[2025] NZTT 9061284

TENANCY TRIBUNAL AT REMOTE LOCATION | TE TARAIPIUNARA RETIHANGA

APPLICANT:	Body Corporate 189252, Craig Leishman Agent appointed by body corporate, Agent appointed by body corporate
RESPONDENT:	Xiao Qing Lan Owner
UNIT ADDRESS:	Unit/Flat 35 (AH), 22A Willcott Street, Mount Albert, Auckland 1025, Willcott Mews

ORDER

1. The application for a rehearing is declined.
2. Xiao Qing Lan must pay $300 to Body Corporate 189252.

Reasons:

1. Both parties attended the hearing. Miss Lan was assisted by an interpreter.
2. Miss Lan has applied for a rehearing of the Tribunal's decision in this matter dated 21 May 2025. The application for a rehearing was set down for a rehearing and was heard today.
3. The parties were sent a video link ahead of the hearing today but as with the earlier hearing, Miss Lan chose to appear by telephone. All parties appeared by telephone, and I was satisfied Miss Lan was not prejudiced by this method of hearing. I note that in any event she resides in Australia, so a hearing in person is out of the question.

Background

4. The background to this matter is as follows:
   a) The Body Corporate applied for recovery of unpaid interest, debt recovery charges and the filing fee from Miss Lan

b) The claim arose out of levies due following a scheme for repairs sanctioned through the High Court in 2019.

c) Two invoices were raised for payment by Ms Lan, totalling $18,205.59. The invoices were due in December 2021 and December 2022 respectively.

d) By the time of the hearing on 21 May 2025, the invoices had been paid by instalments but the claim related to debt recovery fees and interest charged on these amounts.

e) Miss Lan filed submissions close to the hearing on 21 May 2025 and the Body Corporate filed reply submissions the day prior (20 May).

f) At the outset of the hearing on 21 May, Miss Lan said she had not seen the reply submissions filed by the Body Corporate. My order of 25 May 2025 records that to deal with this issue, Mr Leishman (who was instructed and appeared for the Body Corporate), took the Tribunal through those submissions carefully and on various occasions his submissions were summarised by me for the benefit of Miss Lan.

g) Miss Lan's overall response to the application was that she had not opposed the initial invoices, but needed to borrow money from the bank or a finance company to pay them. She alleged she had sent the Body Corporate an email asking for a copy of the CCC for the repair works. She needed this to get the funding. She claims she sent further communications to the Body Corporate asking for this document. She said that the Body Corporate's failure to supply this information meant she could not get funding to meet the original invoices and this caused delays.

h) She therefore submitted that interest and collection charges should not be paid by her.

i) She claimed also that a payment of $5,000 has not been correctly taken into account or accounted for.

j) On 21 May 2025, the Tribunal issued a decision in favour of the Body Corporate. I noted in my order that "It is not a ground of defence to a request for interest that the unit holder needs to get funding from a financier."

k) On 30 May 2025, Miss Lan applied for a rehearing. During the hearing today, she submitted she had filed her application on 28 May, however, the completed application is dated 30 May 2025 and this is also the date she emailed it to the Tribunal.

Should I grant the application for a rehearing?

5. Section 105(1) Residential Tenancies Act 1986 (the RTA) provides that the Tribunal has the power to order a rehearing where "a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur".

6. Usually the party applying for the rehearing must show that something went wrong with the Tribunal's procedure, for example, that they did not receive notice of the hearing or they were not able to properly present their case.

7. The District Court has held that if the Tribunal was simply wrong in its findings of fact, or its application of the law, this is not sufficient to establish a miscarriage of justice: a rehearing is not an alternative to an appeal. Furthermore, a rehearing will not be granted just because a party is unhappy with the decision, or to give them a second opportunity to present their case all over again to another adjudicator.

8. In *Wellington City Council v McMillan* (DC Wellington, MA 70/02, 17 June 2002), a decision of the District Court that is binding on me, the learned Judge referred to the different criteria that are applicable to appeals from the Tribunal to the District Court and then stated:

> "[18] By contrast, by virtue of the specific terms of section 105, an application for a rehearing can only succeed if the applicant shows that a substantial wrong or miscarriage of justice has or may have occurred or is likely to have occurred. These are strong words which set a high standard. They most obviously apply...to cases of procedural error e.g. a hearing which takes place in the absence of a party who has not been given notice of it; the improper admission or rejection of evidence; misconduct by the adjudicator or by one of the parties or a witness...
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> [19] In my view, however, the words do not cover a complaint that the Tribunal was merely mistaken or wrong in its findings of fact or in its application of the law. There are two reasons for this. First the strength of the language in s105 is such that something more than a mere wrong decision must be shown. The section does not speak of a decision being wrong but of a substantial wrong or miscarriage of justice occurring. This implies an obvious injustice, not merely an erroneous decision.
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> [20] Secondly, if a mere erroneous decision is enough, whether the error is factual or legal or both, it would enable parties to in effect appeal any decision twice: once to the very Tribunal which made it by way of an application for rehearing, and then again to the District Court against the grant or refusal of the application for rehearing. Not only does that offend against the general hierarchical nature of the appeal system, it would also make the time limit for filing [a] notice of appeal against an original decision nugatory".

9. Simply disagreeing with the decision is therefore not grounds for a rehearing.[1] A rehearing will not be granted just because a party is unhappy with the decision, to give a party a second opportunity to present their case, or as an alternative to an appeal.

10. Importantly, s 105(2) of the RTA provides that applications for a rehearing must be filed within five working days of the date of the order. This time limit is set for good reason, so as to ensure finality of Tenancy Tribunal orders and certainty of the position from the point of view of both parties.

