

**TENANCY TRIBUNAL AT** Auckland | Tāmaki Makaurau

APPLICANT: Yong Kun  
Occupier of a principal unit

RESPONDENT: Body Corporate 314041  
Body corporate

UNIT ADDRESS: Unit 10, 15 Minnie Street, Eden Terrace, Auckland 1021

**ORDER**

Body Corporate 314041 must pay Yong Kun \$3,807.26 immediately, calculated as follows:

Descriptions	Applicant	Respondent
Costs: Ladders	\$729.76	
Costs: Paint	\$720.00	
Costs: Work tools	\$842.50	
Costs: Materials	\$1,015.00	
Filing Fee	\$500.00	
<b>Total award</b>	<b>\$3,807.26</b>	

## **REASONS:**

1. Yong Kun attended in person.
2. Alexander Hitchcock, appeared for the body corporate
3. The applicant applies for compensation from the body corporate for them disposing of some of his work-related materials and tools.

## **Background**

4. Mr Kun was a tenant at the unit. He is a painter by trade.
5. The body corporate rules forbid the use of the development's car parks for any purpose other than parking cars.
6. However, Mr Kun stored his ladders, tubs of paint, and other tools of trade on one of his unit's car parks. He is not alone in using the car parks in this way. Other unit occupiers have also been placing their belongings such as toys and furniture in their car parks.
7. Unit owners have complained about the car parks being used in this way.
8. Mr Hitchcock explains that the development's fire escape routes run through the carparking areas. Having items lying about poses a fire risk. The items could cause a fire, fuel a fire that has broken out, or block occupants' escape routes from fire. He says the body corporate decided to take decisive action to remove the applicant's and other offending unit occupiers' property from the Level 1 carpark area (Level 2 was to be attended to later).
9. The body corporate chairperson arranged for Junk2Go to remove all improperly stored items from the car parks on 24 February 2023. A notice was supposed to go to the unit owners and unit occupiers well before that date, so they had the chance to remove their belongings, but Mr Kun and his landlord, the unit owner did not receive any notice.
10. On 24 February 2023, Junk2Go took all of Mr Kun's tools of trade and materials that he had stored on the carpark. Junk2Go has disposed of them. He values the items at over \$10,000.00.
11. At the matter's last call on 17 August 2023, I adjourned the matter for the parties to file and serve further evidence. Mr Hitchcock filed further evidence confirming what he had told the Tribunal at the last hearing. Mr Kun did not file any further evidence. In particular, Mr Kun did not file any further evidence proving the existence and value of his lost belongings.

12. The issues for determination are:

- a. Is the body corporate liable to compensate Mr Kun for his lost items?
- b. If so, what amount of compensation, if any, should be ordered?

**Is the body corporate liable for Mr Kun's lost items?**

13. The body corporate rules allow the body corporate to remove vehicles parked in breach of its rules. However, the rules do not authorise the body corporate to remove other property.
14. The applicant breached the carpark use rules. However, the body corporate's decision to treat his belongings as rubbish, permanently deprived the applicant of his property altogether. The rules did not purport to permit the body corporate to deprive unit owners or unit occupants of their property, and such a rule would probably be ultra vires. A case might be made for the body corporate removing and storing such items once it had given effective notice that the occupant or owner must remove them. However, I cannot see that having a rubbish removal company take the items away (with or without notice) was lawful.
15. A more proportionate step may have been to warn the applicant that his property should be removed on pain of the body corporate taking more direct action. Moving the applicant's property to a safe location, with the costs to be borne by the applicant would have been a less drastic measure. A new body corporate rule imposing a fine for breach of the "cars only" rule would likely have been a fair measure. None of these lesser steps were taken.
16. It follows, I find the body corporate is liable for the removal of Mr Kun's items.

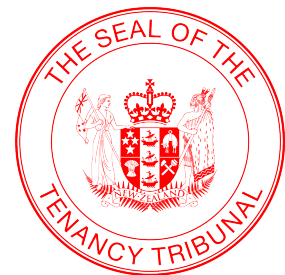
**What compensation, if any, should be ordered?**

17. The Tribunal directed Mr Kun to file proof of the items that were lost and their value by 22 September, but he did not do so.
18. Today, he brought along a copy of a list of missing items he compiled shortly after the event, to which he had recently added in handwriting what it would cost him to replace them. Mr Kun does not generally keep any receipts, so he could provide no proof of purchase of anything.
19. The evidence Mr Kun provided was principally two photographs of the Junk2Go truck showing painting gear and paint loaded into the rear tray, and his own oral evidence in the Tribunal.
20. The photographs show three aluminium ladders. I accept Mr Kun's evidence of the cost of purchase today. I use those values and depreciate the amount ordered based on an expected eight-year useful lifespan.

21. I accept Mr Kun's evidence that approximately six large tubs of unopened paint were removed. I order \$720.00 for those.
22. I do not make any award for the items beginning with the Bosch water blaster through to the gumboots. The water blaster was not his, the microwave was second hand, I do not have enough information about the other items to make an assessment and I do not feel confident of their existence. I allow the other items to the value of 50 per cent because I am satisfied on the balance of probabilities that at least that value of work tools was lost. Similarly, I order 50 percent of the materials for the same reasons.
23. The total amount ordered is \$3,307.26.

### **Filing fee**

24. Because Mr Kun has succeeded with the claim, the body corporate is ordered to reimburse Mr Kun for the filing fee.<sup>1</sup>



R Kee  
14 November 2023

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<sup>1</sup> Section 176(1) of the Unit Titles Act 2010 and s 102(4) of the Residential Tenancies Act 1986.

**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](http://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.