

TENANCY TRIBUNAL - Auckland | Tāmaki Makaurau

APPLICANT: Felino Alessandro Turner, Waikahu Te Utaiho Heke
Tenant

RESPONDENT: Central West Property Management Limited As Agent For
Valencia Nominees Limited Scott Hickey
Landlord

TENANCY ADDRESS: Unit/Flat 1, 2B Home Street, Grey Lynn, Auckland 1021

ORDER

1. Central West Property Management Limited As Agent For Valencia Nominees Limited Scott Hickey must pay Felino Alessandro Turner and Waikahu Te Utaiho Heke \$955.44 immediately.

Description	Landlord	Tenant
Compensation reduced rent 25 weeks up to 24.11.2023		\$625.00
Compensation CCTV camera		\$200.00
Compensation Opaque film for windows		\$30.00
Compensation Locks for letterbox		\$20.00
Compensation Blackout curtain		\$60.00
Filing fee reimbursement		\$20.44
Total award		\$955.44
Total payable by Landlord to Tenant		\$955.44

Reasons:

1. Both parties attended the hearing.
2. Felino Alessandro Turner and Waikahu Te Utaiho Heke ("the tenant") claim the landlord has breached their requirement under the Residential Tenancies Act 1986, ("the Act") section 45(1)(e), by not taking all reasonable steps to ensure

that none of the landlord's other tenants causes or permits any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.

3. Breaching section 45(1)(e) of the Act is not an unlawful act and exemplary damages are not available as a remedy.
4. The tenancy began on 7 April 2023. The property is a converted weatherboard house that has been divided into three units under the one roof, in Grey Lynn. All units share a common yard. Mr Turner lives at unit 1.

The tenant's complaint and the landlord's response

5. Mr Turner stated that troubles with the tenants at unit 3 and their associates began the day after his tenancy began. Mr Turner had a washing machine delivered to his doorstep. He saw a person who he later established was a person called "David" take the washing machine and roll it into unit 3. Mr Turner involved the police, and the washing machine was recovered.
6. Mr Turner then installed a security camera that recorded incidents that occurred on his doorstep and in the common area in front of his unit. These incidents involved multiple occasions of people urinating on the outside wall of his unit, people peering in through the windows of his unit, several occasions where people exposed themselves directly to his security camera, and incidents of people from unit 3 repeatedly looking in Mr Turner's mailbox. The people on the CCTV footage were the same people Mr Turner saw coming and going on a regular basis from unit 3. Mr Turner became familiar with some of their names, and their relationships to each other and one of the people he believes was the tenancy holder at unit 3.
7. There were also more serious incidents. On one occasion Mr Turner heard loud noises in his ceiling and when he investigated the ceiling cavity, he saw a person he recognised from unit 3, trying to hide. This person returned to the ceiling hatch for Unit 3. Mr Turner called the police, who attended.
8. On another occasion Mr Turner ordered Uber Eats and as the delivery vehicle arrived, Mr Turner saw a person he knew by name from Unit 3 approach the vehicle and collect his delivery. On making enquiries to the restaurant he was advised that someone using his own name had collected the delivery.
9. On another occasion one of the acquaintances of the tenant at unit 3 approached Mr Turner and said "Suck my dick. Next time I see you I'll beat the shit out of you, you dumb American".
10. There were other incidents as well involving loud arguments in the common area, fighting, throwing Mr Turner's rubbish bin across the yard, making hand signals that Mr Turner discerned to be gang signals at his security camera,

surrounding Mr Turner when he collected Uber Eats deliveries, and behaviour which Mr Turner believed pointed to drug dealing happening at unit 3.

