

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]
Tenant

FIRST RESPONDENT: Property Brokers South Limited as agent for Roshan John Mureekal And Anu Abraham
Agent

SECOND RESPONDENTS: Roshan John Mureekal and Anu Abraham
Landlord

TENANCY ADDRESS: 14 Stirling Crescent, Mosgiel, Mosgiel 9024

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant's name and identifying details.
2. Roshan John Mureekal and Anu Abraham (the second respondents) must pay [The tenant] \$5,520.44 immediately, being exemplary damages of \$5,500.00 together with a filing fee reimbursement of \$20.44.

Reasons:

1. All parties attended the hearing. The tenant was assisted by a support person, [support person], as she is still recovering from brain surgery. The first respondent was represented by Tania Simpson and Regional Manager, John Faulks. Mr Mureekal attended by phone and confirmed that he had authority to attend on behalf of both himself and Anu Abraham as second respondents.
2. This claim concerns the tenancy of a property in Mosgiel. The tenancy began on 30 July 2020 and ended on 27 April 2023. The property was initially managed under an agency agreement between the second respondents and Rental Living

Ltd. Rental Living Ltd was then purchased by Property Brokers Ltd as of 1 August 2022 and the agency agreement between the parties continued. Nothing turns on this fact and so for the purposes of this decision I simply refer to both property management companies as the first respondent.

3. The tenant claims that the agent/landlord unlawfully gave notice to end the tenancy without cause. She seeks exemplary damages.
4. Both the tenant and the first respondent (agent) sought to have the second respondents (owners) joined to this proceeding, on the basis that they should be liable for any award made.

Background

5. The tenant is a single mother living with two young children. She initially entered into a fixed term tenancy for one year, which she then renewed. The rent was increased on the renewal. However by the time the second fixed term was coming to an end in July 2022 the tenant advised the first respondent that she was unable to enter into another fixed term tenancy as she had been diagnosed with a brain tumour and required brain surgery. The rent was increased again (although the tenant negotiated a smaller increase than proposed due to a lack of maintenance) and the tenancy then became periodic.
6. On 15 July 2022 the first respondent (Shirley Latta) wrote to Mr Mureekal advising them that the tenant could not sign another fixed term tenancy due to her circumstances and that the tenancy would now be periodic for that reason.
7. On 16 November 2022 Mr Mureekal wrote by email to the first respondent (Ms Simpson), seeking confirmation that the tenant was on a periodic tenancy. Ms Simpson confirmed, and again advised that the reason the tenant had not signed a fixed term tenancy was because she was undergoing brain surgery.
8. On 21 February 2023 Mr Mureekal wrote to Ms Simpson by email to confirm a previous telephone conversation in which they advised that the second respondents would be changing rental agencies. He then stated:

“I would also like you to give the tenants a notice to leave as I am planning to do some renovation before the new agents taking over. I assume it is 90 days notice”.

9. Ms Simpson responded by email the following day confirming that the first respondent would give notice as instructed and would manage the property until the end of the tenancy. However she further recorded that:

“Please note that if the property is not being renovated as you have advised, and you have given the notice for the tenant to vacate due to these reasons it is illegal (just so you are aware). Renovations mean rebuilding, repairing and upgrading areas in the house and out.”

10. Mr Mureekal replied the same day:

"I am planning some work which will be hard with the tenants in place. I understand you have to give notice to tenants if the work affects their stay"

11. The first respondent then served a notice to vacate on the tenant as instructed, advising the tenant that *"the property you occupy as a tenant will be required back by the owner as they intend on completing extensive renovations on the property"*.
12. At the hearing the tenant explained that she had brain surgery on 22 November 2022 and was still in the early stages of recovery when she received the notice to end her tenancy. She said that her children were settled at the local school which was within walking distance and that she had built up a support network of neighbours who could help her manage through the recovery period.
13. She said that the house was not well maintained but that she had treated it as her home and had planted a garden and was very reluctant to leave given her circumstances.
14. Having received notice the tenant however set about finding a new tenancy, with the assistance of the first respondent, and moved into a new tenancy on 24 April 2023.
15. The tenant explained that the stress of suddenly having to look for a new tenancy was very stressful, caused her sleepless nights, and impacted on her recovery. She produced a letter from her Occupational Therapist in evidence confirming she could not engage fully in her rehabilitation programme as she had to prioritise relocating during this crucial time. She explained that she suffers from extreme fatigue and has still not been able to fully unpack.
16. After she had moved the tenant was shocked to discover that only two working days after she moved out of the tenancy the property was advertised on trademe for rent by Smart Homes Property Management Ltd, at \$130 per week more than the tenant had been paying, and that no renovations appeared to have taken place.

Was the notice unlawful?

17. From 11 February 2021, landlords cannot give a 90-day termination notice without a valid reason under s 51(1) or (2) Residential Tenancies Act 1986 ("RTA").

