

**TENANCY TRIBUNAL AT Manukau**

APPLICANT: MSA Investments Limited  
Landlord

RESPONDENT: Donovan Leprou  
Tenant

TENANCY ADDRESS: Room 28, 26 Marjorie Jayne Crescent, Otahuhu, Auckland  
1062

**ORDER**

1. The application is dismissed for want of jurisdiction.

**Reasons:**

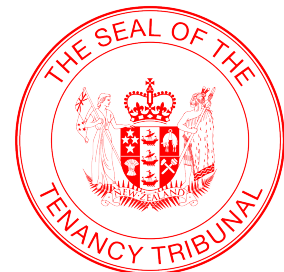
1. The landlord attended today's hearing.
2. The application relates to a written agreement for the right to occupy a caravan and to use the facilities at the Otahuhu Caravan Park (the agreement). The parties signed the agreement on 14 November 2018. Mr Leprou left the park on or about 1 November 2019. MSA Investments has brought an application for rent, damage to the caravan, cleaning, rubbish removal and other compensation.
3. The Residential Tenancies Act 1986 (the Act) applies to every tenancy for residential purposes, except as specifically provided. A tenancy means the right to occupy premises (whether exclusively or otherwise) in consideration for rent. Premises includes any part of any premises, and "any mobile home, caravan, or other means of shelter placed or erected upon any land and intended for occupation on that land" (section 2(1) of the Act).
4. Section 5(1)(ta) states that the Act does not apply where the tenant occupies, under a tenancy agreement, a cabin, caravan, vehicle, tent or other building or structure that (i) is located in a camping-ground subject to regulations under the

Health Act 1956; and (ii) is intended for human habitation for periods not exceeding 50 days in any continuous term of occupancy.

5. The camping ground is subject to the Camping-Grounds Regulations 1985 (the Regulations): MSA Investments operates the camp ground pursuant to a certificate of registration issued by the Auckland Council.
6. The definitions of “camping ground” and “temporary living place” in the Regulations reflect the language of section 5(1)(ta). It is clear, in my view, that section 5(1)(ta) is intended to exclude camping grounds to which the Regulations apply. The Regulations apply to the camping ground operated by MSA Investments.
7. Mr Van Aswegen, the manager of the park, helpfully explained that Mr Leprou’s tenancy was initially intended to be a short-stay but was extended. I acknowledge that Mr Leprou lived at the caravan park from 12 November 2018 to about 1 November 2019, i.e. nearly a year.
8. I consider that section 5(1)(ta) applies whether or not the actual occupation was for a continuous period not exceeding 50 days. Parliament, by adopting the language used in the Regulations, has indicated the purpose of section 5(1)(ta) as being the exclusion of camping grounds governed by the Regulations from the jurisdiction of the Tribunal. The caravan park operates a camping ground with caravans intended for habitation for periods not exceeding 50 days, pursuant to the certificate of registration.
9. I find that, while there was a residential tenancy of the caravan, the Act does not apply by virtue of section 5(1)(ta).
10. I also discussed with Mr Van Aswegen whether the parties had contracted back into the Act. Section 8(1) of the Act provides that the parties can agree in writing that all or any of the provisions of the Act shall apply in respect of the tenancy, including with agreed modifications. Section 8(2) says that any such agreement may confer on the Tribunal, in respect of the tenancy, all or any of the jurisdiction conferred on the Tribunal by the Act in respect of tenancies to which the Act applies.
11. The written agreement refers to the Act once, in the context of termination of the agreement. The agreement, which incorporates the rules of the caravan park, states that the landlord reserves the right to give the resident 28 days’ notice of termination at any time and continues: “According to section 66U(1)(d) of the Residential Tenancies Act 1986, the landlord does not have to give a reason why”. A provision in the rules relating to rent arrears states: “When we make arrangements with you for the repayment of your arrears and you do not keep to our arrangement, a 48 hours Notice of Eviction for non-payment will be issued”.
12. As discussed with Mr Van Aswegen, it is not easy to conceive the occupation of a caravan in a caravan park, with use of the park’s facilities, as being a boarding

house tenancy. The definition of boarding house tenancy and other related definitions in section 66B of the Act clearly envisage a boarding house which contains boarding rooms and communal use of facilities by the tenants within the boarding house. A caravan park does not contain boarding rooms and facilities in a boarding house. I am not satisfied that the agreement is a boarding house tenancy, and Mr Van Aswegen indicated that this was also MSA Investment's view.

13. I also note that the provisions for termination of boarding house tenancies for rent arrears (such as a requirement to give 10 days' notice to pay rent arrears before termination on 48 hours' notice in section 66U(1)(b)) are not fully incorporated into the agreement. It is not clear that the parties intended part 2A of the Act (relating to boarding house tenancies) to apply.
14. In my view, the agreement does not show that the parties intended the Act to apply in whole or in part, or that the Tribunal should have jurisdiction over their dispute. There are no clear references to the Act or the jurisdiction of the Tribunal which can be interpreted as having that effect. I note too that, while the agreement provided for payment of a "security deposit" of \$800.00, this was not lodged with the bond centre, as is required for a residential tenancy. I conclude that the parties did not agree in writing that the Act would apply to their tenancy.
15. For these reasons, I have declined to accept jurisdiction and must dismiss the application.



M Edison  
04 March 2020

## **Please read carefully:**

Visit [justice.govt.nz/tribunals/tenancy/rehearings-appeals](https://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](https://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](https://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](https://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](https://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](https://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](https://tenancy.govt.nz/disputes/enforcing-decisions), pe fesoatai mai le Tenancy Services i le numera 0800 836 262.