

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: The Chief Executive, Ministry of Business, Innovation, and Employment

Applicant

RESPONDENT: Wei Zhang

Landlord

TENANCY ADDRESS: 18A Branscombe Street, Johnsonville, Wellington 6037, Ground level

ORDER

1. Wei Zhang must pay The Chief Executive, Ministry of Business, Innovation, and Employment \$2,186.44, calculated as shown in table below:

Description	Tenant
Exemplary damages	\$2,166.00
Filing fee reimbursement	\$20.44
Total award	\$2,186.44
Total payable by Landlord to Tenant	\$2,186.44

2. The above order for the payment of money to the tenant, is stayed until the landlord's claim against the tenant is determined by the Tribunal.

REASONS

1. The Tribunal must consider an application filed by the Chief Executive of the Ministry of Business, Innovation and Employment, against Ms Zhang a landlord. The application relates to a claimed retaliatory termination notice. The applicant seeks to have that notice set aside, and for exemplary damages to be ordered.

2. I note at this time that in the Residential Tenancies Act 1986 (RTA) the responsibility for undertaking investigations around the compliance with RTA requirements, sits with the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE). However the officers within the Tenancy Compliance and Investigation Team (TCIT) act on delegated authority of the Chief Executive undertaking that work. For brevity in this decision I will refer to MBIE meaning not only the officers of TCIT, but Chief Executive where appropriate.

BACKGROUND

3. The background in this case can be summarised as follows.
4. There is a landlord / tenant relationship between Ms Zhang (landlord) and the tenant.
5. On 29 April 2022 MBIE received a complaint in relation to water ingress at the premises.
6. The MBIE investigator undertook a site visit on 20 June 2022, from which concerns were then raised with the landlord around water ingress into the tenancy, the smoke alarm and an electrical fault. The inspector noted that an extension cord had been plugged into the bathroom, to supply power to the lounge.
7. The Investigator requested various items of information which the landlord provided.
8. An independent weathertightness inspector assessed the premises, but could not find the source of the water leak without invasive testing being undertaken.
9. On 16 November 2023 the Tenants son contacted MBIE to report continuing electrical problems. The MBIE Investigator telephoned the landlord to advise that an improvement notice was to be issued in relation to the electrical fault, and the landlord then advised she would terminate the tenancy. That same day MBIE issued an improvement notice, which required the landlord to address the absence of power in the living area of the premises.
10. Within the quarter of an hour of the improvement notice being issued (within an hour of the phone call with the Investigator), the landlord issued a notice to the tenant terminating the tenancy:

I haven't heard you give me any information about the problem, but you keep telling me that the tenancy has various problems with my house, so I want to redecorate the house and decide to live in it by myself. Please move out of my house as soon as possible...within three months at the latest.

11. The Investigator, Ms Pauu, has filed a witness statement setting out her recollection of events, as follows:

18. On 16 November 2023 I called the Landlord at 11.31am to advise them that an Improvement notice would be issued to them addressing the electrical concerns relating to the breach of section 45 (1)(b) The landlord shall provide and maintain the premises in a reasonable state of repair. The landlord was open and engaged with the conversation about the Improvement notice and that she would work with TCIT.

19. The landlord stated that she would organise a plumber to visit the property. I clarified to the landlord that she would need an electrician. The landlord then became upset at this point as it was not a plumber that was needed. The landlord explained that she had previously organised two electricians to visit the property and that the tenant had not informed her of any electrical issue but only the concerns of the high-power bill. I attempted to de-escalate things by explaining to the landlord the importance of working together to resolve this matter. I explained to the landlord if an electrician was organised a report could be provided of the findings. The landlord then stated she did not understand and was confused and would email the tenants to end their tenancy.

20. I advised the landlord that she would need to follow the correct process around ending the tenancy as an email to the tenants would likely be void. I advised the landlord that the I emailed the landlord a copy of the Improvement Notice at 12.17pm

21. The Landlord then responded at 12:30pm shortly after receiving the improvement notice by emailing myself a tenancy termination notice for 18A Branscombe Street, Wellington with the tenant's son carbon copied in.

12. MBIE filed an application with the Tribunal seeking to have the termination notice set aside, and exemplary damages ordered, on the grounds that the termination notice was a retaliatory notice.