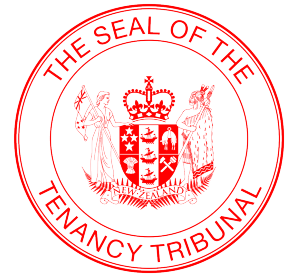
11. Police attended at unit 3 on at least two occasions following incidents with Mr Turner. Mr Turner saw a K9 unit attend on another occasion, and saw a person being taken away in custody following the incident of the person in his ceiling.
12. In all, Mr Turner pointed to 25 incidents with people he could identify from Unit 3 over the course of his relatively short tenancy so far.
13. Mr Turner stated that he expected better communication from the landlord about what was being done about his problems with the tenants from unit 3. He stated that following the incident with the tenant in the ceiling he heard nothing from the landlord for three days, and that for four or five incidents he never received a response.
14. Mr Turner stated that he would like to be reimbursed for the costs he necessarily incurred in the course of protecting his privacy and the protection of his property from the tenants at unit 3. This included the CCTV camera, opaque film to cover his windows, and locks for his letterbox.
15. Mr Turner stated he was seeking a reduced rental because he didn't feel he was able to use the common area yard, he didn't feel safe going outside and he didn't feel he could safely leave his partner alone in the premises, or leave the premises altogether without there being risk of further offences against his partner or their property. In effect Mr Turner was experiencing a significant incursion on the reasonable amenity of the tenancy.
16. For the landlord Mr Hickey accepted that he was also the property manager for unit 3, but that he had only begun managing the tenancies in June 2023 and he hadn't been involved in selecting the tenants. He pointed out that although he didn't question Mr Turner's veracity, the security camera that Mr Turner had installed could not see people coming and going from unit 3.
17. Mr Hickey stated that he had responded to every notification that Mr Turner sent and that when he felt he had sufficient cause, he had served several 14-day breach notices on the tenant at unit 3. In his view, he had taken all reasonable steps to ensure that none of the landlord's other tenants caused any interference with the reasonable peace, comfort, or privacy of Mr Turner in the use of the premises.
18. Mr Hickey stated that he believed at least one of the incidents was retaliatory in nature against Mr Turner.

Discussion and decision

19. These incidents were not limited to nuisance. The ongoing nature of the incidents some of which were serious, formed a pattern which amounted to harassment.
20. Harassment is behaviour directed against a specific person and includes doing a specified act to the other person on at least 2 separate occasions within a period of 12 months, see the Harassment Act 1997, section 3.
21. Harassment also 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.
22. Most of the 25 events that Mr Turner reported involved specified acts as defined in section 4 of the Harassment Act 1997.
23. The landlord was aware of the nature of the breaches of the tenant and their associates from unit 3. The landlord had excellent information coming from Mr Turner in the form of written notifications supported by CCTV footage. The landlord was also aware of police involvement.
24. Because of the frequency and seriousness of the incidents, all of which involved the tenants and/or their associates from unit 3 and Mr Turner as the victim, and for which there was no suggestion that Mr Turner had provoked or retaliated in anyway, I find there was an increased responsibility to address the risks that the tenant and their associates at unit 3 were posing to Mr Turner's and Ms Heke's peace, comfort and privacy in relation to their tenancy, than may usually be the case.
25. I find the landlord did not take all reasonable steps to ensure that none of the landlord's other tenants caused or permitted any interference with the reasonable peace, comfort, or privacy of the tenant in the use of the premises.
26. Locks for the letterbox, opaque film for windows and CCTV cameras are all standard security devices that the landlord could have employed. CCTV cameras installed and monitored by the landlord rather than the tenant, may have served to deter the offensive behaviour of the tenants at unit 3 being directed at Mr Turner. Better communication with Mr Turner may have led to solutions being implemented at an earlier stage.
27. Harassment against one tenant by another is an unlawful act for which exemplary damages are available on an application to the Tribunal by the landlord, see section 40(2) of the Residential Tenancies Act 1986. This was also a course of action available to the landlord.
28. The compensation ordered is as reimbursement for a security camera (\$200.00), opaque film for the glass, (\$30.00), locks for letterbox, (\$20.00),

black out curtains (\$60.00), and loss of amenity calculated at \$25.00 per week for 25 weeks from the beginning of June 2023 until the date of the hearing.

29. Because Felino Alessandro Turner, Waikahu Te Utaiho Heke has wholly succeeded with the claim I must reimburse the filing fee.



C Lamdin
24 November 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.