

[2026] NZTT 5350161, 5371861

**TENANCY TRIBUNAL AT CHRISTCHURCH | TE TARAIPUNARA RETIHANGA KI
ŌTAUTAHI**

APPLICANT: Brendan Wahrlich
 Landlord

RESPONDENT: Nathan Moynihan
 Tenant

TENANCY ADDRESS: 379 Prestons Road, Marshland, Christchurch 8083

ORDER

1. The landlord's application for suppression is refused.
2. Brendan Wahrlich must pay Nathan Moynihan \$16,340 calculated as shown in the table below.
3. The parties' claims are otherwise dismissed.

Description	Landlord	Tenant
Exemplary damages – unlawful termination notice		\$1,000.00
Exemplary damages – retaliatory notice		\$2,000.00
Exemplary damages – no written tenancy agreement		\$750.00
Exemplary damages – condition of premises		\$5,000.00
Rent repayment		\$7,590.00
Total award		\$16,340.00
Total payable by Landlord to Tenant		\$16,340.00

Reasons:

1. Both parties attended the hearing on 27 January 2026.
2. This order follows an order made on 18 November 2025 after a case management hearing, and a consent order made on 27 January 2026 giving the landlord possession of the premises on 11 February 2026.
3. The landlord's remaining claim is for rent arrears.
4. The tenant has claimed compensation and exemplary damages for various breaches of the landlord's obligations and that the landlord's 90-day termination notice served on 11 September 2025 was retaliatory. There is also a claim that the premises were unlawful residential premises and the tenant claims repayment of all the rent he has paid to the landlord.

Background as Recorded in the Order Made on 28 November 2025

5. The premises are part of a semi-rural property in Marshland, Christchurch. The property was previously used as an egg farm.
6. At the front of the property is a family house. Behind are the old chicken sheds and attached to one of the sheds is a garage type building (the premises) that the tenant occupied.
7. The tenant produced Council documents that show that the premises were constructed under a consent for a garage/shop. It seems that it was used by the owners of the egg farm as their shop.
8. The tenant occupied the premises from at least as long ago as 2020. At that time, he had an agreement with the tenant of the house, and he used the facilities in the house as part of that agreement.
9. The landlord bought the property in 2023. The tenant said that he was ready to move to other accommodation at that time, but the landlord invited him to stay. He said that he would make some improvements to the premises. The tenant agreed to stay and to pay the landlord \$200 per week for the right to occupy the premises.
10. The tenant of the house moved out and new tenants rented the house from the landlord from August 2024.
11. The landlord has made improvements to the premises including installing insulation, wall linings, carpet and improving the electrics.

12. The premises do not have bathroom facilities, fixed heating or a kitchen. The tenant had some cooking appliances in the premises and prepared his meals there.
13. The tenant said that he used the toilet in the New World supermarket across the road. He has also used the toilet in the house on occasions.
14. The landlord said that the tenant was able to use the bathroom facilities in the house. He read out a text he said he received from the house tenant on 16 November 2025, the day before the hearing, stating that the tenant had access to all amenities in the house.
15. There was no written tenancy agreement and there was no written evidence of an agreement allowing the tenant to use facilities in the house.

More Evidence and Facts

16. The landlord produced a rent statement showing rent arrears in the sum of \$3,924 to 28 January 2026. The tenant did not dispute the statement. Another two weeks rent fell due between 28 January and 11 February making the arrears total \$4,324.
17. The tenancy began on 1 November 2023. The rent payable was \$200 per week. By my calculation, rent in the sum \$23,828 was payable to 11 February 2026. $\$23,828 - \$4,324 = \$19,504$ that being the total amount of rent that the tenant has paid the landlord.
18. The landlord served a 28-day termination notice on the tenant on 6 August 2025. The landlord accepts that was an invalid notice.
19. The landlord served a 90-day termination notice on the tenant on 11 September 2025.
20. The house tenant provided a statement in which he says that the tenant always had access to the facilities in the house, including the kitchen and bathroom, and that had been agreed between him, the landlord and the tenant.
21. The house tenant did not attend the hearing to give evidence, and the Tribunal telephoned him during the hearing and questioned him on his statement. He stood by his statement but said that latterly, his relationship with the tenant had soured. He said that he saw the tenant using the facilities in the house a couple of times.
22. The landlord produced some written statements suggesting that the tenant used the house facilities freely but there was no other live evidence. The evidence

from the house tenant is the best evidence of the tenant's use of the facilities during the house tenant's tenancy.

