

**TENANCY TRIBUNAL AT** [Event location suppressed]

APPLICANT: [The applicant/s]  
Tenant

RESPONDENT: Kāinga Ora–Homes and Communities  
Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

**ORDER**

1. The Tribunal orders suppression of the Tenant's name and identifying details and the tenancy address.
2. Kāinga Ora–Homes and Communities must pay [The tenant/s] \$2,520.44 immediately, calculated as shown in the table below:

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Compensation		\$2,500.00
Filing fee reimbursement		\$20.44
<b>Total award</b>		<b>\$2,520.44</b>
<b>Total payable by Landlord to Tenant</b>		<b>\$2,520.44</b>

3. By way of declaration, that the rent is reduced by \$20.00 a week from 1 January 2021 until such time that the landlord has taken all reasonable steps to ensure that the landlord's other tenants no longer cause interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises. The landlord may apply to the Tribunal for the rent to be reinstated and for this declaration to be varied/set aside after it is no longer in breach of section 45(1)(e) RTA.
4. The tenant's application for exemplary damages is dismissed.

## Reasons:

1. Chantel Calverley represented the tenant at the hearing by teleconference at the hearing on 23 June 2021; the tenant appeared in person. The landlord is represented by Paul Khor, with its tenancy manager and Matthew Jamieson and area manager Irene Prasad having testified before me. I also heard from the tenant's witness GW who is one of the tenant's neighbours.
2. The tenant seeks compensation and exemplary damages against the landlord for:
  - a. permitting interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant; and
  - b. not taking 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.
3. The landlord accepts that instances of anti-social behaviour have been caused by a neighbouring tenant who I will only identify as "A"; A is also the landlord's (Kāinga Ora) tenant.
4. The landlord however maintains that all reasonable steps have been taken by its tenancy managers and the affected parties to mitigate the tenant's complaints and the landlord denies liability to pay any compensation or exemplary damages.
5. Ms Calverley presented extensive submissions and correspondence in support of the tenant's claims.
6. While efforts had been underway by the landlord to relocate A to another area, as at the date of hearing A remains a direct neighbour of the tenant.
7. The issues are:
  - a. Whether the landlord breached section 38(2) RTA by having permitted interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant;
  - b. Whether the landlord breached section 45(1)(e) RTA by not taking 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; and
  - c. If so, what is the appropriate measure of compensation payable to the aggrieved party and whether the landlord is liable to pay exemplary damages to the tenant.

*Has the landlord breached section 38(2) RTA by having permitted interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant?*

8. The tenant has reported to the landlord that A has exhibited the following anti-social behaviour against the tenant and her children since July 2020:
  - a. thrown things, including glass items, over the fence;
  - b. damaged the tenant's pots and plants and other property;
  - c. verbally abused the tenant and her children with vulgarities;
  - d. purposely blocked the shared driveway with her car even though A has her own assigned parking spot;
  - e. tried to run the tenant down with her car;
  - f. destroyed her son's garden and ripped it out multiple times;
  - g. thrown egg against the tenant's house and car;
  - h. thrown rubbish into her property;
  - i. tagged abuse on the tenant's door and her car;
  - j. banging on walls at night for no reason; and
  - k. verbally abusing the tenant's visitors;
9. A and the tenant's properties have a shared wall between them; their entrances are also adjacent to each other.
10. I am satisfied from the testimonies of the landlord's tenancy manager and area manager, together with the correspondence, documents and the landlord's files that the landlord has not directly or indirectly permitted interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.
11. The landlord's staff had actively approached and worked with A and the tenant in order to alleviate the tenant's concerns, albeit unsuccessfully given the apparent health issues, including quite possibly mental in nature, surrounding the party concerned.
12. In the circumstances, I find that the landlord has not in any way caused or permitted interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant.
13. The tenant's claim founded on a breach of the landlord's obligations under section 38(2) RTA therefore fails. Consequently, the claim for compensation and exemplary damages under this section fails.
14. I now address the second material issue.

*Has the landlord breached section 45(1)(e) RTA by not taking 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?*

15. While I have found that the landlord has not caused or permitted interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises by the tenant, section 45(1)(e) Residential Tenancies Act 1986 ('RTA') requires the landlord to take *all reasonable steps* to ensure that the landlord's other tenants such as A do not interfere with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
16. I accept that a number of positive steps have been taken by the tenancy manager and area manager to try and alleviate the anti-social behaviour concerned. The material issue before me is whether the landlord has taken all reasonable steps.
17. The landlord, in exercising its social housing charter, had to juggle between compliance of its own charter and social housing policies such as promoting "sustainable tenancies" and the applicable legislation such as the RTA.
18. However the landlord's compliance of and preference over its own policy is not law; it does not excuse the landlord's breach of section 45(1)(e) RTA once proved.
19. In *Y v Kainga Ora-Homes and Communities* [2021] NZTT Whangarei 4294256, the Tribunal held at [17] that landlords have a duty to take all reasonable steps to prevent any of their other tenants from interfering with the tenant's peace comfort and privacy.
20. Adjudicator Blake held as follows:

[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... Kāinga Ora's policy decisions do not override the terms of the RTA.

[26] ...there was sufficient weight of evidence, in terms of the frequency and consistency of complaints by the tenants, the number of police attendances, and Kāinga Ora's own experiences of (the neighbour) N's volatile behaviour, to warrant an application to the Tenancy Tribunal seeking termination of N's tenancy.
21. I agree with the learned adjudicator's views that 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 would then have 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. There is also the option of transferring the anti-social neighbouring tenant as an “acceptably effective” alternative.

