

TENANCY TRIBUNAL - Manukau

APPLICANT: Lalit Singh, Musarat Zabeen
Occupants/Tenants

RESPONDENT: Permila Devi Ram
Landlord

TENANCY ADDRESS: 18 Cambourne Road, Papatoetoe, Auckland 2025

ORDER

The application is struck out for want of jurisdiction.

Reasons:

1. Both parties attended the hearing.
2. The Landlord argues that s 5(1)(n) of the Residential Tenancies Act 1986 ("the Act") applies and excludes this tenancy from the provisions of the Act.
3. Just prior to the hearing I told the parties I would hear and determine the issue of jurisdiction first, before hearing the substantive claim. I reiterated this at the hearing.
4. For the reasons outlined below, I am satisfied s 5(1)(n) applies. Consequently, there is no residential tenancy to which the Act applies.

The law

1. Section 4 of the Act reads:

“This Act applies to every tenancy for residential purposes except as specifically provided.”

Prima facie, the premises at 18 Cambourne Road, Papatoetoe (*the premises*) were used for residential purposes and as such as a starting point is covered by the Act, unless a section 5 exemption applies, and the parties did not contract back into the Act.

2. “Tenancy” is defined in section 2 of the Act as follows:

“tenancy, in relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent; and includes any tenancy of residential premises implied or created by any enactment; and, where appropriate, also includes a former tenancy”

3. The Landlord argued that money was paid by the Occupants/Tenants in exchange for occupancy rights and not as rent for tenancy. The Occupants/Tenants argued that they paid rent and had a verbal residential tenancy agreement with the Permila Ram Trust (*the Trust*) in exchange for \$400 per week for the first month, and \$500 per week thereafter.

4. The exceptions to the Act are contained in s 5. Relevantly, s 5(1)(n) of the Act provides:

“...where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord's or owner's family.”

5. Under s 5 of the Act, *member of the landlord's or owner's family* means any person who is related to the landlord or owner by blood, or through marriage, a civil union, or a de facto relationship; or by adoption.

6. Section 2 of the Act, defines a landlord as *“in relation to any residential premises that are subject to a tenancy agreement, means the grantor of a tenancy of the premises under the agreement...”*

7. The Trust, through its trustee Ms Ram, granted tenancy of the premises to the Occupants/Tenants, as members of her family. Ms Ram kept some of her possessions at the premises and occupied a bedroom when she was at home. She also intended to live with the Occupants/Tenants as a family unit on a more full-time basis in the future.

8. Section 10 of the Act states:

“Where, in any proceedings before the Tribunal, any party contends that this Act does not apply in respect of any tenancy of any residential premises, it shall be for

that party to establish the facts upon which it is contended that this Act does not apply.”

9. So, in the present case, the Landlord must prove, on the balance of probabilities, that s 5(1)(n) applies. This requires the landlord to prove that Ms Ram is the landlord and owner of the premises, and that Mr Singh and Mrs Zabeen are members of the landlord's or owner's family.

Who is the landlord or owner of the residential premises

5. A trust is not a separate legal entity, the trustees own the trust assets of any family trust, for the benefit of the beneficiaries.
6. The trustees of the Trust own the premises. Ms Ram is the settlor of this Trust, a co-trustee and a beneficiary that has a licence to occupy the premises and use it as her place of residence. She does not have to pay rent if she pays all the outgoings for the premises. As such, she is not a tenant for the purposes of the Act. Although Mr Alan McLean is a co-trustee and a co-owner/landlord of the premises, as Davidson J states in *Lothbury Management Ltd v Ryan and Anor* [2021] NZHC 2621 [1 October 2021] at [45]:

“...where two co-owners agree that the property is to be used by one of them as a place of residence, s5(1)(n) applies, and a residential tenancy governed by the Act is deemed not to exist”.
7. Whether the Occupants/Tenants are covered by the provisions of the Act, or are common law tenants, depends on whether they are family members of the Trustee landlord and legal owner of the premises.

Were the occupants/tenants members of the landlord's or owner's family

8. During the hearing, the parties confirmed that Mr Singh is Ms Ram's sister's son and her nephew. They are therefore related by blood. The parties also confirmed that Mrs Zabeen is married to Mr Singh and is therefore related to Ms Ram by marriage.
9. Ms Ram, as a co-trustee/landlord/owner, entered into a verbal agreement for Mr Singh and his wife to reside at the premises, in exchange for \$400 a week for the first month and \$500 per week thereafter.
10. Ms Ram says she entered into this verbal agreement, on the understanding that Mr Singh and Mrs Zabeen are her family members, one by blood and the other by marriage. Further, that they were not tenants but occupants that paid rent towards offsetting the outgoings of the premises, that Ms Ram has responsibility for covering as the holder of a licence to occupy and the main tenant.

11. The Occupants/Tenants argues that they resided in the premises from around 28 March 2016 to 29 October 2022, and they were tenants as they paid rent as well as outgoings. They also made payments towards the costs of renovating the premises, as well as supplying free labour to carry out the renovations.

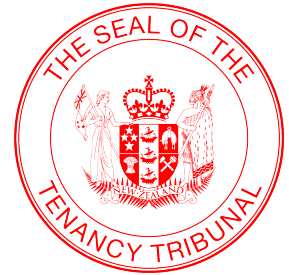
12. Ms Ram argues:

- a The Act does not apply to the Tenants/Occupants occupation of the premises because s 5(1)(n) of the Act applies.
- b There is no residential tenancy, and therefore, no jurisdiction for the Tenancy Tribunal to hear this matter.
- c Both occupants are *members of the landlord's or owner's family*, invoking the s 5 exclusion because:
 - i Mr Lalit Singh is Ms Ram's sister's son, a nephew and therefore a blood relative; and
 - ii Mrs Musarat Zabeen is Mr Lalit Singh's wife and is therefore related to Ms Ram by marriage.
- d Further, Ms Ram made clear to the Occupants/Tenants that there was no binding tenancy agreement between them and the Trust when the Occupants/Tenants asked for tenancy agreement in April 2016. She did so in her character reference letter, dated 28 April 2016, stating that he and his wife were not tenants but occupants that paid rent to live in the family home, and they did not have a residential tenancy with the Trust because:
 - i Mr Singh is her "*nephew*", "*beneficiary*" and "*agent for the rental property*";
 - ii "*Mr Singh and his wife moved into our family home on 21 March with me and will continue to reside there until I return to New Zealand in a few months' time*";
 - iii "*Since the changes to my family Trustees, we as Permila Ram Trust has agreed not to have rental properties but families to live in them*";
 - iv "*I intend to relive in my house 18 Cambourne Road from July 2016 with my adopted son/nephew Lalit Singh and his wife Musarat Zabeen as a family unit*".

10. The parties agreed at the hearing that Mr Singh and his wife are members of the landlord's or owner's family, as required for the section 5(1)(n) exception in the Act to apply. Therefore, the Occupants/Tenants claim that they were tenants that are covered by the provisions of the Act must fail.

Conclusion

11. The Tenancy Tribunal does not have jurisdiction to hear this matter and accordingly the claim is struck out for want of jurisdiction.
12. The Occupants/Tenants have not been wholly or substantially successful in their application. Therefore, their application for reimbursement of the filing fee is denied.



M Pollak
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.