

TENANCY TRIBUNAL AT

APPLICANT: [The applicant/s]

RESPONDENT: Kāinga Ora–Homes and Communities

TENANCY ADDRESS: [Tenancy address suppressed]

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.

| Description | Landlord | Tenant |
|--|-----------------|-------------------|
| Compensation: Failure to take reasonable steps to prevent other tenant from interfering with tenant's reasonable peace, comfort, and privacy | | \$5,000.00 |
| Compensation: Inadequate repair of hallway floor | | \$300.00 |
| Filing fee reimbursement | | \$20.44 |
| Total award | | \$5,320.44 |
| Total payable by Landlord to Tenant | | \$5,320.44 |

Reasons:

1. The application seeks compensation for breach of maintenance obligations (repairs to the hallway floor) and for failing to take all reasonable steps to prevent [The tenant/s]'s neighbour from interfering with her reasonable peace, comfort, and privacy.

2. Both parties attended the hearing on 21 May 2021. [Tenant/s' representative] represented [The tenant/s] with the consent of the Tribunal. Ms Mitchell and Ms Howe represented Kāinga Ora.

Peace comfort and privacy

3. Section 45(1)(e) of the Residential Tenancies Act 1986 (“RTA”) states that the 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. Section 38(2) RTA states that the landlord “shall not cause or permit any interference with the reasonable peace, comfort and privacy of the tenant in the use of the premises”.
5. The tenancy began in May 2010.
6. [The tenant/s]’s application relates to the behaviour of a neighbour, who is also a Kāinga Ora tenant. In this decision I will identify the neighbour as “N”.
7. N was [The tenant/s]’s neighbour for the duration of the tenancy.
8. [Tenant/s' representative] submitted that there were instances of anti-social and intimidating behaviour by N towards [The tenant/s] from the beginning of [The tenant/s]’s tenancy, and that [The tenant/s] made Kāinga Ora aware of that behaviour.
9. However, there is no persuasive evidence of any such complaints before March 2020.
10. From April 2020, Kāinga Ora’s records, along with emails from [The tenant/s], show a rapid escalation of complaints from [The tenant/s] alleging disturbing and threatening behaviour by N directed to [The tenant/s], including:
 - a. Multiple threats to kill and threats of assault.
 - b. Aggressive and intimidating behaviour including yelling at [The tenant/s] whenever she went outside.
 - c. Sexual harassment.
 - d. Trespass, dumping of rubbish on [The tenant/s]’s property, theft of [The tenant/s]’s belongings.
 - e. Abuse and threats to visitors.
11. [The tenant/s] made many calls to the police in addition to her frequent contact with Kāinga Ora.
12. In late July 2020, Kāinga Ora offered [The tenant/s] a transfer to a unit in a property that was soon to be built in a different part of [Redacted]. [The tenant/s] accepted this offer.

13. Unfortunately, there were unexpected delays in the completion of that build. In November 2020, Kāinga Ora offered to move [The tenant/s] into a motel until the new property was ready. [The tenant/s] declined.
14. [The tenant/s] moved to the new property in February 2021.
15. On behalf of Kāinga Ora, Ms Mitchell and Ms Howe submitted that:
 - a. They spoke to N about [The tenant/s]’s complaints. N denied the behaviour, and told Kāinga Ora that it was [The tenant/s] who was harassing him.
 - b. Kāinga Ora sought to arrange a mediation.
 - c. When it became apparent that the situation was not improving, they investigated the option of transfer. They offered the alternative property to [The tenant/s] (rather than re-locating N) because they considered that the property would be more suitable for [The tenant/s].
 - d. When the construction delays occurred, they offered [The tenant/s] alternative accommodation at a motel.
16. Ms Mitchell and Ms Howe submitted that it is not appropriate for Kāinga Ora to “take sides” in a dispute between neighbours if there is unclear and conflicting evidence about what has happened.
17. Landlords have a duty to not permit any interference with the tenant’s peace comfort and privacy, and to take all reasonable steps to prevent any of their other tenants from interfering with the tenant’s peace comfort and privacy.
18. [Tenant/s’ representative] referred me to two relevant Tenancy Tribunal decisions with similar fact patterns, both involving Kāinga Ora.
19. In *Davies v Kāinga Ora-Homes and Communities* [2020] NZTT North Shore 4223461, Ms Davies lived in a unit, and her use and enjoyment of the premises was seriously disrupted by the occupants of the neighbouring unit, who would:

