

TENANCY TRIBUNAL AT Ōtautahi | Christchurch

APPLICANT: Body Corporate 351885

RESPONDENT: Wayne Patrick Collins, Emerita Pausal Collins
Unit Owners

UNIT ADDRESS: Unit/Flat 21 & 24, 25 Clinton Lane, Woolston, Christchurch
8062

ORDER

1. Body Corporate 351885 must pay Wayne Patrick Collins and Emerita Pausal Collins \$19,173.28 immediately being a contribution towards the unit owners' legal costs.

Reasons:

Background

1. On 17 May 2023 the Tribunal issued its final order on this application after the substantive hearing on 8 February 2023. There were two earlier directions hearings.

2. The Tribunal invited submissions from the parties on costs. Both parties provided submissions within the timeframe set.
3. Counsel for the unit owners has sought costs of \$30,313.49 plus GST, a total of \$34,860.51.
4. Counsel for the Body Corporate has submitted that costs should lie where they fall or be awarded at a maximum of 50% of the costs sought.
5. This is a case where the Tribunal would not have granted legal representation but for the Body Corporate pleading an amount well more than the legal representation threshold as part of a penalty provision for alleged breaches of the Body Corporate rules.
6. The Tribunal declared Rule 2 of the operational rules (the penalty rule) ultra vires.
7. The other issues raised by the Body Corporate were neither complex nor unusual.
8. The Body Corporate correctly applied for an order for unpaid levies and penalty interest; the amount involved was small. That issue and other alleged breach issues were successfully resolved at mediation.
9. At the earliest time I expressed my reservation about the involvement of counsel. Despite pushback, I insisted that the Body Corporate consider whether it wished to be represented and to pass a resolution to that effect. It did just that. So, continuing with the application with legal representation was a considered decision. The Body Corporate proceeded with 'eyes wide open'.
10. A consequence of the decision to continue with representation is an exposure to legal costs.

Legal considerations

11. Section 102 of the Residential Tenancies Act 1986 (RTA) provides the Tribunal with a discretion when awarding costs; they are not awarded as of right. But it is settled law that the awarding of reasonable costs as referred to in that section means reasonable solicitor/client costs assessed objectively.
12. The Tribunal is not expected to bore down into the details of every invoice and determine whether every charge is reasonable. Its enquiry is whether the costs overall are objectively reasonable.
13. Counsel for the unit owners referred me to the test from *Holden v Architectural Finishes Ltd* [1997] NZLR 143 with which the Tribunal is very familiar. That case is authority for reasonable costs being within a 40-70% range of the successful party's actual costs, with 60% being an average. But that is always subject to an assessment of the actual issues involved and what was reasonably required by way of advice and representation.

14. In some cases, the District Court has held that the Tribunal may, where appropriate, adopt the equivalent scale costs under the District Court Rules 2008 with 1A being used as a guide as to what might be reasonable costs.
15. I do not propose to adopt the scale costs under the District Court Rules in this case.

Analysis

16. I do not accept counsel for the unit owners' submission that the Tribunal should award full solicitor client costs. That does not accord with the principles that have emerged from case law concerning the awarding of costs. Nor does it reflect the reality of the situation here.
17. The unit owners were not entirely blameless. There was a levy issue and penalty interest issue correctly raised by the Body Corporate in its first application. With levy disputes, costs are generally awarded on a full indemnity basis (again subject to overall reasonableness) under section 124 of the Unit Titles Act 2010.
18. So, the Body Corporate can claim some necessary legal costs given that there was a levies issue in dispute. But those costs would necessarily be limited, and the levies issue was relatively quickly resolved.
19. I note too that counsel for the unit owners sought a transfer of the proceedings to the District Court, which I declined. That would necessarily have involved additional costs. So, the submission that the unit owners were always reasonable and ready to settle has a broader context.
20. Some of the issues raised by the Body Corporate were resolved at mediation.
21. That said, I accept counsel for the unit owners' submission that there was no need for the issues that remained unresolved to have proceeded to a full hearing. They too could have, and should have, been resolved at mediation.
22. I do not accept that costs should lie where they fall given that the applications proceeded to a full hearing and the outcome was largely unsuccessful for the Body Corporate.
23. I have decided to award 55% of the costs claimed by the unit owners against the Body Corporate. This takes account of the fact that the unit owners will themselves be responsible for a pro rata percentage of the costs awarded. The Body Corporate is comprised of all the unit owners and costs such as those awarded will be the subject of a levy at some stage.
24. It also takes account of the Body Corporate having a reasonable basis for parts of the applications made.

Result

25. I award the unit owners costs of \$19,173.28 based on 55% of the total legal costs incurred and sought.



J Greene
01 August 2023

Please read carefully:

SHOULD YOU REQUIRE ANY HELP OR INFORMATION REGARDING THIS MATTER PLEASE CONTACT **UNIT TITLE SERVICES 0800 864 884**.

MEHEMA HE PĀTAI TĀU E PĀ ANA KI TENEI TAKE, PĀTAI ATU KI TE TARI **UNIT TITLE SERVICES 0800 864 884**.

AFAI E TE MANA'OMIA SE FESOASOANI E UIGA I LENEI MATAUPU FA'AMOLEMOLE IA FA'AFESO'OTAI'I LOA LE OFISA O LE **UNIT TITLE SERVICES 0800 864 884**.

Rehearings:

You may make an application to the Tenancy Tribunal for a rehearing. Such an application must be made within five working days of the order and must be lodged at the Court where the dispute was heard.

The **only** ground for a rehearing of an application is that a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur. Being unhappy or dissatisfied with the decision is not a ground for a rehearing. (See 'Right of Appeal' below).

Right of Appeal:

If you are dissatisfied with the decision of the Tenancy Tribunal, you may appeal to the District Court. You only have 10 working days after the date of the decision to lodge a notice of appeal.

However, you may **not** appeal to the District Court:

1. Against an interim order made by the Tribunal.
2. Against an order, or the failure to make an order, for the payment of money where the amount that would be in dispute on appeal is less than \$1,000.
3. Against a work order, or the failure to make a work order, where the value of the work that would be in dispute on appeal is less than \$1,000.

There is a \$200.00 filing fee payable at the time of filing the appeal.

Enforcement:

Where the Tribunal made an order that needs to be enforced then the party seeking enforcement should contact the Collections Office of the District Court on **0800 233 222** or go to www.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.