TENANCY TRIBUNAL AT AUCKLAND | TE TARAIPIUNARA RETIHANGA KI TĀMAKI MAKAURAU

APPLICANT/RESPONDENT:	Lyon Trustee No 10 Limited Owner of a principal unit
RESPONDENT/APPLICANT:	Body Corporate 166208 Body corporate
UNIT ADDRESS:	Unit G, 30 York Street, Parnell, Auckland 1052

COSTS ORDER

Lyon Trustee No 10 Limited must immediately pay Body Corporate 166208 $71,962.24 for its litigation costs, calculated as follows:

Descriptions	**Applicant**
Expert fees and disbursements	$19,154.23
Legal costs - levies recovery	$8,000.00
Legal costs @ 70 percent contribution	$44,370.23
Filing Fee	$437.78
Total award	**$71,962.24**

REASONS:

Introduction

1. This is a decision on costs.

2. I have had the benefit of written submissions of Ms Oporto of Price Baker Berridge (PBB) and Mr Wood, counsel for Lyon.

3. These proceedings were merely the latest instalment in a saga between these parties that has gone on with many twists and turns for a decade.

4. The body corporate was wholly successful in its claims. Lyon was wholly unsuccessful in its claims.

5. The body corporate's claim was a straightforward claim for unpaid levies.

6. Lyon's claim was a more complex claim for rental loss for the body corporate failing in its duty to maintain the common property. Lyon had originally sought a work order but abandoned that remedy on about 28 November 2024 after the body corporate provided evidence that the value of the work order would be well outside the Tribunal's monetary jurisdictional limits.

7. After some reflection, I consolidated the claims because I considered Lyon's claim was interconnected to the levies claim. Lyon alleged it could not pay the levies due to the body corporate's breach of duties which rendered the unit untenantable.[1] In substance though, the claims were quite distinct and were handled very differently. Lyon did not contest the levies but sought to offset the levies against its loss of income. So, the parties did not need to spend time on the levies claim per se.

8. On the breach of duties claim, Lyon complained of water ingress into an entry-level bedroom. In its original submissions for hearing, it argued that the water ingress was from the adjacent breezeway. In updated submissions, filed six days before the hearing, Lyon contended that it did not matter whether the water ingress was from the breezeway or from another source. Either way, the body corporate had failed in its repair and maintenance duties. The body corporate disputed the claims.

9. The hearing took one day. Counsel responsibly limited the evidence and submissions to their essence.

[1] Tribunal's directions dated 14 May 2025.

10. Mr Baker for the body corporate cross-examined Mr Cary, who controls Lyon, on his alleged obstruction of the body corporate's attempts to carry out maintenance and repair work relating to Lyon's unit. Although, this line of questioning had been telegraphed in the body corporate's (unchallenged) evidence filed and served in advance of the hearing, Mr Cary struggled to give Mr Baker persuasive reasons for not allowing the body corporate less fettered access to carry out repairs and maintenance.

11. It would have been obvious to an onlooker that Lyon had fared poorly at the hearing. Aside from Mr Cary's poorly explained unconstructive interactions the body corporate's repairs and maintenance, Lyon's case was limited by a lack of expert evidence to support its case. There was no up-to-date expert evidence that Lyon could rely on in chief or cross-examination.

12. Lyon filed evidence after the hearing. The Tribunal accepted the evidence, but did not require the body corporate to respond.

13. The Tribunal found the body corporate's levies claim proven and Lyon's claim that the body corporate had breached its duty to maintain in respect to the bedroom's water ingress not proven.

14. Lyon applied for a rehearing because it wanted the Tribunal to consider a 2021 Memorandum of Advice from a building consultant that found that the exterior cladding "is not performing". I refused the application. The proposed evidence was not fresh nor the circumstances exceptional nor the grounds compelling.

15. Overall, Lyon conducted its case in a way that prolonged the proceedings. The way it conducted the substantive hearing caused the Tribunal additional work. The chunk of evidence after the hearing led to the Tribunal having to sift through material without the assistance of counsel. That is not intended as a criticism of counsel because it appears Lyon had limited resources, difficulty in providing timely instructions and probably gave counsel unhelpful instructions at times.

Legal principles

16. A principal issue in deciding costs in this case is the extent s 124 of the Unit Titles Act 2010 (UTA) applies. If the section does apply, the Tribunal must order all reasonable costs. To the extent s 124 does not apply, the Tribunal may order costs in accordance with its usual approach to costs which is by applying common law costs principles.

