

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]
Tenant

RESPONDENT: Kāinga Ora–Homes And Communities
Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. Kāinga Ora–Homes And Communities must pay [The tenant/s] \$6,020.44 immediately, calculated as shown in table below:

Description	Tenant
Compensation	\$3,000.00
General damages	\$3,000.00
Filing fee reimbursement	\$20.44
Total award	\$6,020.44
Total payable by Landlord to Tenant	\$6,020.44

REASONS

1. The Tribunal must consider an application filed by the tenant against the landlord. The claim is that the landlord has failed to adequately ensure the quiet enjoyment of the tenants in the tenancy.
2. Both parties appeared at the hearing.

BACKGROUND

3. The tenant's home is a tenancy located in a Kāinga Ora housing complex of 20 units.
4. There is no dispute between the parties, that significant problems arose with the tenants located in unit 10.
5. Regular complaints were made to the landlord in relation to wide ranging antisocial behaviour of the unit 10 tenants.
6. On 27 September 2023 the landlord wrote to the unit 10 tenants stating:

On 26 September 2023 we received multiple complaints about disruptive behaviour at your address which includes people fighting in the hallway, holding the lift, drinking at the entrance door, and leaving trolleys around the floor levels, disorder, intimidation, possible strangers entering property ringing other people's unit to open the entrance door. We believe this is carried out by you and your household members and visitors.

7. On 2 November 2023 the landlord sent a further letter to the unit 10 tenants:

We have been trying to contact you to talk about the number of complaints we have received pertaining to your visitors. In particular, a female individual has been seen by residents at the complex tempering with the access keypad and buzzing other resident units to gain an authorised access into the building.

The same individual has also been reportedly having arguments in the hallway and knocking on other residents doors and asking for money. Unfortunately, this means you are not meeting the conditions of your tenancy.

8. Both letters requested that the tenant moderate the behaviours.
9. The landlord sent six letters to the unit 10 tenants seeking a meeting, those letters were sent on:
 - a. 27 September 2023
 - b. 13 October 2023
 - c. 20 October 2023
 - d. 30 November 2023
 - e. 22 December 2023

f. 15 March 2024

10. The unit 10 tenants, did not respond to any of those communications.

11. On 31 January 2024, the landlord issued a notice under section 55A of the RTA. Section 55A is a provision of the RTA which allows the landlord to issue three notices of antisocial behaviour to a tenant, following which an application could be made to the Tenancy Tribunal seeking termination of the tenancy. In any event, that 31 January notice states:

We recently spoke with you about the incident that occurred on 22 December 2023 at approximately 8.15am at 10/78 Mount Smart Rd **(your home)** which we consider amounts to anti-social behaviour. We understand the details of the incident to be as follows:

- At approximately 8.15am on 22 December 2023, a female visitor to your home, who we understand to be Mr Toto's partner, [the victim], was pushed from the second-floor balcony of your home. [the victim] sustained serious injuries, and other residents at the complex provided [the victim] with comfort and support while waiting for the emergency services to arrive. This behaviour had significant impact on other residents.
- Mr Toto has since been charged with intent to injure for this incident as Police believe Mr Toto pushed [the victim] from the balcony. The police reference number for this incident is [redacted].
- On the same day, Police located methamphetamine, and utensils associated with methamphetamine use at your home.
- • On 02 January 2024, Mr Toto spat at a neighbour, and has since been charged with minor assault by Police.

We consider this to be anti-social behavior because the incident has caused your neighbours and other residents in the complex significant mental trauma and distress.

This is a breach of your tenancy agreement. It is important this does not happen again.

12. On 28 February 2024 the tenant filed this application with the Tribunal.

13. On 11 March 2024 the landlord applied to the Tribunal for an order terminating the tenancy of the unit 10 tenants. This application was successful. The Tribunal ordered a termination of the tenancy on account of the unlawful actions arising from that tenancy, including assault and threat to assault.
14. What I have not recorded in my summary of the background above, it that over this time there were repeated complaints to the landlord from tenants in the complex in relation to the unit 10 tenants.
15. Furthermore, the landlord made a number of offers to the tenant (the applicant) that she could move to another Kāinga Ora property.

