

TENANCY TRIBUNAL - [Event location suppressed]

APPLICANT: [The applicant/s]
Landlord

RESPONDENT: Allie Mitchell, Camilo Aristizabal Gomez, Karl Fesenmeier, Max Farmer, Merlyn Manson, Sarah MacDonald, Tom McDermott, Gerry McKeown, Maeve Cudmore, Nathan Taylor, Zak Cohen Rudin, Eva Sweet-Anderson
Tenant

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An application for suppression has been made in this case, and the Tribunal orders suppression of the Landlord name and identifying details.
2. By way of declaration the landlord is entitled to show the premises to prospective tenants at any reasonable time after giving the tenants 48 hours notice.
3. Allie Mitchell, Camilo Aristizabal Gomez, Karl Fesenmeier, Max Farmer, Merlyn Manson, Sarah MacDonald, Tom McDermott, Gerry McKeown, Maeve Cudmore, Nathan Taylor, Zak Cohen Rudin, Eva Sweet-Anderson must pay the landlord the filing fee of \$20.44 immediately
4. The application by the tenants for a declaration and exemplary damages is dismissed.

Reasons:

1. Two of the tenants and the landlord attended the hearing.

2. The tenants seek a declaration that the landlord is unable to hold viewings for the premises for prospective tenants and exemplary damages for breach of quiet enjoyment.
3. The landlord has cross applied for a declaration allowing viewings for prospective tenants.
4. The tenancy is for a fixed term from 1/1/2023 to 31/12/2023 at \$1,920.00 rent per week.

Has the landlord breached the tenants' quiet enjoyment?

5. The tenants claim the landlord has breached their quiet enjoyment of the premises by showing prospective tenants around the property, without consent on 23/8/2023.
6. The tenants submitted that since 25 July they had made it clear to the previous landlord that the property was not available for viewing by prospective tenants because they had not made up their mind whether they would be staying in the premises after the end of the fixed term.
7. Further the tenants said they were advised via email on 21 August that the landlord would be showing family members around the premises with a view to them becoming tenants in 2024.
8. Based on the fact that the landlord undertook the viewing two days after the email and the difficulties which had arisen with repairs and maintenance during the tenancy the tenants believed the landlord had committed an unlawful act and wanted exemplary damages.
9. In response the landlord submitted that because she did not receive any response to her email of 21 August, she believed she had the consent of the tenants for the viewing.
10. Further because the three tenants who were at the premises on 23 August did not object to the viewing the landlord went ahead with showing the premises to her son.
11. A landlord must not interfere with the reasonable peace, comfort or privacy of the tenant in their use of the premises. See section 38(2) Residential Tenancies Act 1986.
12. Breaching this obligation in circumstances that amount to harassment is an unlawful act for which exemplary damages may be awarded up to a maximum of \$3,000.00. See section 38(3) and Schedule 1A RTA.
13. I find the landlord has not breached the tenants' quiet enjoyment in their use of the premises by showing prospective tenants the premises and certainly not in circumstances that amount to harassment.

