

**TENANCY TRIBUNAL AT** Wellington

APPLICANT: Body Corporate 529949  
Agent appointed by body corporate

RESPONDENT: Phillip George Dyhrberg  
Owner

UNIT ADDRESS: Unit/Flat Unit 17, 36-38 Bankot Crescent, Ngaio, Wellington  
6035

**ORDER**

1. Phillip George Dyhrberg must pay Body Corporate 529949 \$3,937.69 immediately, calculated as follows:

Descriptions	Applicant	Respondent
Interest	\$11.52	
Costs: Legal Costs	\$4,211.50	
GST		\$631.72
Disbursements		\$147.30
Payment on account	\$493.69	
<b>Total award</b>	<b>\$4,716.71</b>	<b>\$779.02</b>
Total interest		
<b>Total award with interest</b>	<b>\$4,716.71</b>	<b>\$779.02</b>
<b>Total payable by Respondent to Applicant</b>	<b>\$3,937.69</b>	

**Reasons:**

1. Both parties attended the hearing which was held by teleconference.

2. This is a matter which began as an application for outstanding levies, the application fee, interest, and collection costs. The total claim was \$9480.95. The application was filed on 6 April 2022. It was filed by Price Baker Berridge (PBB) as agent for Body Corporate 529949
3. The matter was adjourned on a number of occasions and finally heard on 5 September 2022. Submissions and an amended claim were filed on 24 August 2022, noting that the application was now only in relation to costs as the respondent had paid all levies owing by 21 June 2022. The claim was then for costs comprising –

a. body corporate legal handover charge	\$ 287.50
b. section 124 costs	\$8366.92.
c. Appearance costs (estimate)	\$ 575.00
d. filing fee	\$ 850.00
e. interest to 13 June 2022	<u>\$ 253.83</u>
Total	\$10,333.25

4. At the outset there were a number of procedural matters to determine.
5. The applicant was represented by Ms Monique MacGregor. She is a legal secretary/administrator at the firm of PBB. The Tribunal has previously questioned her right to appear before it, ruling in *Body Corporate 45131 v 88 Chi Limited* [2020] NZTT 9023121 that the Lawyers and Conveyancers Act 2006 did not allow representation at a hearing by an employee of a law firm who is not an admitted barrister and solicitor.
6. That was a case where the claim was less than \$6000, the relevance of which is section 93(2) of the Residential Tenancies act 1986, procedures of which are imported into the Unit Titles Act 2010 by virtue of section 176 of the latter. The Tribunal expressly reserved the question whether such representation is permissible where the claim exceeds \$6000, PBB's practice at that time being that it was represented at such hearings by a solicitor. According to Ms MacGregor, that practice has now changed and she is charged with representing body corporate clients at all hearings, irrespective of the value of the claim.
7. Having given the matter further consideration, the view of the Tribunal is that, for the reasons previously given, Ms MacGregor is also not entitled to appear as a representative of the body corporate where her firm is acting, even though it claims to be acting as agent, pursuant to section 171 (3) of the Unit Titles Act, where the claim exceeds \$6000.
8. Ms MacGregor had in this case signed the submissions as "Agent for the Applicant" but the Tribunal notes that the original application was filed in the name of Price Baker Berridge as applicant's representative, the resolution appointing a representative refers to Price Baker Berridge and not to Ms MacGregor personally, and to treat her as agent of the applicant involves legal casuistry to which the Tribunal is not prepared to accede.

9. Ms MacGregor was advised of this ruling and sought a brief adjournment while she sought instructions from her supervising partner. She then advised the Tribunal that the applicant would proceed, relying solely on its submissions, and she would withdraw.
10. [The Tribunal did, in fact, seek further information from her later in the hearing, which was subsequently provided.]
11. I dismiss the claim for appearance costs
12. The second point which arises is whether PBB, if it purports to act as agent or representative, is entitled to claim costs on a solicitor/client basis. This is a point which the Tribunal also considered in *88 CHI Ltd* (above), finding at [33], it could do so but the costs must nevertheless be reasonable.
13. With these preliminary comments I turn to consider the actual claims.
14. According to information supplied, Mr Dyhrberg was supplied by PBB with an email which set out levies and costs then outstanding, broken down. It totalled \$10,983.90.
15. According to Ms MacGregor, on 13 June Mr Dyhrberg paid \$5369.73. On 21 June he paid another \$493.69. No breakdown of the payments has been provided but analysis indicates the first payment comprises the overdue levies, Body Corporate debt collection charges, handover fee and interest to 3 June as set out in the email.
16. As a starting point it is worthy of note that despite the considerable payment by Mr Dyhrberg, the claim finally heard by the Tribunal exceeded the initial claim.
17. On the basis that payment included the handover fee, I dismiss that part of the present claim.
18. I also dismiss the part of the interest claim for the period to 3 June 2022, leaving a balance of \$11.52 payable.
19. There is nothing in the information provided, and Mr Dyhrberg did not explain, the basis of the payment of \$493.69. In the absence of an explanation, I will apply it against any award made.
20. This leaves the legal costs claimed, then said to be \$4764.17 and the filing fee of \$850.00.
21. Mr Dyhrberg strenuously objected to the legal fees, claiming that PBB were aggressive, and the fees amounted to gouging and were more than double the levy arrears. It was apparent from both the hearing and the evidence that he and PBB had a less than amicable relationship.
22. He also argued that part of the problem was due to the fact that until January 2022, both the body corporate administrators and PBB had been sending emails to an address associated with employment which he had ceased some time ago.