Section 51(2)(f) provides that a landlord may terminate period tenancy by giving 90 days' notice if

"extensive alterations, refurbishment, repairs, or redevelopment of the premises are to be carried out by the landlord or owner, and-

- (i) *It would not be reasonably practicable for the tenant to remain in occupation while the work is undertaken; and*

(ii) *The work is to begin, or material steps towards it are to be undertaken, within 90 days after the termination date...*

18. Under Section 60AA RTA a landlord must not give a notice to terminate the tenancy or apply to the Tribunal for such an order, knowing they are not entitled to do so.
19. Breaching any of these obligations without a reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of \$6500.00. See section 60AA and Schedule 1A RTA.
20. At the hearing the first respondent explained that they gave notice to the tenant in good faith, on instructions from Mr Mureekal and that at the end of the tenancy their role as agent for the property ended. They say that they were just as surprised as the tenant to see the property re-advertised.
21. The first respondent explained further that they had not previously had any issues in this regard, but this is now the second instance in which they have given the same notice in good faith only to find that when the property has been transferred to Smart Homes Property Management Ltd to manage and immediately re-let at a higher rental. The first instance was the subject of a decision in the Tribunal on 30 August 2023 under TT 4627267.
22. The first respondent explained that as a result of these two instances they have adopted an agency wide practice of requiring evidence of the intended renovations (details and quotes) prior to giving notice in such circumstances.
23. At the hearing Mr Mureekal explained that when he asked that the tenant be given notice he was in two minds about whether to sell the property. He said that when the tenant gave notice on finding a new property the market wasn't favourable and so he decided not to go ahead and do the work that was planned prior to selling the property.
24. When I asked Mr Mureekal directly whether he had in fact done any repairs or renovations in between the tenant leaving and the property being advertised (four days in total) he said that some carpet had been replaced and some painting and outside work had been done. He was unable to provide any detail or receipts for the work or identify the work done in the photos used to advertise the property.
25. Having considered all of the evidence presented at the hearing, and filed prior, I find that the notice given was unlawful. There was no evidence to support any alterations, repairs, refurbishment or repairs and certainly not to the extent required. If any renovations were done at all they were very minor and not of the extensive nature that would justify terminating a tenancy.
26. The fact that the property was immediately re-listed with another agency and advertised only four days later, at an increased rental of \$130, leads me to the inevitable conclusion that notice was given so that the landlord could increase the rent.

Should exemplary damages be awarded?

27. 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) RTA.
28. The landlord knew that they were not entitled to give notice. While landlords are taken to know the law regardless, the first respondent had in fact advised them of the position and the need to carry out repairs.
29. The effect on the tenant has been severe. The landlord was aware that the tenant was in a very difficult position. The tenant and her young children were forced to move at a very difficult time and the tenant's rehabilitation has been negatively impacted.
30. Tenants find themselves in a vulnerable position when given notice to terminate their tenancy. They must find a new home at short notice and make all of the many life adjustments that such a move entails. There is a strong public interest in ensuring that landlords comply with the law and only give notice when they are lawfully entitled to do so.
31. I consider the breach to be at the high end. An award towards the higher end is required to deter repeat behaviour. I set exemplary damages at \$5,500.

Who is liable?

32. There are two sources of law that are relevant: the common law rules of agency, and the RTA, in particular the extended definition of agent in s 2(1). Section 2(1) RTA defines the meaning of landlord and agent:

landlord, in relation to any residential premises that are the subject of a tenancy agreement, means the grantor of a tenancy of the premises under the agreement, and where appropriate, includes-...

(e) an agent of the landlord

agent, in relation to any person who is a landlord or a tenant, means an agent of that person in that person's capacity as landlord or tenant; and includes an employee of that person in that person's capacity as landlord or tenant.

33. The District Court in the case of ***Mumby v Gary Brown Realty Ltd [2011] DCR 420***, held that *"the law is no different for agents acting under the Residential Tenancies Act than agents acting in any capacity"*.
34. The primary common law rule is that an agent who merely acts as an intermediary for a principal is not a party to the contract between the principal (the owner) and the other party (the tenant). Whether an agent is acting as an intermediary depends on the intention of the parties, which is determined objectively used in the contract and the background facts. Use of qualifying words like "as agent for"

or “on behalf of” will usually be interpreted to mean that the agent is acting as an intermediary and is not personally liable.

35. In reality, the Tribunal routinely hears cases filed by property managers, either in their own name or “as agent” for the landlord. This approach is a practical one that gives meaning to the words “where appropriate” that are used in the RTA when describing instances in which a property manager might also be a landlord.
36. In (TT 4627267) the issue as to which party should be liable could not be determined on the evidence available, and the owner was not joined, so the Adjudicator took the view that both parties were the “landlord” and if there was a disagreement about that issue between then the agent and landlord could resolve that dispute in a different forum.
37. In this proceeding both the tenants and the first respondents sought to have the second respondents joined to this proceeding. The first respondents gave extensive evidence proving that there was no intention on their part to give notice unlawfully.
38. In my view the issue of whether the first respondent also liable as a landlord depends on whether they played an active role in giving the unlawful notice or whether they were simply a conduit for the landlord’s unlawful notice. See ***Edinburgh Realty Ltd v Gray (DC Dunedin, TT1080 & 108297, 8 April 1998)***.
39. In this case, with the benefit of hearing extensive evidence and submissions on the matter, I consider that there was no intention on the part of the first respondent and that they were simply acting a conduit for the landlord when giving notice. It follows that it is only the second respondents that are liable.

Name suppression and filing fee

40. Because [The applicant/s] has wholly succeeded with the claim I must reimburse the filing fee.
41. She is also entitled to name suppression pursuant to Section 95A RTA, and has made an application for suppression, so I make an order accordingly.

M Allan
06 November 2023

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.