenant's friend was digging a small hole in the garden for a small birdhouse. The landlord stormed over and yelled, "What the f**k do you think you're doing? This is my property, get off my property". The landlord also yelled, "that's one strike".
 - (b) The tenant's friend was visiting and had parked behind her car. The landlord banged loudly on the front door and when it was opened he said "get your f**king friend to move his f**king car". As he walked off the landlord yelled "that's two strikes".
 - (c) The tenant went to the electric gate to let in a friend and the landlord turned up and yelled, "Get off my property. I know what you're doing here. You can't be a prostitute on my land. Get off my land, get out now you f**king prostitute, I'm warning you girl. Pack your bags and get out now."
 - (d) One day as the tenant was leaving in her car the landlord came across and was banging on her car window and he yelled "hey, you left the door unlocked, I saw it on the camera." The tenant replied, "Back off, the door is locked, I am leaving". The landlord banged a few more times on the tenant's car window.

9. The tenant was fearful and intimidated by the landlord's behaviour. She has suffered from anxiety, stress and panic attacks. She has consulted with her GP for help to manage these.
10. The landlord also attempted to scare and intimidate the tenant's visitors, particularly if they were male. On 7 March 2021 the tenant decided that she could not safely remain at the premises and therefore stayed elsewhere while continuing to pay her rent. As the landlord would not provide a bank account for the rent to be paid to the tenant paid the rent in cash and therefore has had to return to the premises at least weekly to put the rent somewhere for the landlord to collect.
11. On 13 March 2021 the tenant returned to the property to pay her rent. When she entered the premises and she found that the toilet had been used and not flushed. She was horrified, scared and angry that the house had been entered (there was no sign of forced entry and to her knowledge the landlord was the only other person to have a key). She texted the landlord about this.
12. On 19 March 2021 the tenant again returned to the premises to find that the toilet had been used again and remained unflushed. When she raised this issue with the landlord he suggested that the tenant had given her keys to her friends, which she denies. The toilet issue was again repeated on 22 March 2021.
13. The landlord denies using the tenant's toilet and entering the premises when the tenant was not home. While the landlord has CCTV cameras on the premises he did not notice any other person enter the premises and he only retains footage for two days. In relation to the verbal abuse the landlord explained that he had to give the tenant a talking to about parking in the driveway. With regard to the "strikes" against the tenant he explained that you have to give them three warnings. He said that he heard about this on talkback radio.
14. I find the landlord has committed an unlawful act.
15. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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) Residential Tenancies Act 1986.
16. The landlord has acknowledged that he has used the behaviour complained of by the tenant. This behaviour has clearly had an impact on the tenant and her ability to live in the premises in peace. The public interest is that tenants should be able to live without harassment from a landlord. I consider that the tenant should be awarded an amount of \$1,200.00.

Tenancy agreement not in writing

17. [The tenant/s] claims the landlord has not ensured the tenancy agreement is in writing and provide a copy to the tenant.
18. A landlord must ensure the tenancy agreement is in writing, signed and a copy provided to the tenant prior to the tenancy commencing. See section 13 Residential Tenancies Act 1986.
19. Breaching this obligation is an unlawful act, for which the Tribunal may award exemplary damages up to a maximum of \$750.00. See section 13(4) and Schedule 1A Residential Tenancies Act 1986.
20. The tenant had asked the landlord to record the tenancy agreement in writing. The landlord claimed that the tenant had the offer of cheap rent. He seemed to think that this meant that the agreement did not need to be in writing. I find they have committed an unlawful act.
21. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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) Residential Tenancies Act 1986.
22. The landlord had intentionally not ensured that the tenancy agreement was in writing. He claimed that he was not aware at the time. However, I do not accept that the landlord was not aware that the agreement should be written. It is in the public interest that tenancy agreements are in writing and I consider that the tenant should be awarded \$200.00.

No receipts provided

23. [The tenant/s] claims the landlord has not issued a receipt for rent.
24. A landlord must give a written receipt immediately for any rent paid by cash. See section 29(1) and (2)(a) Residential Tenancies Act 1986.
25. Breaching this obligation is an unlawful act for which the Tribunal may award exemplary damages up to a maximum of \$350.00. See section 29(5) and Schedule 1A Residential Tenancies Act 1986.
26. The landlord would not provide the tenant with a bank account to pay the rent. This meant that the tenant had to pay rent in cash. Despite asking the landlord for receipts for the cash payments he never provided any. I find they have committed an unlawful act.
27. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied that 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) Residential Tenancies Act 1986.

28. The landlord claims that he is not aware of any receipts. The tenant had asked for the receipts to be provided. It is in the public interest for a landlord to provide receipts when rent is paid in cash. I consider that the tenant should be awarded \$100.00 for this breach.

Retaliatory notice

29. On 15 March 2021, the landlord gave the tenant a notice ending the tenancy in 90 days' time, however no date was given on the notice for the termination. While the notice was dated 15 March 2021, the tenant was not aware of it until 19 March 2021 when she returned to the premises. The tenant claims the notice is retaliatory.
30. 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.
31. 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 \$6,500.00. See section 54(2), (3) and Schedule 1A Residential Tenancies Act 1986.
32. The landlord and the tenant both acknowledge that there was a verbal altercation between them on 7 March 2021. The tenant claims that the landlord had sent her a message stating, "pay your power account before you vacate". At that stage the tenant had not been given notice. When she saw the landlord later that day she advised him that he could not evict her, it was illegal, and she would go to the tenancy people. She states that the landlord was verbally abusive.
33. A further altercation took place by messages between the tenant and landlord on 13 March 2021. The communication related to the premises being accessed, someone using the toilet and not flushing it after use. The tenant's view is that the landlord must have been responsible for this as he was the only other person she knew to have a key for the premises. The landlord denies that he was responsible and believes that the claim was fabricated by the tenant.
34. On that same day the tenant had messaged the landlord asking that when she return to the property he not approach her. The landlord's evidence is that he evicted the tenant because she was sending texts to him about going in to the house and using the toilet and robbing her property. The landlord denied that the notice was retaliatory. He states that he plans to move back in to the house while the property he currently lives in is refurbished.

35. I do not accept the reasons given by the landlord. I find they have committed an unlawful act.
36. 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) Residential Tenancies Act 1986.
37. I accept the tenant's view that the notice was given following their verbal altercation and her advice to the landlord that she intended to apply to the Tenancy Tribunal. The tenant does not believe that the landlord has any plans to move in to the property himself and I do not accept that notice was given for the reason claimed by the landlord. I declare the notice retaliatory. I have not made an award in favour of the tenant because she remains in the premises and there was no evidence that she has taken steps to vacate.
38. Because [The applicant/s] has substantially succeeded with the claim I must reimburse the filing fee.

N Walker
03 May 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, asiiasi ifo le matou aupega tafailagi: tenancy.govt.nz/disputes/enforcing-decisions, pe fesoatai mai le Tenancy Services i le numera 0800 836 262.