

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

APPLICANT: [The applicant/s]  
Tenant

RESPONDENT: Denise Fincher, Mark Fincher  
Landlord

TENANCY ADDRESS: 106 School Road, Paihia 0200

**ORDER**

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Tenant names and identifying details.
2. Mark Fincher and Denise Fincher are to pay [The tenant/s] \$334.72 immediately, calculated per the table below:

<b>Description</b>	<b>Landlord</b>	<b>Tenant</b>
Partial rent refund		\$314.28
<b>Filing fee</b>		<b>\$20.44</b>
<b>Total award</b>		<b>\$334.72</b>
<b>Total payable by Landlord to Tenant</b>		<b>\$334.72</b>

**Reasons:**

*Background*

1. The tenanted premises is a self-contained apartment/unit on the ground floor of a house in Paihia. The landlords live in the upper floor.
2. Before the start of the tenancy the tenants lived in [City 1]. [Tenant 1] accepted a job at the [redacted] in [City 2]. They saw the Paihia property available to rent

and made enquiries about it. Most of the communication was between [Tenant 1] and Mrs Fincher.

3. Mrs Fincher sent [Tenant 1] a video of the property. [The tenant/s] agreed to rent it. Mr & Mrs Fincher sent [The tenant/s] a tenancy agreement for a fixed term tenancy commencing on 18 August 2023 and ending on 18 February 2024. [The tenant/s] signed the tenancy agreement and returned it.
4. The tenants did not have the full amount of the bond (\$1,650.00). The landlords agreed to accept an initial payment of \$500.00 for the bond, plus two weeks rent in advance.
5. [The tenant/s] left [City 1] on 28 August, planning to travel directly through to Paihia, intending to arrive early in the morning on 29 August.
6. In the afternoon of 28 August, a probation officer came to the property and informed Mr & Mrs Fincher that [Tenant 2] is on electronically monitored bail. The officer wanted to ensure that there was an internet connection at the property for the electronic monitoring. Mr & Mrs Fincher say that the probation officer told them that:
  - a. Because [Tenant 2] was going to reside in the same house as them, they would need to provide written consent for him to live there, and they would also need to consent to a police check being done on them.
  - b. [Tenant 2] would be subject to regular visits by a probation officer and random checks by police, potentially at any time of the day or night.
7. Mr & Mrs Fincher were upset about this, and about the fact that the tenants had not told them about [Tenant 2]'s circumstances. They immediately contacted the tenants and told them that they did not want to proceed with the tenancy.
8. Mr & Mrs Fincher refunded the \$500.00 bond, but not the two weeks' rent in advance.
9. The tenants' application seeks refund of the two weeks' rent in advance, plus costs associated with the cancellation of the tenancy (accommodation, travel, inconvenience, etc), and exemplary damages (termination without grounds).

### Findings

10. The parties entered into a written agreement. The agreement created a tenancy.
11. The Residential Tenancies Act 1986 ("RTA") imposes rights and obligations on landlords and tenants.
12. The RTA does not impose any obligations on tenants as to what information they must disclose to landlords when negotiating a tenancy.
13. The RTA sets out the circumstances in which a tenancy may be terminated.