This is reflected in the summary of levies submitted in support of the application: the email address to which notices were sent changed from that month.

23. He also pointed out that the complex in which he lives is relatively small, his address is known, he has a letterbox, and a committee member lives next door. He questioned why, if he did not respond to email, contact had not been made by alternative means, and why he should have to bear the resultant cost.
24. Against that, he acknowledged that he should have notified his change of email address: s.85(2) of the Unit Titles Act 2010 and r.4 of the Unit Titles Regulations 2011 apply.
25. PBB filed its usual submissions on entitlement to costs. Notably it cites *Gilbert v Body Corporate 162791* [2015] NZCA 185. The Tribunal notes that the Court of Appeal, at [78] explicitly stated that it is only reasonable solicitor/client costs, objectively assessed, that can be recovered.
26. PBB does not cite any authority on what this might mean, despite the fact that the Tribunal has, on a number of occasions now, referred to High Court authority on the point. It is discussed at length in *88 CHI Ltd* (above), and particularly the Tribunal's adoption of the approach in *Exuberant Limited v Quinovic Property Management Limited* [2021] NZHC 3533.
27. More recently the High Court has again addressed the question in *Criffel Deer Ltd v ANZ Bank New Zealand Limited (Costs)* [2022] NZHC 2418, a decision which is useful for its discussion of the relationship between reasonable solicitor/client costs and scale costs.
28. In *Exuberant* the High Court, at [53], discussed the relationship, concluding that the Court is not precluded from having regard to scale costs as a point of reference or comparator when assessing reasonableness: it is not likely to be especially influential but nor is it irrelevant. *Criffel Deer* takes an arguably stronger position, stating at [24] that the difference between the actual costs claimed and what would be awarded under the scale costs regime is a relevant factor in determining whether the indemnity costs claimed are reasonable. It noted that an award of indemnity costs in that case would effectively constitute a 1250% increase from scale costs, which it concluded, at [26] was not reasonable. The relevance to the immediate case is obvious.
29. It also echoes *Exuberant* where, at [49], it was noted that the exercise is also informed by public policy considerations: the Court will not become an instrument of injustice and an order that a party pay another party's actual costs, when those costs are unreasonably high, would result in just such an outcome.
30. The High Court in *Criffel Deer* also went on to note, citing authority, that scale costs are intended to approximately represent 2/3 of a reasonable fee.
31. In the approach that it adopted, the High Court relied on *Black v ASB Bank* [2012] NZCA 384. There were obvious reasons why it would do so, both being cases where indemnity costs were sought based on contractual liability under financial

arrangements. The Court in *Exuberant* made reference to *Black* in the context of whether there was any difference between the approach to be adopted where the liability is contractual and otherwise but concluded that while the two situations are different, the overriding requirements remains that the costs claimed must be reasonable.

32. There is not currently a scale of costs in the Tribunal, although it is expected that one will be introduced pursuant to s.176A of the Act as inserted by s.24 of the Unit Titles (Strengthening Body Corporate Governance and Other Matters) Amendment Act 2022. The District Court scale is commonly used as a comparator: see, for example, *French v Ryan* DC Akld CIV-2012-004-711.
33. Based on this scale, on a 1A basis, the scale costs for preparation and filing of an application, with supporting affidavit, is \$1650.00. The 1A scale is appropriate: The Tribunal is a lay tribunal where lay people are expected to be able to prepare and submit applications and frequently and successfully do for levy arrears.
34. The Tribunal makes the distinction that not all the costs claimed by PBB relate to filing of the application and supporting evidence: they need to be dealt with separately.
35. Based on the evidence presented by PBB, identifiable costs for preparing the application and supporting submissions amounted to \$1985.00. They include both an original submission in June 2022 and an amended submissions in September which seemingly involved less than an hour's drafting. By reference to the comparator, the costs are reasonable on an indemnity or solicitor/client basis.
36. It is still, however, necessary to consider the other factors identified in *Exuberant* and other cases, which may justify an increase or decrease in the award.
37. An application for levies is not particularly complex: as noted the Tribunal is established as a lay tribunal and the expectation is that lay people will be able to bring the application. In the Tribunal's experience they frequently do, successfully. Based on the material submitted to the Tribunal, some property managers routinely instruct PBB and AGM resolutions are drafted so as to allow for the practice. But it is not necessary.
38. Relevant also is the skill and experience brought to the exercise. In this case there are a number of issues.
  - a. The claim for the handover fee is based on an invoice not payable until November 2022. The justification for the claim at any earlier point in time is not explained. Were it not for the fact that Mr Dyhrberg paid the amount claimed, that part of the claim would have been dismissed;
  - b. The payment was made on 13 June but claim is still made for it in the submission in September 2022;
  - c. The claim includes interest. Resolutions are produced authorising the claiming of interest but it is notable that the invoices issued, while they include levies and other costs, do not include reference to interest. Nor do the instructions issued to PBB. In short, there was no evidence put

before the Tribunal that PBB was specifically authorised to seek interest. Were it not for the fact that Mr Dyhrberg paid the amount claimed (at least up to 3 June 2022), that part of the claim would also have been dismissed;

- d. The payment of interest was made on 13 June but claim is still made for it in the submission in September 2022. The claim should have been amended to allow for the payment.