Regularly bang on the walls including late at night, frequently set off fire alarms causing considerable noise; and exhibit other disturbing and dangerous behaviours. [Ms Davies] said the police had been called out on at least 15 occasions and the fire service on 5 occasions

In response to Ms Davies’ complaints about the neighbour’s behaviour, Kāinga Ora spoke with the neighbour and with other support services including the police, fire service, and even the neighbour’s GP.

20. Adjudicator Greene held that Kāinga Ora’s legal obligation under section 45(1)(e) required them to take more interventionist steps:

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 re-located or their tenancy should be terminated

21. Adjudicator Greene awarded compensation for breach of quiet enjoyment for the period of disturbance prior to the hearing, and awarded a reduction of rent until Kāinga Ora resolved the issue satisfactorily.
22. In *C v Kāinga Ora-Homes and Communities* [2020] (unreported), Adjudicator Stirling similarly found that the steps taken by Kāinga Ora in response to the tenant's complaints about anti-social and threatening behaviour by neighbouring tenants were inadequate. Kāinga Ora spoke with the offending tenants, issued warnings, and ultimately (over a period of more than a year) transferred the offending tenants to other properties. Adjudicator Stirling stated:

Breaches of tenancy agreements and anti-social behaviour must be dealt with promptly and decisively, notwithstanding policies to try and sustain tenancies and/or policies not to terminate. The tenants who are causing this interference must be relocated or their tenancies terminated, and the situation cannot be allowed to drag on for months on end.
23. Adjudicator Stirling awarded compensation to C for Kāinga Ora's failure to meet its duty under section 45(1)(c).
24. The difficulty for Kāinga Ora is that the requirement to take "all reasonable steps" conflicts with Kāinga Ora's policy of not terminating tenancies by notice and not seeking termination of tenancies through the Tenancy Tribunal.
25. However, I agree with the adjudicators in the two decisions discussed above that Kāinga Ora's policy decisions do not override the terms of the RTA.
26. In this instance, by no later than May 2020 there was sufficient weight of evidence, in terms of the frequency and consistency of complaints by [The tenant/s], the number of police attendances, and Kāinga Ora's own experiences of N's volatile behaviour, to warrant an application to the Tenancy Tribunal application seeking termination of N's tenancy.
27. In May 2020, the grounds for termination of tenancies were restricted due to the level-4 COVID-19 lockdown measures that were in place at that time. However, landlords could seek termination of tenancies on the grounds of "anti-social behaviour" by the tenant, which was defined as:

Harassment; or

Any intentional act that reasonably causes significant alarm, distress, or nuisance
28. This provision was in effect from late March 2020 until late June 2020. The definition of anti-social behaviour encapsulates the type of behaviour that [The tenant/s] alleges she was experiencing from N. It would have been a reasonable step for Kāinga Ora to seek termination of N's tenancy on the grounds of anti-social behaviour.
29. The advantage to the landlord of seeking termination through the Tenancy Tribunal is that it shifts the burden to the Tribunal to determine whether there is

sufficient evidence of anti-social behaviour to justify termination. The landlord has met his or her legal duty to take “reasonable steps” by bringing the matter before the Tribunal and producing all the relevant evidence, irrespective of the outcome.

