

**TENANCY TRIBUNAL - North Shore | Ōkahukura**

APPLICANT: Wallbank Trustee Limited as agent for Lance and Cherie Wallbank  
Landlord

RESPONDENT: Aimee Nicole Wallbank  
Tenant

TENANCY ADDRESS: 121 Brightside Road, Stanmore Bay, Whangaparaoa 0932

**ORDER**

1. The tenancy of Aimee Nicole Wallbank at 121 Brightside Road, Stanmore Bay, Whangaparaoa 0932 is terminated, and possession is granted to Wallbank Trustee Limited as agent for Lance and Cherie Wallbank, at 11.59pm on Sunday 16 June 2024.
2. Aimee Nicole Wallbank must pay Wallbank Trustee Limited as agent for Lance and Cherie Wallbank \$51,470.44 immediately, as calculated below:

Description	Landlord	Tenant
Rent arrears to 5 June 2024	\$51,450.00	
Filing fee reimbursement	\$20.44	
<b>Total award</b>	<b>\$51,470.44</b>	
<b>Total payable by Tenant to Landlord</b>	<b>\$51,470.44</b>	

**Reasons:**

1. Both parties attended the hearing. Mr and Mrs Wallbank are directors of Wallbank Trustee Limited (WTL). The application has been made in the name of WTL as their agent. Mr Mitchell appeared as their counsel.
2. The landlord has applied for termination of the tenancy, rent arrears and the filing fee.
3. The Tribunal first began hearing the application on 13 March 2024. It adjourned the hearing for Ms Wallbank to seek legal advice and to file a cross application. No cross application has been filed, nor was Ms Wallbank represented at the hearing today.

**Background**

4. This is a family dispute. Aimee Wallbank is the daughter of Lance and Cherie Wallbank.
5. The tenancy started on 30 January 2010. The tenancy agreement records the landlord as Ms Wallbank's parents.
6. The rent arrears have grown over time. Ms Wallbank claims that there was a 'rent-to-buy' agreement in place. Her parents deny that. There is no evidence of such an arrangement before the Tribunal.
7. There is a history of Family Court proceedings between Ms Wallbank and her now estranged partner. Those proceedings are not directly relevant to the issue before the Tribunal.
8. In 2014, Mr and Mrs Wallbank incorporated WTL. Before then and possibly for some time after the premises were owned by a Trust of which Mr and Mrs Wallbank were the settlors. On 9 July 2018 a mortgage was registered against the title of the property; WTL as the owner was the mortgagor.
9. Ms Wallbank produced a letter she provided to Westpac on 21 June 2018, (probably needed for lending to be approved) confirming that she paid rent of \$450.00 per week to her parents. She relies on that as proof the tenancy was between her and her parents.
10. Ms Wallbank was aware of the change of ownership of the premises from the Trust to WTL. She changed her rent payments, so they were paid to WTL's account.
11. WTL as agent for the directors Mr and Mrs Wallbank want to terminate the tenancy because their daughter is neither paying rent (even though she gave

the Tribunal an assurance she would do so when the application was first at hearing), nor will she vacate the premises.

12. She confirmed she had received various cash offers from her parents to vacate the premises, but she has refused every offer. She wants to hold out for more.
13. The fact that offers have been made to settle what is an upsetting family dispute, is not directly relevant to the matter before the Tribunal. Perhaps, despite this order, further negotiations can still take place.
14. The landlord has a statutory right to terminate the tenancy because the rent was at least 21 days in arrears on the date the application was filed – see section 55(1)(a) of the Residential Tenancies Act 1986 (RTA).
15. The landlord provided rent records which prove the amount owing at the end of the current rent period.
16. I explained to Ms Wallbank that the only way the Tribunal can refuse to make the orders sought in this case is if she can prove that the tenancy is an excluded tenancy under the provisions of the RTA.

#### **Is the tenancy an excluded tenancy?**

17. The RTA does not apply to all tenancies, some are excluded.
18. Section 5(1)(n) RTA excludes a tenancy  
Where the premises, not being a boarding house, continue to be used, during the tenancy, principally as a place of residence by the landlord or the owner of the premises or by any member of the landlord's or owner's family:
19. When the tenancy started the tenancy would clearly have been an excluded tenancy because Ms Wallbank is the daughter of the landlord (as stated in the tenancy agreement). The trustees of the Trust have legal personality for the purposes of section 5(1)(n) so the same familial relationship applied.
20. However, the ownership of the premises changed (probably) in July 2018. WTL became the owner of the premises as evidenced by the record of title.
21. Ms Wallbank was aware of the change of ownership because she changed the payment of her rent to the company's account.
22. Even if the landlord did not formally advise her of the change of landlord (which is a landlord breach of the RTA) that does not alter the fact of the change of ownership and with that the change of landlord, from the Trust to the company. While the individuals might not have changed, their legal status did.
23. It is established law that a company cannot have family members. It is unlike an actual person or a trustee both of which fall within the definition of 'member of the landlord's or the owner's family'.

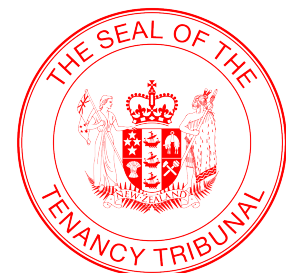
24. As Ms Wallbank relies on the section 5(1)(n) RTA exclusion it is for her to prove that it applies in this case. She has not done so.
25. The fact that the owner of the premises since 2018 has been and is WTL means that she cannot be a member of the owner's family. In other words, there is no familial connection between her and WTL, only between her and her parents and they are no longer the owners of the premises or the landlord.
26. It is not unusual in cases like this for the parties to deal with each other directly. But what determines such applications is the legal status of the landlord and the ownership of the premises.
27. The tenancy is therefore not an excluded tenancy. It falls under the provisions of the RTA and within the jurisdiction of the Tenancy Tribunal.

### **Termination of the tenancy**

28. Because the rent was at the date of the application and is still more than 21 days in arrears the landlord is entitled to have the tenancy terminated and to be granted possession.
29. I have granted the landlord possession on 16 June 2024 to allow the tenant time to make other arrangements.
30. I have made the order for rent arrears to the end of the current rent period only to reflect the landlord's rent record produced in evidence. The tenant remains liable for rent until she vacates the premises.
31. As the application is successful, the tenant must pay the landlord's Tribunal filing fee.

### **Name suppression**

32. Upon my enquiry (and explanation) neither party sought an order for name suppression.



J Greene  
31 May 2024

## **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.