39. There is no apparent justification for any increase in the award based on skill and experience. If anything, there is an argument for a decrease.

40. Taking into account these factors, the Tribunal considers an award of \$1985.00 for this aspect of the matter to be reasonable.

41. This leaves the claim for the balance of costs, \$5162.50. As noted above, at para. [11], accepting that PBB is entitled to act on the matter, the Tribunal takes the view that they are entitled to claim costs on a solicitor/client basis: however they must be reasonable and the factors referred to are applicable.

42. Costs to 31 December 2021 amount to \$735.00. They include communication with the manager, drafting of an interest statement and drafting of a letter of demand. The costs of drafting the demand amount to \$305.00. The Tribunal is cognizant that the software used by the manager includes a standard charge for such a letter of \$126.50. One of the factors that is to be taken into account is whether it is necessary for a lawyer to carry out the work. It is not. The only valid argument for the action is that a lawyer's letter may carry more weight. The question then is whether the cost is justifiable. In the view of the Tribunal, it is not when it could have been sent by the manager at a lesser cost. At this point it is noted that PBB argues that it is acting as an agent in this respect. The Tribunal takes the view that the charge that would be made by a typical agent is relevant in this regard. It allows a sum of \$126.50.

43. The Tribunal has previously commented on the practice of PBB preparing an interest statement. Again it is something that it could be expected that a competent manager with the appropriate software should be able to produce. The Tribunal accepts that is something that a competent solicitor would check for the purposes of the application to the Tribunal but it also notes that the calculation appears to have been made for the letter of demand: the application was not submitted until early April 2022 and the notations include drafting and checking of interest at that point.

44. The Tribunal also disallows this cost.

45. In total, for the period, it allows \$456.50.

46. For the period 1 January 2022 to 7 June 2022 it accrued costs of \$5035.00 based on its submission of that date. Of these, costs for the application and submissions have been allowed, leaving a balance of \$3050.



47. Perusal of records indicate these costs largely consist of communications with the manager but also some dealings with Mr Dyhrberg. The Tribunal's brief experience of Mr Dyhrberg is that he could be difficult and this is a relevant factor according to the High Court in *Exuberant* at [52], although it did not consider that this was reason for increasing the severity of the award. Mr Dyhrberg also seems to the Tribunal to have had some justification for his frustration with the body corporate processes and his question as to how the matter ever got to the situation it did has some justification, even allowing that he may have been a contributing factor himself.
48. The Tribunal also notes that these are largely costs for PBB acting as agent, not counsel, and that if much of the work had been carried out by the manager, it could have been done at a considerably lower cost. It raises the question whether PBB should have been carrying out much of the work for which a claim is made - one of the relevant factors which Courts take into account - and is a situation where the policy considerations referred to by the High Court carry some weight.
49. There is clearly a justification for some communication over this period, particularly with the manager and particularly having regard to the possibility of settlement during that time, but the extent appears inordinate in this case. Having reviewed the schedules produced, the Tribunal allows 1/3 or \$1020.00 (rounded).
50. As noted, Mr Dyhrberg settled the outstanding levies and some of the costs on 13 June. Between then and the hearing on 5 September 2022 PBB incurred further costs of \$2112.50. These include \$200 amending submissions and which has already been allowed for above.
51. The remaining \$1900 consists of exchanges with its client, exchanges with the Tribunal - by which is presumably meant correspondence with MBIE and/or Tenancy Services as there is limited record on the file other than in relation to a request for a teleconference – and a brief exchange with Mr Dyhrberg.
52. The gist and purpose of this correspondence is not explained. Although some correspondence is to be expected, the level and cost is inordinate. The High Court decisions allow of “robust judgment”. The Tribunal awards \$750.00.
53. In summary, it is the view of the Tribunal that the costs claimed are unreasonably high, particularly as it is apparent that Mr Dyhrberg was prepared to settle the matter so far as levies were concerned and did so, and the real issue seems to have been PBB's costs. The basis on which PBB sought costs is as agent and the history of the matter indicates that the body corporate or its manager bears some responsibility for what has eventuated and it is not appropriate that Mr Dyhrberg should bear all of the cost.
54. In total, costs of \$4211.50 are awarded.
55. The costs awarded are exclusive of GST and disbursements, which are payable in addition.

56. The filing fee is also sought. The applicant has been partly successful and by virtue of s176(3) of the Act, s.102(4) of the Residential Tenancies Act applies. The Tribunal has a discretion. On the basis of its view that the body corporate itself could have done more to resolve this matter without the incurring of the significant costs involved, the Tribunal declines to award the application fee.



A Henwood  
22 October 2022



**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.