

**Tenants Protection Association (Chch) Inc. Notes for presentation at Tenancy Management  
Community of Practice Nov 2021**

### **Applying for a termination on the grounds of anti-social behaviour**

When applying to the Tenancy Tribunal to terminate a tenancy due to anti-social behaviour (ASB)<sup>1</sup> it is first necessary to understand the legal requirements for your application. It has been noted in an early case before the Tenancy Tribunal (TT) that this is a heavily regulated area of law<sup>2</sup>. The legal requirements are in the Residential Tenancies Act 1986 (RTA), for an adjudicator to ignore these would give reason for a tenant to apply for a rehearing or appeal the order.

A periodic tenancy is the first requirement. If your tenant is on a fixed term tenancy this is not an option for you. Misinformation has been spread that you should still apply if your tenant is on a fixed term tenancy and the adjudicator can decide whether to terminate the tenancy for ASB, this is not correct, and many applications dismissed on this alone.

The next requirement is that there has been ASB on the premises, by the tenant or someone on the premises with their permission. ASB is described as “harassment or any other act or omission (whether intentional or not) if the act or omission reasonably causes alarm, distress, or nuisance that is more than minor”<sup>3</sup>. General noises associated with living at a property is not ASB, including having young children playing at the premises<sup>4</sup>. In addition to this, the behaviour must happen on the premises, a tenant cannot be expected to control the behaviour of others in a public space. While the behaviour may be just off the premises, if it was extended beyond the premises, where would it be limited to<sup>5</sup>?

When ASB has occurred, the landlord must serve the tenant with a notice. The RTA sets out the requirements for the notice. It is important to note this is not a standard 14-day breach notice<sup>6</sup>. You can find a template for the correct notice on the Tenancy Services Website<sup>7</sup>. The notice must contain:

- A description of the behaviour and who engaged in it (if known)
- The date, approximate time, and location of the behaviour
- Information regarding how many notices have been given in the last 90 days
- Advice on the tenant’s right to make an application to challenge the notice

Before you apply to the Tenancy Tribunal to end the tenancy there must have been three separate occasions of ASB. You must serve a notice on your tenant on each occasion. You cannot serve two notices together as it does not give the tenant an opportunity to make any changes to correct the behaviour or to challenge the notice given<sup>8</sup>. You should also keep a record of how the notice is

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<sup>1</sup> <https://www.legislation.govt.nz/act/public/1986/0120/latest/LMS451920.html>

<sup>2</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6529662-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6529662-Tenancy_Tribunal_Order.pdf)

<sup>3</sup> See note 1

<sup>4</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6988835-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6988835-Tenancy_Tribunal_Order.pdf)

<sup>5</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6595580-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6595580-Tenancy_Tribunal_Order.pdf)

<sup>6</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6578520-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6578520-Tenancy_Tribunal_Order.pdf)

<sup>7</sup> <https://www.tenancy.govt.nz/disputes/breaches-of-the-residential-tenancies-act/dealing-with-anti-social-behaviour/#related-content>

<sup>8</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6769248-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6769248-Tenancy_Tribunal_Order.pdf)

served and ensure all the details in the notice are clear to avoid any possible confusion<sup>9</sup>. If a notice is successfully challenged, it cannot be amended and reissued<sup>10</sup>. Your application to the Tenancy Tribunal must also be made within 28 days of the third notice being given.

When you are at the Tribunal there are obligations on you as the applicant. As a civil court, the standard of proof you are required to meet in the Tenancy Tribunal is called “on the balance of probabilities”. That means the adjudicator must be satisfied that it is more likely than not the events you are talking about have happened. Your tenant doesn’t have to prove that what they say, they are not required to provide evidence, they merely need to refute what you are saying (“he said, she said”). In that kind of situation, you can appreciate it will become difficult for the adjudicator to determine whose version is more likely to have occurred. It is not that the adjudicator necessarily doesn’t believe what you have said, but they must believe it is more likely to have happened the way you explained. That is why evidence becomes important<sup>12</sup>. One question that comes up a lot is when a neighbour who is affected by the ASB is happy to tell you what is happening as the landlord but refuses to provide a statement or be a witness at the Tenancy Tribunal. Resist the urge to get a statement from someone else as evidence of what the neighbour has told you, doing so may be hearsay and not admissible<sup>13</sup>. You can provide your own statement, or statements from others who are not neighbours of the tenant. It must be a first-hand account of what has happened.

If you have worked through all the requirements for an application under ASB to terminate a tenancy and feel you might not meet the requirements you should consider whether this is the application you should be making. Is an application under another section more relevant; what is the neighbour’s motivation in making their complaints; is their behaviour provoking the situation or is there an element of discrimination involved? Make sure you get the “full picture” before taking any action.

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<sup>9</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6930314-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6930314-Tenancy_Tribunal_Order.pdf)

<sup>10</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6769811-Tribunal\\_Order\\_Redacted.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6769811-Tribunal_Order_Redacted.pdf)

<sup>11</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6929455-Tribunal\\_Order\\_Redacted.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6929455-Tribunal_Order_Redacted.pdf)

<sup>12</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6796029-Tribunal\\_Order\\_Redacted.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6796029-Tribunal_Order_Redacted.pdf)

<sup>13</sup> [https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6963799-Tenancy\\_Tribunal\\_Order.pdf](https://forms.justice.govt.nz/search/Documents/TTV2/PDF/6963799-Tenancy_Tribunal_Order.pdf)