14. This is a fixed term tenancy. It is one to which section 60A, as amended in 2021, applies. The effect of section 60A(1) is to continue a fixed term tenancy as a periodic tenancy unless any of the circumstances specified in section 60A(2) or (3) applies.
15. The amendment only applies to tenancies granted after 11 February 2021. This is the case here as the tenancy began on 1 January 2023.
16. Subsection 60A(2) provides that the tenancy does not continue as a periodic tenancy if:
 - a. Before the expiry, the parties renew or extend the existing tenancy agreement; or
 - b. Before the expiry, the parties agree not to continue with the tenancy; or
 - c. At least 28 days before the expiry, the tenant gives the landlord written notice of the tenant's intention not to continue with the tenancy; or
 - d. Before the expiry a party gives notice in relation to physical assault, unlawful residential premises, mortgagees entitled to possession, destruction of premises, where a breach renders premises uninhabitable and maximum level of contaminant, none which are applicable in this case.
17. Although the tenants have not yet given the landlord any notice about whether they are continuing with the tenancy, and have until 3 December to do so, this does not mean that the landlord cannot show prospective tenants the premises.
18. Under section 60A landlords and tenants have rights about how a fixed term tenancy may end.
19. The renting of premises is a business and the landlord suggested because of the size of the property finding new tenants could be difficult, as had happened at the beginning of 2023.
20. I consider the evidence supports that the landlord is attempting to ensure the continuation of her business as far as the legislation allows her to do so.
21. However, the landlord needs to be careful of signing up any new tenancy agreement for 2024 when there is an existing tenancy still in place, be that fixed term or periodic.
22. Harassment means "to trouble, worry or distress" or "to wear out, tire, or exhaust" and "indicates a particular pattern of behaviour directed towards another person". *MacDonald v Dodds*, CIV-2009-019-001524, DC Hamilton, 26 February 2010.
23. Black's Law Dictionary defines harassment as:

Words, conduct, or action (usu. repeated or persistent) that, being directed at a specific person, annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.

24. These definitions suggest there must be evidence of some ongoing intentional actions directed at a specific person which causes distress to them. Therefore, a single act of interference with the tenant's quiet enjoyment would be unlikely to amount to harassment, unless it was an occasion of significant seriousness, which I do not consider is the case here.
25. As the landlord has not committed an unlawful act, the claim for exemplary damages fails.

Did the landlord enter without consent and did the tenants unreasonably withhold consent?

26. [The landlord/s] claims the tenant has not allowed her entry to the premises when she was entitled to enter.
27. The day after the viewing on 21 August the landlord submitted that she received an email from the tenants suggesting that she had entered the premises without consent, and they did not agree to the premises being shown to prospective tenants.
28. The landlord said she sent a 14 day notice to the tenants dated 28 August 2023 advising them she believed their refusal to allow viewings was a breach.
29. On the other hand, the tenants believed it was unreasonable for the landlord to schedule viewings because they had not told the landlord whether or not they were leaving the tenancy at the end of the fixed term.
30. A landlord may enter the premises during the tenancy at any reasonable time with the tenant's consent, for the purpose of showing the premises to, among others, prospective tenants. See section 48(3)(a) Residential Tenancies Act 1986.
31. Under subsection (3A) a tenant may not withhold consent unreasonably and a landlord may not enter without prior consent.
32. Breaching these respective obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of \$1,500.00. See section 48 (4)(a)&(b) and Schedule 1A Residential Tenancies Act 1986.
33. For the reasons set out in paragraphs 20, 21 and 22, I find the tenants have committed an unlawful act by unreasonably refusing to allow viewings of the premises by prospective tenants.
34. The reason given by the tenants that there should be no viewings because they haven't yet told the landlord whether they are leaving is I consider not a reasonable excuse.

35. The landlord has indicated that the prospective tenants she has in mind, who are the friends of her sons, need to be shown through within the next four weeks, before the end of the University year.
36. Based on the evidence of the landlord I do not consider this is unreasonable.
37. As the landlord did not ask for exemplary damages for the breach by the tenants, I do not need to consider that issue.
38. I find the landlord did have consent to enter the premises on 23 August.
39. When the tenants received the 48 hours notice about the viewing they did not respond to the landlord.
40. The evidence of the landlord supports that the three tenants at the premises at the time of the viewing did not object, and this evidence was not disputed by the tenants.
41. I have ordered by way of declaration that the landlord is entitled to show prospective tenants the premises pursuant to section 48(3)(a).
42. The tenants' application for a declaration fails.
43. As [The applicant/s] has wholly succeeded with the claim I must award the filing fee.
44. Suppression is granted to the landlord pursuant to section 95A because she was successful with the claim.
45. No filing fee or suppression is available to the tenants.

J Wilson
27 September 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.