TENANT'S POSITION

16. The tenants position is that they have been terrorised by neighbours at unit 10. The tenants state that they have reported this to the landlord multiple times over about a year, and got no traction from those complaints with the landlord addressing the abuse and behaviour from the unit 10 tenants. The response from the housing manager was that the tenants should keep complaining so that that the landlord would have a record of the issues. The tenants say they should not have to keep complaining, without the landlord doing something about it.
17. At the hearing the tenant described the following issues with the unit 10 neighbours :
 - a. She has needed to pause her studies, because she could not cope with it given what was happening at the tenancy.
 - b. Given her understanding that Kāinga Ora did not terminate problem tenancies, there was no reason to move to another offered Kāinga Ora tenancy, because she would be in a similar situation with other problem tenants there.
 - c. There is widespread contamination over the premises with blood, sputum and urine.
 - d. Abuse from other tenants, such as being called "pig lover" because she knew police officers.
 - e. Death threats from other tenants in the premises.
 - f. A female tenant from the complex defecating outside her door.

- g. Tenants banging on the doors.
- h. Car tyres being slashed.
- i. Lack of freedom of movement

18. At the hearing the tenant set out in detail the psychological issues she has faced from her experience with the unit 10 tenants, which is supported by a medical certificate from her GP. I will not set that out in this decision.

LANDLORD'S POSITION

19. In response the landlord accepts there has been an interference with the peace comfort and privacy in relation to the unit 10 neighbours. To be fair to the landlord, the landlord has not disputed any of the experiences the tenants describe.

20. However the position the landlord takes, is that the actions the landlord has taken to address the problems with unit 10 have been reasonable in the circumstances.

21. The landlord submits that exemplary damages cannot be ordered, and the landlord opposes an order for compensation or general damages because it considers it has acted reasonably.

RELEVANT LEGAL CONSIDERATIONS

22. The relevant law that applies is found in the [Residential Tenancies Act 1986](#) ("RTA").

23. With any claim before the Tenancy Tribunal, the Tribunal applies the usual civil law standards and expectations.

24. 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.

25. This obligation carried by the applicant is referred to as the “burden of proof”. Independent witnesses, corroborating documents and photographs are an important part of discharging this burden.

ANALYSIS

26. The starting point must be to consider what the relevant obligations are.

27. Section 40 of the RTA sets out the tenants responsibilities, and that includes that the tenant shall not:

cause or permit any interference with the reasonable peace, comfort, or privacy of any of the landlord’s other tenants in the use of the premises occupied by those other tenants, or with the reasonable peace, comfort, or privacy of any other person residing in the neighbourhood.

28. That of course was the obligation on the unit 10 tenants. There is no dispute that they have not complied with this obligation.

29. Section 45 sets out the landlords responsibilities, and that includes at 40(1)(e) that the landlord must:

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.

30. For the reasons I explained to the parties at the hearing today, I find that the landlord has breached its obligations under section 45 for these reasons.

- a. If is not clear to me the point of the landlord sending the unit 10 tenants the letters it did on 27 September 2023 and 2 November 2023, because they are not statutory notices, they are no more than non-binding requests from the landlord that carried no legal weight.

They were not section 55A notices, and on reviewing those notices again following the hearing, they would not even be 14 day notices which may have been relevant for a termination application under section 56. That is because:

- i. In order to be a section 56 notice then the notice needed to require the tenants to remedy a breach in no less than 14

days. Both notices failed to require the tenants to remedy the breaches within a time frame; and

- ii. I consider the breaches described would not be capable of remedy, so a notice to remedy would be a nullity. That is because (put legally) the breaches relate to breaches of a negative covenant. A negative covenant means a requirement not to do something. As an example, in the District Court decision of *Clarke v Housing New Zealand* (CIV 2008-006-000033) the breach was a breach of the Misuse of Drugs Act 1975. The Judge confirmed that:

[38] In my view, this is one of those breaches which is incapable of remedy. This is one of those situations where there was a breach of a negative requirement on the tenant not to commit an unlawful act on the property.

