

TENANCY TRIBUNAL - Remote Location

APPLICANT: Inspire Property Management Limited - Ashmith Nand And
Arishma Lal
Landlord

RESPONDENT: Natasha Mohr
Tenant

TENANCY ADDRESS: 3B Nield Road, Manurewa, Auckland 2102

ORDER

1. No application for suppression has been made in this case and no suppression orders apply around publication of this decision.
2. The tenancy of Natasha Mohr at 3B Nield Road, Manurewa, Auckland 2102 is terminated, and possession is granted to Inspire Property Management Limited - Ashmith Nand And Arishma Lal, at **11.59 pm on Tuesday 3 October 2023**.
3. The landlord's claim for exemplary damages is dismissed.
4. The landlord's claim for compensation is adjourned. A further hearing is to be scheduled in person, on the next date and time available, before any Adjudicator.

Reasons:

1. The hearing was held by teleconference on 6 September 2023. Both parties attended the hearing.
2. The landlord has applied for termination of the tenancy for breach of the tenant's obligations, exemplary damages and compensation for methamphetamine testing and decontamination.
3. Given the urgent nature of the claim and that no in person hearing dates were available until November 2023, this matter was scheduled for a remote hearing

to consider the claim for termination and exemplary damages only. The claim for compensation is adjourned to another date.

Should the tenancy be terminated?

4. The Tribunal may terminate a tenancy for breach where, due to the nature or extent of the breach, it would be inequitable to refuse to terminate. See section 56(1) Residential Tenancies Act 1986 ("the RTA").
5. Where the breach is capable of remedy the landlord must first serve a notice on the tenant requiring them to remedy the breach within at least 14 days and establish that the tenant has failed to do so.
6. Where the breach is not capable of remedy, the landlord is not expressly required to serve a 14-day breach notice on the tenant. A breach is not capable to remedy where the thing done, or its effect, cannot be undone.
7. However, unless the breach is serious, the Tribunal usually requires the landlord to have warned the tenant about the likely consequences of continued breach before it will exercise its discretion to terminate.
8. The landlord claims the tenant has used the premises unlawfully, by using or permitting the smoking of methamphetamine in the premises.
9. A tenant must not use the premises or permit the premises to be used for an unlawful purpose. See section 40(2)(b) RTA.
10. Breaching this obligation is an unlawful act for which exemplary damages may be awarded up to a maximum of \$1,800.00. See section 40(3A)(c) and Schedule 1A RTA.
11. Tenants are liable for the actions of others who are at the premises with their permission. See section 41 RTA.
12. It is unlawful to possess or consume methamphetamine. See section 7(1)(a) and Schedule 1 of the Misuse of Drugs Act 1975.
13. The landlord provided a pre-tenancy methamphetamine test establishing that prior to the start of the tenancy, there was no detectable methamphetamine at the premises.
14. The landlord provided a further methamphetamine test carried out in August 2023 which returned positive traces of methamphetamine ranging from 2.94 µg to 11.60 µg. Most of the areas tested were at the level of 11.60 µg, other than bedrooms 3 and 4.
15. Based on that evidence, I am satisfied that methamphetamine has been consumed in the premises at some point during the tenancy.
16. The breach is not capable of remedy because it is serious and constitutes use

of the premises for an unlawful purpose.

17. There is no evidence that methamphetamine has been consumed by the tenant herself. She was shocked and upset at what was found. The tenant suggested however that she did find out afterwards that someone who had visited or stayed at the premises (perhaps a family member) may have done so without her knowledge or consent.
18. Methamphetamine can last on surfaces for lengthy periods of time. There is no way to determine when methamphetamine was consumed. I can only be satisfied that it was consumed at some point during the tenancy.
19. The tenant did not suggest that anyone was in her premises without her permission. Based on that, I must infer that whoever has smoked methamphetamine was at the premises with her permission. That unfortunately means she is liable for their acts even though she may not have known what they were doing.
20. I therefore find that the tenant has committed an unlawful act.
21. The seriousness of the unlawful activity in question here is at the upper end of the scale and I am satisfied it would be inequitable to refuse to make an order terminating the tenancy.
22. I appreciate that the tenant's personal circumstances are such that moving out will be difficult. However, I cannot consider the impact on the tenant, in making an order for termination of the tenancy.
23. Accordingly, the landlord's application for termination of the tenancy is granted.
24. Given my finding, it is not necessary to address the other ground relied on by the landlord for termination.

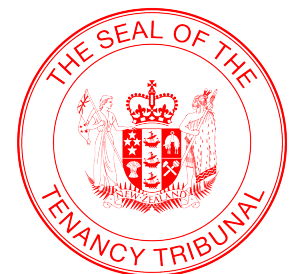
Should the Tribunal order the tenant to pay exemplary damages?

25. Exemplary damages are designed to punish and deter. They are like a fine. In *Auckland City Council v Blundell* [1986] NZLR 732 the Court of Appeal stated:

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.

26. Exemplary damages are awarded at the Tribunal's discretion when one party has proved that the other party has committed a defined unlawful act. The Tribunal must consider whether it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest. See section 109(3) RTA.

27. Intentional means that the party who has committed the breach must be aware of it. The focus of the intention however must be the act (or omission) and not the legal knowledge of the offending party.
28. In this case, the landlord submitted that whoever had smoked drugs in the property must have been connected to the tenant in some way. They therefore say there was some element of knowledge on her part. Essentially, the landlord is saying that the tenant must have known that person was a drug user and so there was a likelihood that drugs were going to be consumed while they were at her property.
29. I accept that there may be some basis for such a suspicion on the landlord's part. However, a suspicion is not proof. Bearing in mind that the landlord carries the onus and burden of proof, I am not persuaded that it is more likely than not that the tenant was aware that methamphetamine had been smoked in her house.
30. I therefore find that the breach was not intentional.
31. Even if I had been persuaded that the breach was intentional, I do not consider it would have been just to award exemplary damages in this case. That is because exemplary damages are meant to punish a guilty party, and it is difficult to see how the tenant's conduct could be characterised in this way.
31. The claim for exemplary damages is therefore dismissed.



J Setefano
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.