14. The RTA applies to all residential tenancies, but it does not exclude the application of the general law of contract. To the extent that the general law of contract does not directly conflict with a specific provision of the RTA, it still applies. A tenancy agreement is a type of contract.
15. In any contract there may be express and implied terms.
16. Implied terms are not set out in the written agreement. They are “read into” an agreement by the Courts in circumstances. One established example is to “give business efficacy” to an agreement.
17. The Tenancy Tribunal and the District Court have found implied terms in tenancy agreements in various circumstances, for example:
  - a. There is an implied term that a tenant will allow reasonable access for a landlord to carry out a repair.<sup>1</sup>
  - b. There is an implied term that the landlord will provide water invoices to the tenant at regular intervals for payment.<sup>2</sup>
  - c. There is an implied term that landlords will provide curtains in a tenanted property, particularly in bedrooms.<sup>3</sup> By analogy, landlords must also provide light fittings.<sup>4</sup>
  - d. There is an implied term that tenants can only be held responsible for keeping swimming pools clean if it is reasonably possible for them to do so.<sup>5</sup> The same term is implied in respect of keeping driveways free from weeds.<sup>6</sup>
18. The purpose of these implied terms is to ensure that no excessive or unreasonable burden is placed on either the landlord or the tenant. Sometimes issues come before the Tenancy Tribunal or District Court that are not specifically addressed in the RTA, but which need to be resolved in a manner that is consistent with the spirit and intent of the RTA.
19. The tenants did not have a legal obligation to tell the landlords that [Tenant 2] was on electronically monitored bail. The landlords could not legally cancel the tenancy simply because [Tenant 2] was on bail.
20. However, the fact that [Tenant 2] was on electronically monitored bail meant that the landlords were required to assume obligations that are substantially beyond a ‘normal’ tenancy, including:
  - a. Having to submit to a police check.

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<sup>1</sup> *Hooper v Housing New Zealand Corp* TT Manukau 10/03104/MK

<sup>2</sup> *Woollams v Simpson* DC Auckland 2005-004-1583

<sup>3</sup> *Tomlinson v Mittal* TT Auckland 08/5574/AK

<sup>4</sup> *Summit Property Management Ltd v Tenant* [2023] 4691490

<sup>5</sup> *Wiki Property Management v Tenant* [2022] 4301945, 4304076

<sup>6</sup> *Miti v Barfoot & Thompson Ltd* [2023] 4637969

- b. Having to inform their insurer, with possible implications in terms of their insurance cover.
  - c. Having to accept random police visits to the property at any time of the day or night.
21. I accept that [The tenant/s] thought that they were doing the right thing by waiting until they arrived at the tenancy before telling the landlords about [Tenant 2]'s circumstances face-to-face. They went through all the correct steps in terms of communicating with Corrections Officers about the re-location. They were disappointed with the way that the Northland Corrections Officers contacted the landlords without communicating with them about it, including giving the landlords information about [Tenant 2]'s convictions.
22. The Tenancy Tribunal is required to “determine each dispute according to the general principles of the law relating to the matter and the substantial merits and justice of the case”<sup>7</sup>.
23. My findings are:
- a. It would be unjust to require Mr & Mrs Fincher to accept a tenancy that imposed on them an unforeseeable and unreasonable compromise of their own peace comfort and privacy (consenting to a police check, accepting random police visits) and their own commercial risk (insurance).
  - b. Therefore, Mr & Mrs Fincher were entitled to cancel the contract.
  - c. It was appropriate to refund the bond to the tenants, and Mr & Mrs Fincher did this promptly. Mr & Mrs Fincher elected to cancel the contract, and my finding is that any rent paid by the tenants beyond the date of cancellation must be refunded to them. The tenants paid two weeks' rent in advance, but they did so on the understanding that they would not be able to travel to Paihia to begin the tenancy until 28/29 August. My finding is that Mr & Mrs Fincher must refund the balance of rent paid for the period after 28 August, which is four days of rent (\$314.28).

Filing fee, name suppression

24. The tenants have been partially successful in this application. I will award the tenants the filing fee of \$20.44.
25. The tenants did not seek name suppression. The Tribunal has a discretion to grant name suppression “of its own initiative”.<sup>8</sup> This decision includes information that is personal to the tenants, over which they have the right to some control. Publication of the tenants' names may be unfairly detrimental to

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<sup>7</sup> Section 85(2) RTA

<sup>8</sup> Section 95A(4) RTA

them. Having regard to the interests of the parties and to the public interest my finding is that it is appropriate to grant name suppression to the tenants in this instance.

N Blake  
08 April 2024

## **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.