

TENANCY TRIBUNAL AT Whangarei

APPLICANT: Malcolm Harrington
Tenant

RESPONDENT: Warren Pickens
Landlord

TENANCY ADDRESS: 1224 Oneriri Road, Kaiwaka, RD 2, Kaiwaka 0573

ORDER

1. The application is dismissed.

Reasons:

1. Mr Harrington's application seeks compensation on the grounds that he had a 6-month fixed term tenancy with Mr Pickens for the property at 1224 Oneriri Road, and that Mr Pickens ended the tenancy prematurely and unlawfully.
2. Mr Pickens' view is that he had no tenancy agreement at all with Mr Harrington.

Background

3. I understand that Mr Harrington first contacted Mr Pickens in early 2020 about possibly using 1224 Oneriri Road. The conversation at that time was about using the property for storage. There is no written record of their communication.
4. The discussions in early 2020 did not go forward.
5. The property is in need of repair. Prior to Mr Harrington, Mr Pickens had an arrangement with a man named Platon, whereby Platon lived at the house in exchange for carrying out maintenance work.

6. In May 2020 Mr Harrington contacted Mr Pickens partner (Ms McMeechan) via Facebook messenger. Mr Harrington asked about “the possibility of somehow renting / maintaining the property at 1224, preferably before winter sets in too much?”. At that time Mr Harrington was living nearby in his caravan.
7. Ms McMeechan replied “we don’t want to enter into a legal tenancy because of the toilet issue etc”, but “we will allow you to use the house in exchange for maintenance, at this stage and can we review it in 6 months say, ok?”.
8. Mr Harrington agreed and moved in. Mr Harrington provided Mr Pickens and Ms McMeechan with occasional updates on his progress with repairs.
9. On 30 June, Ms McMeechan sent Mr Harrington a message stating that a family member was in urgent need of accommodation, and “we have decided to give you 4 weeks notice effective today bringing our agreement to an end on the 28th of July”.

Findings

10. At the hearing Mr Pickens argued that the arrangement was for storage only, and that there was no agreement that allowed Mr Harrington to live in the house. However, that argument is plainly inconsistent with the exchanges between Mr Harrington and Ms McMeechan, detailed above.
11. It is clear that Mr Harrington was granted the right to occupy 1224 Oneriri Road in exchange for maintenance work.
12. Section 2 of the Residential Tenancies Act 1986 (“RTA”) defines a tenancy as:

In relation to any residential premises, means the right to occupy the premises (whether exclusively or otherwise) in consideration for rent.
13. The same section defines rent as:

Any money, goods, services, or other valuable consideration in the nature of rent
14. The arrangement between Mr Harrington and Mr Pickens meets those definitions.
15. The RTA applies to all residential tenancies, except for the types of tenancies listed in section 5 of the RTA. None of the exclusions in section 5 applies to the type of arrangement that Mr Harrington had with Mr Pickens.
16. Therefore, the arrangement was a tenancy to which the RTA applies.
17. However, it was not a “standard” tenancy and it would be unjust to simply ignore the nature of what Ms McMeechan and Mr Pickens reasonably understood they were entering into.
18. As Ms McMeechan stated in her message to Mr Harrington, she did not want to enter a ‘legal tenancy’. These words were not intended to have a technical meaning. They convey an understanding that the arrangement is informal,

casual, and that Mr Harrington should not expect that the premises are to a particular standard.

19. Similarly, it would not be reasonable to read Ms McMeechan's statement "we can review it in 6 months say" as a commitment to a 6-month fixed term tenancy. An objective reading of Ms McMeechan's words, in context, does not lead to that conclusion.
20. There was a tenancy, but not a fixed term tenancy. Under the terms of the RTA, if a landlord wishes to terminate a tenancy, and if the reason is that a member of the landlord's family needs to use the premises as their ordinary place of residence, the landlord must give 42-days' notice in writing.
21. Ms McMeechan did not give Mr Harrington 42-days' notice. She gave 28-days. Mr Harrington did not leave the property on 28 July. He remained for several more days.
22. I accept that Ms McMeechan did not think that she was in a tenancy with Mr Harrington, and she had no reason to understand that the RTA requirements applied. Ms McMeechan gave what she considered was a reasonable period of notice.
23. It would be unjust to impose the strict technical requirements of the RTA to a tenancy that was of a different nature.
24. I acknowledge that Mr Harrington had a reasonable hope that the arrangement would last at least 6 months, and the fact that it did not has caused him inconvenience and stress. However, I do not agree that it is appropriate to characterise this as a landlord breaching their legal duties, and therefore I will not make an award of compensation.
25. The application is dismissed.



N Blake
09 October 2020

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 fesoatai mai le Tenancy Services i le numera 0800 836 262.