[2026] NZTT 9067624

TENANCY TRIBUNAL AT MANUKAU | TE TARAIPIUNARA RETIHANGA KI MANUKAU

APPLICANT:	Body Corporate 571762 Body Corporate
RESPONDENTS:	James Grant Harry Daniels and Jessica Shanell-Frans Thompson Owners
UNIT ADDRESS:	Unit/Flat 7B, 7B Hinaki Street, Point England, Auckland 1072

ORDER

1. The respondents' application for rehearing dated 11 November 2025 is dismissed.
2. The names of the respondents, ie., James Grant Harry Daniels and Jessica Shanell-Frans Thompson, are amended to and incorporated on the original order of Adjudicator J Maher dated 11 November 2025 to read as follows:

   James Grant Harry Daniels and Jessica Shanell-Frans Thompson must pay Body Corporate 571762 $8,328.89 immediately, calculated as follows:

   Costs – levy collection $7,483.89

   Filing Fee $500.00

   Costs: attendance at hearing $345.00

   Total award $8,328.89
3. For the avoidance of doubt, the order of Adjudicator J Maher dated 11 November 2025 is restored and enforceable against both respondents James Grant Harry Daniels and Jessica Shanell-Frans Thompson accordingly.

Reasons:

1. Both parties attended today's rehearing as directed by Adjudicator J Northwood on 27 February 2026 as follows:

   1. The application for rehearing is granted on the papers.

   2. I direct that these applications are together at the next hearing:

      a) James Daniels rehearing application dated 11/11/25.

      b) The Applicant's application to amend Adjudicator Maher's order of 11/11/25.

      c) Applicants' application for a rehearing of my order of 11 February 2026.

2. In considering the above matters before me today, I am mindful that while Adjudicator Northwood has previously made a substantive order on 11 February 2026, the learned adjudicator had duly set aside her own order on directing this rehearing before me.

3. There remains one substantive order which binds the parties, and it is the original substantive order of Adjudicator J Maher dated 11 November 2025 which is material and now the subject for consideration on whether there should be a rehearing as requested by the respondents.

4. A day after issuance of Adjudicator Maher's order dated 11 November 2025, counsel for the body corporate filed a memorandum dated 12 November regarding apportionment of liability under the 11 November 2025 order to include both legal owners and respondents James Daniels and Jessica Thompson to the order.

5. The 12 November 2025 memorandum was not an application for a rehearing. I reproduce the memorandum in full as follows:

   1. This memorandum is filed on behalf of the Applicant in response to the Tribunal Order dated 11 November 2025.

   2. While paragraph 4 of the Tribunal's Order states that "Initially the application was made against both owners, but it was amended and is now lodged on the basis that Mr Daniels only is liable to pay the requested costs," this is respectfully incorrect. The original application and all subsequent submissions filed and presented at the hearing confirm that the claim for costs was, and remains, lodged against both owners, Mr Daniels and Ms Thompson.

   3. Specifically, our filed submissions confirm liability was pursued against both parties with a 1/2 share each, as detailed in paragraphs 3 and 4.

   4. We request the Adjudicator amend this Order to stipulate that liability for the ordered sum be equally apportioned between both parties.

   5. Should the Order remain unamended, the Body Corporate will be left with no recourse but to pursue a rehearing or an appeal. Such proceedings would inevitably incur further costs under Section 124. We understand the Adjudicator's desire to avoid imposing additional costs, particularly in light of the Respondents stated health issues.

6. A further critical consequence of the unamended Order is that the Body Corporate is unable to pursue full and effective recovery of the ordered sum. Since the unit is owned by two parties as tenants in common, not one, and the current Order only holds Mr Daniels liable, the judgment can only be effectively enforced against his interest. This materially impairs the Body Corporate's ability to recover the debt from both owners.

7. We look forward to receiving the amended Order prior to the expiration of the deadline for the rehearing or appeal.

6. In essence, what the body corporate was seeking in their 12 November 2025 memorandum was for the Tribunal to correct a slip in Adjudicator Maher's order of 11 November 2025. It was not an application for rehearing and should not have been regarded as such.

7. The respondents however had applied for a rehearing dated 11 November 2025 of Adjudicator Maher's substantive order which is now before me for consideration, first and foremost.

8. The respondents' primary ground for the rehearing is that Adjudicator Maher has failed to apply substantial justice and merits considerations enunciated under section 85 Residential Tenancies Act 1986 to the body corporate's levy/legal costs recovery claim thereby resulting in a miscarriage of justice. Cogent and pressing grounds have been set out in the rehearing application as to why Adjudicator Maher had erred in disregarding the parties' agreement for repayment of outstanding levies. The respondents' position was largely vindicated by the issuance of Adjudicator Northwood's order of 11 February 2026 which dismissed the body corporate's claim against the respondents altogether.

