

TENANCY TRIBUNAL -

APPLICANT: Anita Lois Dudley
Tenant

RESPONDENT: [The respondent/s]
Landlord

TENANCY ADDRESS: [Tenancy address suppressed]

ORDER

1. An order for suppression is made of the Landlord's name and identifying details.
2. The application is dismissed.

Reasons:

1. Both parties attended the hearing.
2. This application was filed on 20 March 2023. It relates to a tenancy which terminated on 20 July 2015. The applicant claims compensation against the landlord for a range of factors, including for failure to return the bond, unfair increases in rent, wrongful termination of the tenancy and for the allegedly poor condition of the property, including an allegation of mushrooms growing on the carpet in the lounge.
3. As was discussed with the parties at the outset of the hearing, the question of jurisdiction arises because of the length of time that has passed between the end of the tenancy and the date of the application being filed and also because of the fact that this matter has been dealt with previously by the Tribunal.

Background facts

4. A brief summary of the earlier orders of the Tribunal is as follows:
- a) On 22 July 2015, an order was made granting possession of the premises to the landlord. The applicant, who was then the tenant of the premises, was ordered to pay various rent arrears to the landlord. It was recorded in the order that the applicant did not appear on that date.
 - b) On 25 September 2015, the Tribunal made orders for the applicant to pay damages to the landlord for the costs of lock replacement, storage costs and a removal truck. Deducted from the amount awarded to the landlord was the bond of \$550. Also deducted was \$130.00 for a rent overpayment. After those deductions, the amount payable by the applicant was only \$113.49. It was recorded in the decision that the applicant did not appear on that date.
 - c) The applicant then applied for a rehearing out of time, and that application came back before the Tribunal on 16 May 2016. It was recorded in the Tribunal's decision of that date that an earlier application for a rehearing by the applicant had been dismissed at her request. After hearing from the parties, the Tribunal determined that the applicant had failed to establish the necessary grounds for a rehearing.
 - d) On 25 May 2022, the applicant brought a fresh claim against the landlord with respect to these premises. Included in her application was a request for the bond to be refunded and allegations that she had been wrongfully evicted from the premises, as well as various allegations about unlawful increases in rent and the quality of the premises including mushrooms growing in the lounge and other alleged faults.
 - e) The Tribunal set the matter down for a hearing on the question of jurisdiction given the Limitation Act 2010. The applicant did not appear at the hearing and her application was dismissed on 31 August 2022.
 - f) An application was filed for a rehearing. According to the applicant today, she had appeared at the courthouse but may have been near the wrong courtroom at when the matter was called.
 - g) On 15 September 2022, the application for a rehearing was dismissed. Recorded by the adjudicator in their decision was the following:
 - 3. The tenant seeks to re-open matters dealt with by the Tribunal in 2015 when orders were made.
 - 4. The landlord attended the hearing on 31 August 2022 and submitted that the application was vexatious and outside the Limitation Act time frame.
 - h) On 6 October 2020 the Tribunal dismissed a second application for a rehearing.

Analysis

5. Section 11 of the Limitation Act 2010 provides:

Defence to money claim filed after applicable period

- (1) It is a defence to a money claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based).

6. Section 92A of the Residential Tenancies Act 1986 provides that:

The Tribunal may strike out, in whole or in part, a proceeding if satisfied that it—

- (a) discloses no reasonable cause of action; or
- (b) is likely to cause prejudice or delay; or
- (c) is frivolous or vexatious; or
- (d) is otherwise an abuse of process.

7. The matters raised within this application appear to be well outside the six year time frame for the bringing of any claim for damages against another party.

8. More significantly, the subject matter of this application is essentially the same as the application that was filed in 2022. Similar allegations are made in that the two claims essentially relate to the manner of termination of the tenancy, the alleged quality of the premises, and the question of bond. Where an application is made to the Tribunal which is dismissed and where two applications for rehearing and relation to that application are also unsuccessful, it is an abuse of process and / or vexatious for the Tribunal to allow a fresh application to be made raising, essentially, all of those same issues.

9. In her evidence today, the applicant said, several times, words to the effect, that the bond had not been refunded to her. I have set out a summary of the prior orders of the Tribunal to clarify for her benefit that whilst the bond may not have been paid to her, it has been taken into account in fixing amounts that she should pay to the landlord.

D Watson
21 August 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.