

**TENANCY TRIBUNAL AT Wellington**

APPLICANT: Michael James Pastroff  
Tenant

RESPONDENT: LITC Limited - trading as Lodge In the City  
Landlord

TENANCY ADDRESS: Room 323, 152 Taranaki Street, Te Aro, Wellington 6011

**ORDER**

1. The hearing is adjourned
2. A further 180 minutes should be allowed for the next hearing of this matter.
3. The application is in jurisdiction.

**Reasons**

1. At the previous hearing LITC Limited (LITC) did not have sufficient time to present a response to the claim because all the time was taken with the question of jurisdiction and counsel for Mr Pastroff presenting the claim. Opportunity needs to be given to LITC to present its defence.
2. Mr Davis, representative for LITC, submitted that the building is commercial premises. He also submitted that room that Mr Pastroff rented is in a backpacker establishment, not a boarding house, and therefore the dispute was outside of the jurisdiction of the Tenancy Tribunal.
3. Whether a dispute is within the Tribunal's jurisdiction is not governed by how a landlord defines or names their premises. The Tribunal must determine jurisdiction questions by reference to the Residential Tenancies Act 1986 (the Act) and the courts' interpretation of the Act.
4. Dealing first with LITC's claim that the premises were commercial premises. Section 2(1) of the Act defines commercial premises as 'not residential premises'.

Section 2(1) defines residential premises as ‘any premises used or intended for occupation by any person as a place of residence, whether or not the occupation or intended occupation for residential purposes is or would be unlawful’. Mr Pastroff used his room in the building as a place of residence and therefore lived in residential premises. All the occupants in the LITC building were there for residential purposes. LITC may have a commercial lease with the owner of the building but that does not make the premises commercial premises. Mr Pastroff was occupying residential premises. The Tribunal has jurisdiction to hear disputes regarding residential premises but not all residential premises.

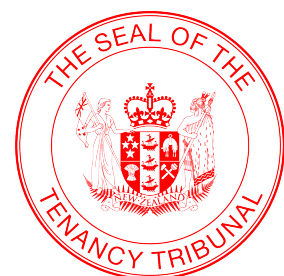
5. Turning then to whether LITC’s residential premises are excluded from the Tribunal’s jurisdiction because of subsection 5(k) of the Act. S5(k) refers to the Act not applying to residential premises intended to provide transient or temporary accommodation such as hotels and motels. It includes where a person has entered an agreement for temporary or transient accommodation that continues to be provided under the agreement. For example, if a hotel guest entered an agreement as a hotel guest and stayed for a longer period than that may be excluded.
6. LITC has many occupants who are transient. By its booking system and method of operating LITC has organized its business to run as backpacker’s accommodation. However along with short stay, temporary and transient guests there are people staying long term.
7. Turning then to whether Mr Pastroff entered an agreement for temporary or transient accommodation with Lodge in the City. Prior to living at LITC Mr Pastroff lived at Tapu Te Ranga Marae. However the building was ravaged by fire and he could not stay at the Marae. Arrangements were made for him to move to Lodge in the City. In an email from LITC dated 8 July 2019 the booking made for Mr Pastroff’s stay prior to starting on 29 June 2019 was copied to him. The email adds; “this is ajn(sic) ongoing booking with Lodge in the City at \$220.00 pcw(sic)”. It is clear that Mr Pastroff’s stay was always viewed by LITC as long stay and not as temporary or transient accommodation.
8. Was Mr Pastroff’s occupancy of a room in LITC a boarding house tenancy in backpacker’s accommodation? The following definitions are important.
9. Section 66B defines a ‘boarding house tenancy’ as: ‘a residential tenancy in a boarding house
  - (a) that is intended to, or that does in fact, last for 28 days or more; and
  - (b) under which the tenant is granted exclusive rights to occupy particular sleeping quarters in the boarding house, and has the right to the shared use of the facilities of the boarding house.’

A 'boarding house' is defined as containing 1 or more boarding rooms with facilities for communal use and occupied, or intended by the landlord to be occupied by at least 6 tenants at any one time.

A 'boarding house tenancy' means a residential tenancy in a boarding house that is intended or does in fact last 28 days or more and under which the tenant is granted exclusive rights to occupy particular sleeping quarters and has right to the shared facilities.

A 'boarding room' means a room in a boarding house that is used as sleeping quarters by 1 or more tenants of the boarding house and is for use only by a tenant whose tenancy relates to that room.

10. As stated above, Mr Pastroff did not begin residency at LITC as a backpacker. His tenancy was in residential premises where individual rooms could be rented for short or long stays. The rooms came with access to communal facilities. More than six rooms were used for stays over 28 days. Mr Pastroff had exclusive rights to his own room. Rooms were allocated by the landlord, not by the other occupants of the building. Therefore Mr Pastroff's tenancy was a boarding house tenancy.
11. LITC did not believe that there could be a boarding house tenancy in premises primarily designed for backpacker's accommodation. However LITC premises is clearly a mixed use situation where the Act will apply to some of the accommodation and not other parts of the accommodation. In *Conayne v Taylor Rotorua TT 266/93* 'premises' were held to be not the motel but the particular rooms in the motel.
12. In summary, the application made by Mr Pastroff is within the jurisdiction of the Tenancy Tribunal and is a tenancy to which the Residential Tenancies Act 1986 applies.
13. LITC will therefore be given opportunity to respond to Mr Pastroff's claim at the next hearing.



B Smallbone  
Tuesday, 14 July 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.

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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.