23. The evidence suggests that the premises did not have consent for occupation for residential purposes. The landlord gave evidence that he considered putting a bathroom in the premises and he was told by an experienced builder that he would not obtain consent for that.
24. Given that there is no evidence to suggest that the tenant could lawfully occupy the premises, I can safely make a finding that he could not.
25. The tenant said that he rented a Portaloo for his use at the premises from 1 December 2025. He said that the Portaloo improved his enjoyment of the premises dramatically.
26. The landlord conducted methamphetamine (meth) testing of the premises, using proprietary testing kits, starting in July 2025. He said the results were positive for the presence of meth. He said that it was after the testing that his relationship with the tenant deteriorated.
27. The testing was indicative, not quantitative and there was no baseline test. As well, there was no other hard evidence that the tenant used meth in the premises or at all. I therefore disregard meth contamination as a relevant consideration.

Landlord's Claims

Rent Arrears

28. The premises could not be lawfully occupied for residential purposes.
29. Section 78A of the Residential Tenancies Act 1986 (the Act), relevantly, states as follows.

78A Orders of Tribunal relating to unlawful residential premises

(1) This section applies in any matter where the Tribunal, on application by a party or otherwise on the evidence before the Tribunal in respect of any claim within its jurisdiction, determines or declares that the premises are, or were at any material time, unlawful residential premises.

(2) For the purposes of this Act, **unlawful residential premises** means residential premises that are used for occupation for a person as a place of residence but—

(a) that cannot lawfully be occupied for residential purposes by that person (whether generally or whether for the particular residential purposes for which that person is granted occupation); and

(b) where the landlord's failure to comply with the landlord's obligations under [section 36](#) or [45\(1\)\(c\)](#), or [section 66H\(2\)\(c\)](#) or [66I\(1\)\(c\)](#), as relevant, has caused the occupation by that person to be unlawful or has contributed to that unlawful occupation.

(3) Despite anything to the contrary elsewhere in this Act,—

(a) unless the Tribunal is satisfied that, having regard to the special circumstances of the matter, including the nature of the premises, it would be unjust not to make the order, the Tribunal must not order the tenant to pay to the landlord—

(i) any sum found to be owing by way of rent in arrear; or

28. The landlord failed to comply with his obligations under s36 of the Act by failing to take all reasonable steps to ensure that there were no legal impediments to its occupation for residential purposes. There is no evidence that the landlord took any steps in that respect. It should have been obvious to him that a building that was plainly unsuited for residential occupation and had been an ancillary building to a chicken farm, could not lawfully be occupied for residential purposes.

29. It follows that I can declare that the premises were unlawful residential premises under the Act.

30. The landlord argues that he had arranged for the tenant to have access to the facilities in the house. But even if that is accepted, that does not constitute

taking all reasonable steps to ensure that the occupation was lawful. He did not, for example, check with the Council that occupation under those circumstances was lawful.

31. Even if it were lawful under those circumstances, the landlord faces another problem. He was not able to grant the tenant the right to use the house facilities because it was not in his power to do so. He had rented out the house and only the house tenant could grant that right.
32. I accept the evidence of the house tenant that he was willing to allow the tenant use of the facilities in the house and, to some extent, that was supported by the tenant's evidence. I will say more about this below, but it is enough to say that the tenant had no legally enforceable right to use the facilities. The house tenant could have withdrawn his consent at any time and there was nothing that the tenant or the landlord could do about. It was, at best, a permission from the house tenant that could be withdrawn at any time.
33. I find that there is nothing in the circumstances of this case to make it unjust not to order payment of the rent arrears and so I dismiss the landlord's claim for them.

Tenant's Claims

Unlawful Entry

29. The tenant asserted that the landlord has entered the premises without his permission or authority under the Act. This relates to the landlord's meth testing. The tenant said that the landlord conducted three tests but had authority for only two.
30. The landlord said that he visited the premises only twice to conduct meth testing. The second time he carried out two tests for confirmation purposes. I have no reason to doubt that, and the evidence did not establish that there has been any unlawful entry to the premises. This claim is therefore dismissed.

Interference With Quiet Enjoyment of the Premises

31. The tenant complained about several acts committed by the landlord, his son and others that he said interfered with his quiet enjoyment of the premises.
32. They included parking vehicles in the area adjacent to the premises and thereby interfering with his use of them, using the water supply that he uses, putting up lights and cameras in the area and harassing him from outside the premises.