22. Here, while the relocation of A the neighbour concerned is at the heart of the tenant’s claim, the landlord has still not done so prior to the date of hearing. There were also no steps taken by the landlord to apply to the Tribunal to terminate A’s tenancy.
23. In light of the particular nature of A’s anti-social behaviour, and frequency and consistency of complaints by the tenant, I find that the landlord has not taken all reasonable steps to ensure that A does not interfere with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
24. I therefore find that the landlord has breached section 45(1)(e) RTA towards the tenant.
25. This leads us to the next issue of what is appropriate compensation.

*What is the appropriate measure of compensation payable to the aggrieved party, including exemplary damages?*

26. At the hearing, the tenant indicates that she is seeking compensation of \$5,000.00, citing *Y v Kāinga Ora-Homes and Communities*, and exemplary damages.
27. However the Tribunal’s has no jurisdiction to award exemplary damages for breach of section 45(1)(e) RTA; there is no declaration/provision in the RTA that failure by the landlord to comply with paragraph (e) of 45(1) is an unlawful act for which exemplary damages is awardable. In contrast, breach of section 38(2) RTA has been specifically declared to be an unlawful act pursuant to section 38(3) RTA which states that “contravention of subsection (2) in circumstances that amount to harassment of the tenant is hereby declared to be an unlawful act”.
28. I award the tenant compensation, based on a lump sum of general/compensatory damages and rent rebate for the continuing breach of section 45(1)(e) RTA by the landlord.
29. In considering what is appropriate compensation I have had regard to the following decisions of the Tribunal.
30. In *Y v Kāinga Ora-Homes and Communities* the Tribunal awarded compensation of \$5,000.00 for the social housing landlord’s breach of section 45(1)(e) RTA based on these interferences with the reasonable peace, comfort, or privacy of the tenant:
  - a. Multiple threats to kill and threats of assault.

- b. Aggressive and intimidating behaviour including yelling at the tenants whenever she went outside.
  - c. Sexual harassment.
  - d. Trespass, dumping of rubbish on the tenant's property, theft of the tenant's belongings.
  - e. Abuse and threats to visitors.
31. In *Davies v Kāinga Ora-Homes and Communities* [2020] NZTT North Shore 4223461 the Tribunal awarded compensation of \$1,500 for the social housing landlord's breach of section 45(1)(e) RTA based on these interferences with the reasonable peace, comfort, or privacy of the tenant:
- a. The [neighbouring] tenants at Unit 4 regularly bang on the walls including late at night; frequently set off their fire alarms causing considerable noise; and exhibit other disturbing and dangerous behaviours. She said the police had been called out on at least 15 occasions and the fire service on 5 occasions.
  - b. ...the disturbances are such that she must either sleep in the front lounge or move to her daughter's place. She described being terrified on occasion. She played a sound file of the tenants banging on walls late at night and of them setting off their fire alarms.
32. In *Sharandov v Kāinga Ora-Homes and Communities* [2020] NZTT North Shore 4222149 the Tribunal in its 9 January 2020 decision awarded compensation of \$1,500 for the social housing landlord's breach of section 45(1)(e) RTA based on these interferences with the reasonable peace, comfort, or privacy of the tenant:
- The tenants at Unit 4 regularly bang on the walls including late at night; frequently set off their fire alarms causing considerable noise; and exhibit other disturbing and dangerous behaviours. Ms Sharandova said the police had been called out on several occasions because the tenants in Unit 4 have made on-going complaints that this tenant is making methamphetamine. She said he had had to issue a trespass notice on the tenants in Unit 4. As well the fire service had been called on many occasions.
33. In *C v Kāinga Ora-Homes and Communities* [2020] NZTT Wellington 4271938 (unpublished) the Tribunal awarded compensation of \$2,000 plus rent rebate totalling \$3,052.80 for the social housing landlord's breach of section 45(1)(e) RTA based on interferences with the reasonable peace, comfort, or privacy of the tenant set out as follows:
- a. Deliberate damage to the tenant's property including cigarette burns caused to outdoor items including furniture, trampoline and shade cloth;
  - b. Continuous and deliberate acts of dropping cigarette butts and rubbish, including used toilet paper, onto the tenant's ground floor deck area;
  - c. Incidents of spitting, urinating and vomiting on the tenant's premises;
  - d. Excessive music and parties late into the night by next door neighbours;

- e. Excessive noise related to incidents of domestic violence and abuse occurring in next door neighbours' premises and in common areas of the apartment block;
  - f. Threats of assault against this tenant and acts of intimidation; and
  - g. Drug use by neighbours which the tenant could smell from her premises
34. Here the tenant testified that she is a solo mother with children to care for and who has little or no support network. The tenant also says that she has PTSD and some difficult physical health issues.
35. Having regard to the above facts and previous Tribunal awards of compensation, the tenant's personal attributes and the particular nature and extent of the neighbour's anti-social behaviour against the tenant and her children and stress and inconvenience that they endured, I award \$2,500.00 as compensatory and general damages.
36. I also find that the tenant is entitled to a \$20.00 rebate on her rent per week from the start of 2021 until all reasonable steps have been taken by the landlord to ensure that A no longer interferes with the reasonable peace, comfort, or privacy of the tenant or her children.
37. Because the tenant has substantially succeeded with the claim I have reimbursed the filing fee.

J Tam  
05 August 2021

## **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.