30. The option of transfer is an acceptably effective alternative. I think that it was reasonable for Kāinga Ora to offer the transfer to [The tenant/s] rather than to N, for the reasons given by Kāinga Ora about the suitability of the alternative property. However, the disadvantage in this instance was the delay that taking this option caused. This meant that [The tenant/s] was exposed to further, and very serious, instances of anti-social behaviour by N over a period of several months.
31. I acknowledge that Kāinga Ora’s offer of motel accommodation was also an acceptably effective alternative. I understand the reasons why [The tenant/s] did not take up that offer.
32. Having regard to the *Davies* and *C* decisions, my finding is that:
 - a. Kāinga Ora failed to meet its duty under section 38(2), and (in particular) section 45(1)(e) RTA.
 - b. The information available to Kāinga Ora by May 2020 was sufficient to support an application for termination of N’s tenancy due to anti-social behaviour. Kāinga Ora failed to take this reasonable step.
 - c. Kāinga Ora did take the reasonable step of re-locating [The tenant/s]. However, this did not occur until February 2021. Kāinga Ora sought (appropriately) to mitigate this delay by offering [The tenant/s] temporary accommodation in a motel.
33. A breach of section 38(2) or 45(1)(e) is an unlawful act, and exemplary damages can apply. The Tribunal can award exemplary damages if the Tribunal is satisfied that the unlawful act was committed intentionally. Exemplary damages are punitive in nature. Their purpose is to punish and deter certain behaviour.
34. Kāinga Ora’s decision to not seek termination of N’s tenancy was intentional in the sense that Kāinga Ora has purposefully chosen a policy of seeking to preserve and not terminate tenancies. However, I do not agree that it is appropriate to award exemplary damages in this instance. Kāinga Ora’s decision to not seek termination of N’s tenancy was not due to a wilful disregard of [The tenant/s]’s circumstances.
35. It is appropriate to make an award of compensatory damages.
36. In considering an appropriate award I have had regard to the amounts of compensation awarded in the *Davies* and *C* decisions, and I have also given weight to:

- a. The seriousness of [The tenant/s]'s allegations, in particular the threats of physical violence and sexual harassment.
 - b. The proven duration over which the behaviour persisted (March 2020 – February 2021).
 - c. The fact that [The tenant/s]'s allegations, although consistent, persuasive, and well documented, are by their nature difficult to evidence, and the allegations were denied by N.
 - d. The effects of the behaviour on [The tenant/s].
37. Having regard to these factors I will award compensation of \$5,000.00.

Maintenance

38. In 2016, the flooring in the hallway deteriorated to the point that [The tenant/s] noticed that it was soft when she walked on it. [The tenant/s] contacted Kāinga Ora on 23 October 2016.
39. Kāinga Ora arranged for repair work in early November.
40. [Tenant/s' representative] submitted that the repair work was a temporary fix. The repairers fitted a timber board over the affected area.
41. In early December 2016, [The tenant/s] tripped on the lip of that board. She fell and injured her knee.
42. Ms Mitchell and Ms Howe did not agree that the work carried out in November was a 'temporary repair', but they acknowledged that further work was done on the same area in December, after [The tenant/s] informed them that she had tripped.
43. [The tenant/s] suffers from arthritis and her mobility is limited. Kāinga Ora were aware of this.
44. Kāinga Ora attended to the initial repairs promptly, but the repair was inadequate in that the area was left in a condition that was unsafe for the tenant. Kāinga Ora did not know that the repair was inadequate, but as landlord Kāinga Ora is responsible for the work of its contractors.
45. My finding is that the manner of repair, which left a trip hazard for the tenant, amounted to a breach of the landlord's duty to maintain the premises in a reasonable state of repair. It is appropriate to make an award of compensation to [The tenant/s] because she suffered pain and inconvenience as a result of the inadequate repair.
46. I will award \$300.00.

Filing fee and name suppression

47. The applicant was successful in this application and I must also award the filing fee of \$20.44.
48. Name suppression is granted to the tenant per section 95A(1) RTA.

N Blake
16 June 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 fesoatai mai le Tenancy Services i le numera 0800 836 262.