[1] *Yogeswaran v Doubletree Properties Ltd [*2021] NZDC 15704

11. Section 105(2) of the RTA also allows for the Tribunal to give further time for the filing of an application for a rehearing. This recognises the rare situation where there may be good grounds for a rehearing application being filed late, for example, where the decision went to the wrong address (and therefore did not come to the attention of the applicant).[2]

Miss Lan's submissions

12. Much of Miss Lan's written submissions provided ahead of the hearing were directed at the substance of the decision itself, which she made clear she strongly disagrees with. She does not accept my prior finding and disagrees with the reasoning. She readvances the same points made earlier.

13. I observe that a number of Miss Lan's written submissions refer to incorrect statutory provisions, for example:

    a) "The Tribunal ABSOLUTELY has hardship jurisdiction.
    Explicit Authority:
    Tenancy Tribunal Rules 2019, Rule 9.2(a):
    The Tribunal may, according to equity and good conscience:
    (a) Modify or set aside unreasonable fees;
    (b) Grant relief for proven hardship."

    There is no such statutory provision.

    a) "Breach of the Burden of proof Rules. The BC bears the legal burden to substantial its claim of unjust enrichment under section 94 of the Contract and Commercial Law Act 2017."

    This also is an incorrect recitation of the law. In any event, the Contract and Commercial Law Act 2017 has no relevance to this matter.

14. In terms of what went wrong with the hearing, Miss Lan wrote in her written submission:

    "Procedural Breach: Non-disclosure of reply Submissions (rule 12.3) the Body Corporates failure to disclose its submissions prior to the hearing on 21 May 2025 in violation of Tenancy Tribunal Rule 12.3 and the principles of national justices" .

15. I observe that there is no rule 12.3 that says this.

16. During the hearing, Miss Lan's oral submissions included the following:

    a) She submits that the Body Corporate did not present the full story and ultimately its conduct prevented her from getting finance.

    b) The Body Corporate breached its duty under s 113 of the Unit Titles Act 2010. (I note that this provision relates to Body Corporate meetings). Under this provision, she says she has the right to have the information about the building repairs.

[2] See *First Choice Rentals v McLeod* TT Tauranga 09/851/TG, 10 February 2010.

c) Miss Lan's bank required proof of repair before advancing the money to pay the invoices. Had the Body Corporate replied to her earlier about not having a CCC, she would have explored other solutions to pay the fees, such as selling a property.

d) The Body Corporate was required to respond to her within 30 days. Failing to do so for 12 months was a breach of the Body Corporate's obligations.

e) There was a procedural breach because she did not get the reply submissions filed two days prior to the hearing. She claims this denied her the opportunity to make submissions during the hearing.

17. For the Body Corporate, Mr Leishman submits:

a) The application is out of time, having been filed outside the required 5 working day time frame.

b) All of the issues raised today were raised at the hearing; nothing new is raised.

c) There was no objection to the reply to submissions at the time of the previous hearing.

d) There has been no miscarriage of justice.

e) The statutory provisions quoted by Miss Lan make no sense and do not support Miss Lan's argument.

18. In the event it is successful, the Body Corporate seeks the actual costs of 2.5 hours of Mr Leishman's time at $225 plus GST per hour.

19. In reply, Miss Lan submitted:

a) She offers no reason for any delay in filing her application but maintains that she filed her application for a rehearing on 28 May.

b) She strongly disagrees that further costs should be paid.

Outcome

20. The bulk of Miss Lan's submissions relate to her dissatisfaction with the outcome of the prior order. She seeks to reargue the same points she previously advanced before me. It is clear she simply disagrees with the outcome and the reasoning and wants the opportunity to reargue the case.

21. In terms of her not having seen the reply submissions and now putting that forward as a reasons for prejudice, I note there was no obligation on the Body Corporate to file those submissions. In any event, they were emailed to Miss Lan ahead of the hearing. To avoid a situation of possible prejudice Mr Leishman took the Tribunal and Miss Lan carefully through the submissions and there was no objection to them at the time. I also paraphrased the submissions for the benefit of Miss Lan.

22. I find that the application for a rehearing was filed on 30 May 2025, and is therefore filed out of time. I do not agree that further time to file the application should be allowed in this case. The application therefore fails on that ground.

23. In the event I am wrong, I consider there is nothing in this application which convinces me there should be a rehearing. Miss Lan is unhappy with the outcome of the order dated 21 May 2025 and wants the opportunity to reargue her case.

24. The only aspect of process raised has no basis as I consider there was no prejudice at all to Miss Lan at the prior hearing.

Is the Body Corporate entitled to costs?

25. The Body Corporate is not entitled to indemnity costs under s 124 or s 127 of the Unit Titles Act 2010. This is because the costs do not relate to the collection of a levy under s 124 or an act that the "Body Corporate is required or authorised to do, …. and the repair, work, or act was rendered necessary by reason of any willful or negligent act or omission on the part of… any unit owner."[3]

26. The Body Corporate is however entitled to costs under the general costs jurisdiction in the Tribunal, where Counsel has been appointed (Section 102(2) of the RTA).[4] I note that a different approach towards fixing costs applies under that provision. I consider it appropriate, given the amount of money involved for the costs to be fixed at $300. This is just under half the amount of actual time spent. In fixing this sum, I take into account the lack of general merit in the application as well.

D Watson
29 August 2025

[3] See *Hart v BC* (HC Akd, CIV 2005 – 404-1429, 23.6.05, Courtney J).
[4] *Body Corporate v Ikeda* CIV-2018-004-001944 [2020] NZDC 3669

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.