13. On 19 January 2024 I convened a hearing in Wellington to consider the MBIE application. In attendance was Ms Siania counsel for the Chief Executive. Also present was the tenants son (the tenant was not present). The landlord

was present and supported by a Mandarin interpreter, and the tenants son a Tamil interpreter. I directed that the whole of the hearing be interpreted into both languages.

14. In the circumstances I took an inquisitorial approach to the hearing, I summarised the case as set out in the MBIE documents, which Ms Pauu and Ms Siania confirmed was correct, and also requested the interpreters to interpret the key paragraphs of Ms Pauu's witness statement (those paragraphs have recorded above in my paragraph 11). I also set out a summary of the relevant legal considerations I would need to make in relation to claims for retaliatory notice. The landlord was given a fulsome opportunity to respond to the issues around the tenancy termination and allegation it was a retaliatory notice.

RELEVANT LEGAL CONSIDERATIONS

15. The relevant law that applies is found in the [Residential Tenancies Act 1986](#) ("RTA").
16. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.
17. That includes a requirement that the party bringing the claim (the applicant), establish their claims "on the balance of probabilities". The balance of probabilities means more likely than un-likely, or in mathematical terms, has a fractionally more than 50% likelihood. The Tribunal does not need to be certain or very sure about any claim, only that what is claimed is likely.

APPLICANT'S CASE

18. The position taken by MBIE is reasonably straightforward. MBIE's position is that the notice to terminate the tenancy, issued by the landlord, is a retaliatory termination notice. MBIE consider the notice was issued in response to the complaints around the tenancy, particularly the electrical issues. MBIE seek to have the termination notice set aside, exemplary damages ordered as well a reimbursement of the filing fee and a name suppression order for the tenant.

LANDLORD'S CASE

19. The landlord states that after the issues were raised in relation to electrical issues, the landlord appointed an electrician who could not find any fault in the premises.
20. The landlord notes also that that inspection report from MBIE also records that there were no electrical issues in the tenancy.
21. The landlord states that she was concerned about the state of the house, is wanting to do the renovation work.
22. At the hearing I requested that the interpreters read the Investigators witness statement (paragraphs 18 – 21 of that statement), in which the Investigator set out her impression of events, which was that on 16 November 2023 at 11:31 am the Investigator phoned the landlord about the electrical issues, during which the landlord advised the tenancy would end, after which the written improvement notice was given at 12:17, and then the termination notice shortly after that at 12:30. I indicated that my impression of this statement was that the termination was given in response to the communication from the Investigator about the electrical problems.
23. The landlord responded again advising that her intention was to undertake the work and move into the premises. The landlord also stated that the tenants had made many complaints about the flooding and electrical issues, but that she had addressed these with the relevant experts. The landlord again advised that she wanted to move back into the premises so she could then check the premises to find the problems. But the landlord was firm in her belief that there were no electrical problems.
24. The landlord advised that she has her own claims against the landlord for rent arrears, and further takes issue with damage caused by the tenant to the premises. I confirmed to the landlord that I cannot hear those matters today. Very recently a claim was filed for the rent arrears dispute, and that will be allocated a hearing before the Tribunal in due course, but the only matter I can consider today is the MBIE retaliatory notice claim.

ANALYSIS

25. The question I must determine, is whether the termination notice was a retaliatory termination notice.

26. Section 54 of the Residential Tenancies Act 1986 holds that the Tribunal may declare a notice to terminate a tenancy of no effect, and retaliatory if:

In giving the notice, the landlord was motivated wholly or partly by the exercise or proposed exercised by the tenant of any right, power, authority, or remedy conferred on the tenant by the tenancy agreement or by this or any other Act or any complaint by the tenant against the landlord relating to the tenancy.

27. The essential element of a retaliatory notice is the issuing of it in response to a tenant asserting a right or making a complaint, but it need not be the sole motivation, provided the landlord was partially motivated by the tenant asserting the right.

28. The Tribunal in *Easton v Marks* Auckland TT 229/87, 27 May 1987 considered the meaning of the verb “motivate”. It considered the Webster’s dictionary definition “to furnish with a motive or motives; to give impetus to; to insight; to impel”.

29. I have considered the information available, and I am entirely satisfied that when the landlord issued the termination notice to the tenant, she did so at least partly motivated by the tenant’s complaint via MBIE. That makes the termination notice a retaliatory termination notice.