33. One of the difficulties facing this claim is that it is not clear what outside area, if any, is for the tenant's exclusive use. The tenant accepted that others had the right to pass through and use the area outside the premises. People and traffic used it for access to areas at the back of the property.
34. The tenant pointed to the fact that the landlord put up a fence at the back of the premises to give him some privacy. But that does not necessarily define a boundary of an area that forms part of his tenancy.
35. The landlord said that the cameras were for security and do not point directly at the premises. He said that the lights are also for security.
36. In my assessment, the evidence does not establish that there has been an interference with the tenant's quiet enjoyment of the premises. Plainly, relations between the tenant, the landlord and others became fractious towards the end of the tenancy, and my sense is that all involved have rubbed others up the wrong way at times.
37. I find that this claim has not been proved and it is therefore dismissed.

Unlawful Termination Notice

38. Under s60AA of the Act a landlord must not give a notice to terminate the tenancy or apply to the Tribunal for such an order, knowing they are not entitled to do so.
39. Breaching any of these obligations without a reasonable excuse is an unlawful act for which exemplary damages may be awarded up to a maximum of \$6500.00.
40. Where a party has committed an unlawful act intentionally, the Tribunal may award exemplary damages where it is satisfied it would be just to do so, having regard to the party's intent, the effect of the unlawful act, the interests of the other party, and the public interest
41. The landlord accepts that his 28-day termination notice was unlawful. Serving the notice was therefore an unlawful act.
42. The landlord should have known that it was unlawful. Everyone is deemed to know the law.
43. I accept that it must have upset the tenant and caused him to be stressed about the possibility of being evicted. Only when the tenant took advice from Tenancy services was that threat put to rest.

44. It is a serious breach of the Act to serve an unlawful termination notice and that is reflected in the high level of exemplary damages that may be awarded. It risks a tenant vacating against their will when there is no lawful reason to do so. That can cause serious difficulties for a tenant.
45. In this case, the tenant did the sensible thing by obtaining advice and the worry was short lived.
46. Nevertheless, an award of exemplary damages is required to mark the seriousness of serving such a notice and the possible consequences. It should be at the lower end of the scale, and I award \$1,000.

Retaliatory Termination Notice

47. For a notice to be declared retaliatory, the tenant must prove that in terminating the tenancy, the landlord was motivated wholly or partly by the tenant exercising a right under the tenancy agreement or any Act, or by any complaint against the landlord.
48. Giving a termination notice which is declared to be retaliatory is an unlawful act for which exemplary damages may be awarded, up to a maximum of \$6,500.00.
49. Where a party has issued a retaliatory notice, the Tribunal may award exemplary damages where it is satisfied it would be just to do so taking into account the effect of the unlawful act, the interests of the other party, and the public interest. Serving a retaliatory notice does not have to be intentional to award exemplary damages (s109(3A) of the Act).
50. The tenant says that the landlord's 90-day termination notice has come after he raised concerns about the condition of the premises and specifically about the lack of toilet facilities.
51. The landlord says that the notice followed his concerns about and then testing for meth. He believed that the tenant was dealing in meth from the premises.
52. The tenant had seemingly been content, or at least uncomplaining, with respect to his living conditions. Indeed, he was happy with the improvements that the landlord had made to them. The tenant's complaints began in earnest after the landlord had accused the tenant of dealing in meth.
53. The tenant had good reason to complain, as discussed below. The landlord's explanation for the notice I find disingenuous. Given the circumstances surrounding the testing it could even be described as bogus. If the landlord was seriously concerned about meth contamination of the premises, he could have arranged professional testing of them. Even if such a test confirmed meth

contamination, without some very good evidence that the tenant was responsible for it, it would not be a reason to terminate the tenancy.

54. The landlord offered no other reason for the notice and therefore I find that he was motivated wholly or in part by the tenant's complaints and that the notice was retaliatory.
55. The 90-day notice was valid on its face and so it must have been of more concern to the tenant than the 28-day notice. A landlord can terminate a tenancy without reason by serving a 90-day notice and therefore it is extremely important that landlord's do not misuse the process. Tenants' complaints must not be stifled by the misuse of the process.
56. I find that an award of exemplary damages is required. By the time of the notice the parties were in open dispute and headed to the Tribunal where all these issues would be resolved. I find that an award of \$2,000 is appropriate.

Locks

57. There was no lock on the ranch slider door at the premises either when the tenant first occupied the premises or when he became a tenant. He used a length of wood put in the channel of the door to prevent it being opened. There was another door that was lockable.
58. The landlord said that he installed a lock to the door but the evidence for that was not convincing.
59. I find that the tenant's method of securing the door was adequate and it meant that the door could be secured from the inside. In the context of this case, that was acceptable. If I'm wrong about that, I find that any breach does not warrant an award.

