

## The Tenancy Tribunal (*Hand-out notes*)

The Tenancy Tribunal is a specialist tribunal that sits within the Ministry of Justice, but unlike the Disputes Tribunal, it is not a part of the District Court. It is a standalone tribunal whose adjudicators are judicial officers.

The tribunal adjudicates disputes between landlords and tenants under the Residential Tenancies Act 1986 (RTA) and between unit owners and bodies corporate under the Unit Titles Act 2010 (UTA).

Other classes of persons that fall within the UTA jurisdiction include: -

- A former owner of a principal unit:
- A future development unit owner:
- An occupier of a future development unit:
- An administrator:
- A registered valuer:
- An occupier of a principal unit:
- A service contractor:
- A prospective buyer of a principal unit:
- An original owner:
- A lessor of base land:
- The chief executive:

Unit title disputes are more akin to civil litigation. The disputes can be complex, and the hearings can be lengthy.

Under the RTA jurisdiction, the tribunal has jurisdiction up to \$100,000. Under the UTA jurisdiction the tribunal has jurisdiction up to \$50,000.00 (soon to increase to \$100,000.00).

The tribunal has originating jurisdiction for all RTA and UTA disputes up to the monetary jurisdiction. That means, all disputes must commence in the Tenancy Tribunal and can only be transferred by tribunal order.

The tribunal receives around 20,000 applications per year. Around 27% of the applications are dealt with remotely by phone; many are settled following mediation; and the remainder are referred for a full hearing. The tribunal sits in most Courthouses throughout New Zealand.

In the RTA jurisdiction, the filing fee is \$20.44. This is seen as allowing inexpensive access to Justice. The filing fee contributes to the administration of the bonds tenants pay which landlords then lodge with the Bond Centre.

In the UTA jurisdiction the filing fee is \$850.00 for a "simple dispute" and \$3,300.00 for a complex dispute. Recently the government has reduced the fee to \$450.00, with a lesser fee if parties agree to go to mediation first.

There are currently 52 adjudicators, almost all of whom are legally qualified and many of whom have their own law practices.

The tribunal is administered by the Ministry of Business, Innovation and Employment (MBIE). Tenancy Services sits within MBIE. Files transfer from MBIE to the Ministry of Justice 5 days before the scheduled hearing.

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Tenancy Services provides free advice to landlords and tenants and has an **excellent website with free resources** such as tenancy agreements and compliance notices.

Unlike the Disputes Tribunal, which has a statutory mandate to try and achieve a mediated outcome first, the tribunal has no mediation function. **Mediation** is available through Tenancy Services and takes place before cases are referred to the tribunal for adjudication.

**Lawyers are generally excluded** from the tribunal, with some exceptions. However, the parties have a right to legal representation if the monetary amount in dispute is \$6000.00 or more.

The time between filing an application and getting to a hearing is usually around 4-6 weeks, though sometimes longer depending on location.

Tenancy disputes are often highly emotionally charged, especially when the rental market is tight. Tenancy hearings are **public hearings**, and the media has a right to attend and report the proceedings. - Unlike the Disputes Tribunal where hearings are private. **Tenancy Tribunal Decisions are almost always published**, though adjudicators may in limited situations prevent publication.

The tribunal can **terminate tenancies** for rental arrears, assault, antisocial behaviour and other breaches that are not capable of remedy.

The tribunal can make **name suppression** orders and must do so on the application of a successful party. Suppression cannot be granted for subjective reasons such as "this might affect my chances of getting another tenancy".

The tribunal can issue witness summonses.

The tribunal is one of the few jurisdictions that can award **exemplary damages** (the civil equivalent of a fine) for breaches by landlords or tenants that amount to unlawful acts. For example, a failure by a landlord to comply with the Healthy Homes Standards can result in an award of exemplary damages up to \$7,200.00. There is no penalty regime in the UTA space however, other than interest on unpaid levies.

The tribunal can award parties **compensation** for their losses, including tangible losses (such as damage to the premises) and intangible losses (such as loss of enjoyment, stress, inconvenience).

The tribunal also hears **prosecutions** brought by MBIE as the regulator of residential tenancies. In those cases, MBIE assumes the role of the tenant (whether willing or not) and prosecutes landlords for sustained or serious breaches of their statutory responsibilities. Often the prosecution cases will involve landlords who own multiple tenancies and who simply fail to comply. The orders, across many tenancies, can be significant, sometimes much more than \$100,000. (The jurisdiction is up to \$100,000 per tenancy.)

Tribunal **orders are usually issued on the day of the hearing** or the following day. However, complex hearings will often result in a reserved decision. The usual timeframe for a reserved decision is no more than one month after the hearing concludes.