- b. While I cannot criticise the landlord for wanting to engage with the unit 10 tenants by way of a meeting to discuss their behaviour, it cannot have been reasonable to write 6 letters requesting a meeting between 27 September 2023 and 15 March 2023. It should have been crystal clear to the landlord well prior to 15 March, that the unit 10 tenants we are not going to engage with the landlord. In my view a reasonable landlord would have reach that conclusion, probably after the second letter had gone unanswered. By persisting with requesting meetings, all that the landlord has done is continue to allow the other tenants in the complex to be disturbed by the behaviour of the unit 10 tenants.
- c. In my view, no reasonable landlord would have elected to issue a section 55A notice, as this landlord has done on 31 January 2024, when faced with such serious allegations as a person being thrown off a second floor balcony, having methamphetamine and utensils in the premises and assaulting another tenant. A reasonable landlord would have applied for an immediate termination under section 55 and 56.
- d. Taking into consideration the behaviour that has been described from the unit 10 tenants, I am very confident in concluding that any reasonable landlord would have applied to the Tenancy Tribunal well before the landlord did in this case. Even if I were to only consider the behaviour set out in the 31 January 2024 notice, it took the landlord around 6 weeks to apply to the Tenancy Tribunal for termination of the tenancy. I do not accept that a reasonable defence

to this delay was obtaining legal advice internally before the application was made.

31. For those reasons, I find by a very significant margin, that the landlord has not taken all reasonable steps to ensure that none or the landlord's other tenants caused or interfered with the reasonable peace, comfort or privacy of the other tenants (this applicant) in the use of her premises.

Exemplary damages

32. The tenants have applied for exemplary damages. Exemplary damages can be ordered when the landlord (or tenant) commits a defined unlawful act in the RTA. In this case however, a breach of section 40(1)(e) is not deemed to be an unlawful act (see *Maria Cavanagh v Kainga Ora* [2022] NZDC 7003).

Compensation / General damages

33. I do consider that compensation and general damages should be ordered in this case.
34. Compensation is money ordered to remedy an actual loss. For example the tenant failing to get what they had contracted for from the landlord for which rent was paid (such as quiet enjoyment of the tenancy), or other out of pocket costs.
35. General damages is like compensation, but it is money ordered to 'compensate' for failure to get mental satisfaction when mental satisfaction of an agreement is required.

Compensation

36. The situation is similar to that considered by the District Court in *Maria Cavanagh v Kainga Ora* [2022] NZDC 7003
37. In that case Ms Cavanagh was living in a Kāinga Ora complex in Christchurch, and was troubled by distressing events above her unit. Over the next 10 months Ms Cavanagh reported her concerns to the landlord, and eventually the problem tenants were moved to another location. The disturbance to Ms Cavanagh could be summarised as her being disturbed

by domestic violence in the problematic tenancy, but one of the significant differences to the current case, is that the problematic behaviour was not directed at Ms Cavanagh. The court concluded that \$1,000.00 should be ordered by way of compensation to the tenant.

38. When I consider this current claim, against that of Ms Cavanagh's, I have determined that a higher level of compensation is necessary, because I consider the effect for the tenants was much more significant, so any loss can be expected to be proportionally greater. In this case the abuse and threats were at times directed at the tenant, and in short I consider the tenants have been terrified by their neighbours, to the extent she was fearful of leaving her house. It is not possible to quantify with precision what level of loss has been experienced, the best that I can do is to step back and decide what a fair level of compensation would be in the circumstances.

39. I take into account the rental for the premises was modest, and I also take into account the level of compensation the court applied in Cavanagh as a guide, alongside the period of time the behaviour has affected the tenant. I have determined that a fair level of compensation would be \$3,000.00 and that is ordered.

General damages

40. As above, general damages are directed toward failure to obtain mental satisfaction from the agreement. It can be accepted that there is an expectation that the tenants will be at peace and comfortable in their own home, and that was an expectation under the tenancy agreement. A further aggravating factor in this case, is that rather than addressing the behaviour from unit 10, the landlord suggested that the tenant (the applicant) move. This has caused an additional level of distress for the tenant, in further diminishing her sense that her tenancy was her home.

41. Having heard from the tenant, and considering the evidence and case of Kāinga Ora, I believe the landlord has seriously underestimated and downplayed the impact that living in the tenancy, with the abuse, threats and fear that was instilled by the unit 10 tenants. The tenant did not feel the landlord took their complaints seriously, and I can understand why they feel that way. I have determined that general damages of \$3,000.00 would be reasonable and that is ordered.

NAME SUPPRESSION

42. The Tribunal can order name suppression when a party has been wholly or substantially successful in the proceeding. In this case the tenants request name suppression. Because the tenants have been substantially if not wholly successful, name suppression for her is ordered.

R Woodhouse
23 March 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 fesoatai mai le Tenancy Services i le numera 0800 836 262.