9. Under the heading of *Proportionality and Fairness*, Adjudicator Northwood's order of 11 February 2026 dismissed the body corporate's application for legal costs and Tribunal filing fee for these reasons:

    a. The Tribunal should also consider proportionality and fairness under section 85 of the Residential Tenancies Act 1986 but must first apply the law. If the legal costs were incurred unnecessarily or prematurely, they may not be "reasonable costs" under section 124 of the Unit Titles Act.

    b. The Tribunal finds that the parties had a clear agreement that the owners would pay $1000.00 and then the full amount of levies by 31 March 2025. The owners complied with this agreement and paid in full by the agreed date.

    c. I accept that the Respondents could/should have communicated better with the body corporate however given the circumstances at that time, they can be excused for this.

    d. The body corporate instructed lawyers and incurred legal costs two weeks before the agreed payment deadline, on the basis that the owners had not advised a payment plan. However, there is no evidence that the owners were in default or that legal action was necessary at that stage.

e. Under section 124(2) of the Unit Titles Act 2010, only "reasonable costs incurred in collecting the levy" are recoverable. The Tribunal must objectively assess whether the legal costs were necessary and reasonable in the circumstances (see *Body Corporate 346799 v Gueirard & Vu* [NZDC 19645]; *Exuberant Limited v Quinovic Property Management Limited* [NZHC 3533]).

f. In this case, the Tribunal finds that it was not reasonable for the body corporate to instruct lawyers before the agreed payment date had passed, as the owners were not in default. The legal costs incurred at that time are therefore not recoverable as "reasonable costs" under section 124(2).

10. Given the major divergence of approach by adjudicators Maher and Northwood to the claim filed herein, I acknowledge that ostensibly, I am put in an unenviable position of having to pick a side in this rehearing application now before me.

11. However, I consider that the right approach that I must take on the matters before me today is to determine whether or not there is basis for the Tribunal to grant a rehearing of Adjudicator Maher's original decision in the first instance.

12. Section 105(1) Residential Tenancies Act 1986 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".

13. 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. A rehearing may also be granted where there is new evidence that was not reasonably available at the first hearing, if it could have affected the outcome.

14. 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.

15. In *Zang v Yip* [2016] NZDC 9356, Judge Cunningham summarised and set out these circumstances that might qualify for a rehearing:

    a) one party did not receive notice of the hearing;

    b) a party was not able to present their case clearly;

    c) there was new evidence that was not reasonably available at the first hearing.

16. In *Wellington City Council v McMillan* [2003] DCR 50, Judge Tuohy considered the provision "a substantial wrong or miscarriage of justice has or may have occurred or is likely to occur" to be strong words which set a high standard and most obviously apply to cases of procedural error or discovery of new evidence.

17. Those words however cannot cover a complaint that Tenancy Tribunal was merely mistaken or wrong in its findings of fact or application of law. Where the grounds relied on in application for rehearing are complaints about legal correctness of decision they should have been dealt with by way of appeal. No distinction can be made between errors of law that are grave enough to constitute a substantial miscarriage of justice and those which are not.

18. More recently, in *Scott v Sidhu* [2024] NZDC 1549, Judge Harrop dealt with 2 appeals from the Tenancy Tribunal, one in respect of the substantive decision awarding, inter alia, general damages against the landlord and the other, the decision refusing the landlord's application for rehearing.

19. Judge Harrop dealt with the landlord's appeal against the refusal to grant her a rehearing first because if that appeal was upheld, the obvious remedy would be to grant the rehearing and the matter would be referred back to the Tribunal to be heard by a different adjudicator.

20. Considering the substantive points raised by the appellant on why her application for a rehearing should have been granted, Judge Harrop held at [25] that the Tribunal's obvious focus under section 105(1) RTA is on the fairness of the hearing process and in respect of complaints about the substance of the Tribunal's decision, as opposed to the process by which it was reached, there are, of course, appeal rights to address those.

21. Judge Harrop reiterated that the merits of the case are able to be and have been challenged by the landlord in her appeal against the substantive decision.

22. In dismissing the landlord's rehearing appeal, Judge Harrop accepted the Tribunal's assessment that many of the landlord's criticisms relate to the merits of the case (rather than the process) which merits of the case were later considered by the learned judge under the appeal against the substantive decision.

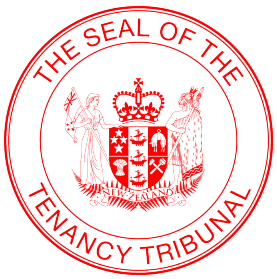
23. On the appeal against the substantive decision, it is noteworthy that Judge Harrop ultimately found that the Tribunal was wrong to have awarded general damages of $500 for breach of section 38(2) against the landlord and allowed part of the landlord's appeal against the substantive decision and quashed that award of general damages against the landlord accordingly.

24. Against that backdrop, I agree with counsel for the body corporate that the respondents' rehearing application does not raise any new evidence or legal argument that could alter the outcome. Adjudicator Maher has already addressed the fairness of the body corporate's actions, the email communication issue, and the reasonableness of costs under s124 of the Unit Titles Act 2010 and relevant caselaw.

25. I hasten to add that even if Adjudicator Maher was wrong in law and/or application of the facts to the law, the remedy lies in the appeal process, not rehearing.

26. For those reasons, I dismiss the respondents' application for rehearing of Adjudicator Maher's substantive order of 11 November 2025.

27. I also amend the 11 November 2025 order of Adjudicator Maher under the *slip rule* principle to stipulate that liability for the ordered sum be equally apportioned between both respondents James Grant Harry Daniels and Jessica Shanell-Frans Thompson.



J Tam
19 June 2026

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.