30. Whether or not there is in fact an electrical issue, would not change anything as far as this retaliatory notice complaint is concerned. I have no reason to believe that the tenant and MBIE had not acted in good faith, or to put that another way, the improvement notice was issued with an honest belief there was an electrical problem. It is completely lawful for the tenant or MBIE to raise that with the landlord, and if the landlord terminated the tenancy in response, even in part, then the landlord is acting in a retaliatory way.

31. It is also relevant to note that if the landlord wanted to challenge the improvement notice (as she seems to want to do), then there is a process in the RTA under section 126L. The landlord could apply to the Tenancy Tribunal, and this Tribunal could confirm, vary or rescind the notice. This information is set out in the improvement notice.

32. I have considered the landlords statement that she wished to move into the premises and undertake renovation works. The tenant has not produced any evidence supporting that intention such as quotations etc. All I have is the landlords statement on that matter.

33. But I consider the much stronger evidence is that from MBIE, which shows that there had been a range of complaints made and investigated in relation to the tenancy. On 16 November 2023 the Investigator was speaking with the landlord, and advised an improvement notice was to be issued, which it was a short time later. Then within less than 15 minutes, the landlord had issued a termination notice. I am also minded that the landlord had indicated to the Investigator during the conversation she would end the tenancy.
34. I consider the much more likely situation is that the landlord was motivated at least partly, by the complaint around the tenancy.
35. The primary remedy to for a retaliatory notice, is that the Tribunal orders that notice be set aside (cancelled), and I make that order today. This means the notice is of no effect, so the tenancy will continue.

EXEMPLARY DAMAGES

36. MBIE has applied for exemplary damages for the landlord's giving of the retaliatory notice.
37. Exemplary damages are designed to punish and to deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal (Cooke P) said:

Exemplary and punitive [damages] are different words for the same thing. The damages are exemplary because they are meant to teach an example to the guilty officer and others. They are punitive because they are meant to punish. They are like a fine, though they go to the citizen who has been the victim of conduct.

38. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. In this case the RTA confirms that the giving of a retaliatory termination notice is an unlawful act. If that is proven, and before the Tribunal may award exemplary damages, it must take account of the factors set out in section 109 RTA.
39. Section 109 of the RTA relates to exemplary damages, and confirms that exemplary damages can be awarded if the unlawful act was committed intentionally, and having regard to:
- a. The intent of the person committing the unlawful act.
 - b. The effect of the unlawful act.

- c. The interests of the landlord or tenant against whom the unlawful act was committed.
 - d. The public interest; and
 - e. Whether it is just to make the award.
40. The maximum levels of exemplary damages are set out in Schedule 1A of the Act.
41. Taking those factors into consideration, I consider the landlord had acted intentionally. My impression is that during the conversation on 16 November 2023, after the landlord had advised the Investigator the tenancy would be terminated, the Investigator had warned the landlord that she needed to follow the correct processes, but that warning was not heeded, and shortly following the phone call the termination notice was issued. In light of the warning, I consider the landlord acted intentionally.
42. The effect of the unlawful act (giving the retaliatory notice), is that the tenant was advised his tenancy would end, which I could accept would have caused significant stress for him and his family.
43. There are strong interests for tenants and the public generally, that when termination notices are given, they are only given lawfully. Ending a person's tenancy is a very significant step to take.
44. I consider it would be just to make an order, particularly in light of the circumstance of the landlord having been warned prior to the notice being issued.
45. The maximum level of exemplary damages for a breach of section 54 is \$6,500.00. In this case I make an order for 1/3rd of that maximum. There are no aggravating factors that would call for a higher order, nor is there evidence before me of the landlord committing similar unlawful acts which would require a higher order today. I therefore order exemplary damages of \$2,166.00.

ORDER STAYED

46. I have ordered the landlord pay exemplary damages (and the filing fee) to the MBIE. However I note that the landlord has very recently filed an application against the tenant for rent arrears. It is reasonable that I stay this order

(meaning the landlord does not need to pay the money now), until the Tribunal determines the rent arrears claim. The reason is that if the Tribunal finds that rent arrears are owed (and to be clear I have not considered that claim and so I express no view on it), then the money I am ordering today will be deducted from any amount of rent ordered at the later hearing.

FILING FEE

47. Because the applicant has been wholly successful in their application, I must award the filing paid to commence the proceeding in the Tribunal, which is \$20.44.

NAME SUPPRESSION

48. The Tribunal orders name suppression to apply for the tenant as required by section 95A(2) of the RTA.

R Woodhouse
19 January 2024

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