No Written Tenancy Agreement or Related Information

60. A landlord must ensure the tenancy agreement is in writing, signed and a copy provided to the tenant prior to the tenancy commencing.
61. Breaching this obligation is an unlawful act, for which the Tribunal may award exemplary damages up to a maximum of \$750.00.
62. A landlord must also provide insulation and Healthy Homes Standards (HHS) information.
63. There was no written tenancy agreement or any related information.

64. The landlord is an experienced landlord and should know better. If the landlord had turned his mind to HHS, he might have decided against granting the tenant a tenancy of the premises.

65. I find no mitigating factors here and so I have awarded the maximum of \$750.

Condition of the Premises

66. Under section 45 of the Act, a landlord must provide and maintain the premises in a reasonable state of repair, comply with all requirements in respect of smoke alarms and insulation set out in the Residential Tenancies (Smoke Alarms and Insulation) Regulations 2016 and comply with any relevant enactment in relation to buildings, health and safety.

67. Under the Housing Improvement Regulations 1947 a dwelling must have proper cooking facilities, a bathroom, a toilet and a means of heating.

68. Breaching any of these obligations is an unlawful act for which exemplary damages may be awarded up to a maximum of \$7,200.00. before

69. This is the heart of this case. The premises failed to comply with minimum requirements in several respects. The one that caused the tenant most difficulty was the absence of a toilet. He said that if he had been provided with a toilet, he would have been happy to stay in the premises.

70. The landlord said that he thought it was acceptable to allow the tenant to remain living in the premises paying rent because that was the situation before he bought the property. But that situation was materially different. Previously, the tenant occupied under an agreement with the then house tenant. He was, in effect, a lodger. He was not a tenant. The landlord should have been aware of the distinction.

71. Under that agreement, the tenant had use of the facilities in the house. He used the premises as a sleepout. He had the right to use the facilities in the house because that right had been granted to him under his agreement with the house tenant.

72. The landlord says that the tenant had the right to use the facilities in the house. I have accepted the evidence of the house tenant in this point, but there are important differences between the previous situation and the situation under the landlord.

73. For one thing the landlord could not grant the tenant the right to use the house facilities. The house and the premises were in the possession of the house tenant, not the landlord. No one can give what they don't have.

74. The house tenant agreed that the tenant could use the facilities in the house, but that permission could be withdrawn at any time.
75. The tenant was understandably reluctant to use the facilities in the house. Although the house tenant appeared to be relaxed about it, the tenant was not so sure about his wife. I think that he was right to have that concern. If the tenant was wandering in and out of the house and using the facilities at will, I have serious doubts that the house tenant's wife would be happy with that. After all, the house tenant and his wife were paying a market rent for the property and there was no benefit for them to have the tenant sharing their facilities.
76. Consequently, the tenant used the facilities in the house very rarely. The house tenant's evidence supports that.
77. The difficulties that this caused the tenant are obvious and do not need spelling out.
78. The premises were not only unlawful; they were also seriously inadequate for use as a dwelling.
79. The landlord's justification for the arrangement is weak to say the least. If he had given it a moment's proper thought, he should have realised that. At the hearing he accepted that he should never have allowed the tenant to continue occupying the premises.
80. There must be an award of exemplary damages for this, and it must be substantial. Landlords must be strongly discouraged from flouting legal requirements in this kind of way. I have therefore awarded \$5,000.
81. I note that in awarding exemplary damages in this case I have taken into consideration the effect of the breach and so no additional award of compensation is required.

Unlawful Residential Premises

82. The starting point for this is repayment of all rent paid under the tenancy. In this case rent payable was \$23,828 of which have excused the tenant the arrears in the sum of \$4324.
83. In my view, it would be unjust to expect the landlord to repay all the rent that the tenant has paid. The tenant had some use of the premises and, as he said, he would have been happy to stay if there was a toilet in the premises. The landlord also made some improvements to the premises that made the tenant more comfortable.

84. Against that, parliament has made it very clear that it wants to discourage landlords from granting tenancies of premises that cannot be lawfully occupied by the tenant. There were also serious shortcomings in the condition of the premises.

85. In my assessment, the landlord should have to repay one half of the rent payable. That amounts to \$11,914. The tenant has been excused \$4,324 and so I order repayment of the sum of \$7,590.

Result

86. The result is that the landlord must pay the tenant a total of \$16,340.

Suppression

87. Only the landlord sought name suppression. There is no reason to suppress the landlord's name, so his request is refused.



R Armstrong

13 March 2026

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 \$260. 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, or the failure to make an order, where the amount in dispute on appeal is less than \$1000

- a final order to undertake work, or the failure to make an order, where the value of the work in dispute on appeal is 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.

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