17. Section 124(2) of the UTA relevantly provides:

> (2) The amount of any unpaid levy, together with any reasonable costs incurred in collecting the levy, is recoverable as a debt due to the body corporate…

18. Under s 124 the Tribunal must order all the body corporate's cost unless they are not reasonable in the context of what steps the body corporate had to take. As Judge David J Clark found in *Gueirard & Vu* Judge David J Clark held: [2]

> [20] Because the recovery of solicitor client costs is a category of cases which can be claimed under s 124 of the UTA, the starting point then is a statutory acceptance solicitor client costs can be granted as of right.

19. In considering whether the solicitor client costs claimed were reasonable His Honour adopted the following approach:[3]

> (a) Whether the work that was done was reasonably necessary;
>
> (b) Whether the amount charged for the reasonably necessary work was reasonable (in both instances, the NZLS Rules and Rule 9 in particular are a prime reference point when assessing reasonableness);
>
> (c) Third, test the analysis against other available reference points.

20. So, if for instance, the body corporate took needless steps or its lawyers charged it disproportionately high fees,[4] the costs would not be allowed to the extent they were not objectively justifiable.

21. Where s 124 does not apply, the Tribunal applies its own principles largely based on common law. The Tribunal has no costs rules or guideline judgments setting out costs principles. However, it typically applies conventional civil litigation costs principles. As the author of one of the leading textbooks on residential tenancy law, Stewart Benson, has written, "In principle, costs are awarded to the successful party".[5] The author of the other leading textbook, David Grinlinton wrote:[6]

> The general principles that are applied by the courts on the quantum of costs, may also be applied by the Tribunal. What is considered a "reasonable contribution" to a successful party's costs will depend on many factors, but there is authority that a figure of 60 per cent is regarded as the average, with most awards falling within the range of 40 - 70 per cent of actual costs.

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[2] *Body Corporate No. 346799 v Gueirard & Vu* [2023] NZDC 19645 at [20].
[3] Ibid at [31].
[4] The touchstone being the requirements of Rule 9 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules.
[5] Stewart Benson *Residential Tenancy Law in New Zealand* (Thomson Reuters New Zealand Limited 2018) at p 284.
[6] David Grinlinton *Residential Tenancies: The Law and Practice* (4th ed, Lexis Nexis, Wellington, 2012) at 8.3.5.

22. The District Court has approved of that approach.[7] Generally, the Tribunal should order costs where "the parties are represented by counsel, the dispute is complex, and the amount of the claim is substantial: *Westwood v Western* [1994] DCR 759".[8]

23. What will amount to a reasonable contribution to costs will depend on a range of factors. The following factors are often relevant to be considered when assessing costs:

    (a) The length of the hearing.

    (b) The sum of money involved.

    (c) The legal and factual complexity.

    (d) Whether argument lacking substance was advanced.

    (e) The degree of success achieved by the parties.

24. In *Holden v Architectural Finishes Ltd* Justice McGechan held that: [9]

> …the sum in issue is a 'reasonable' 'contribution'. It is not some mere gesture. It is not some virtual payment in full. It is merely a contribution, and a reasonable one. At the outer limits, proportions of reasonable actual fees can afford some guidance. A 10% or even 20% contribution – very little indeed – may seldom qualify. A 90% or 80% contribution, virtually the total, may be regarded as likewise…if the 'reasonable contribution' earlier determined falls within a middle range, say 40% to 70%, there is a feeling of some comfort…

25. His Honour went on to emphasis the important principles underlying "shopping lists" of specific factors for determining a reasonable contribution:[10]

> These specific factors, generally referred to as the first port of call, have their important place, but a Court should not forget the ultimate question, or overlook the principles which underlie. There is a wood as well as these trees. The ultimate question always remains: What is a reasonable contribution in these particular circumstances? In my view, there are two underlying principles to be kept in mind. They underlie most if not all of the "shopping list" factors just noted. They interweave, and at times conflict. (1) The wrongdoer should pay the costs of the injured party obtaining compensation for the wrong, unless good reason exists to the contrary. The wrongdoer - not the injured party - should bear that further expense. That, I suggest, is a matter of elementary justice. It is not comprehensive.
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> As noted, there is a threshold rule that costs nevertheless will be a "reasonable contribution" only, and not a total recovery. That is for public policy reasons. However, the Court's first inclination properly can be to lean toward a high level of compensation for the

[7] See for example, *Body Corporate 346799 v Ikeda* [2020] NZDC 3669 [5 March 2020]; and *French v Ryan* DC Auckland CIV-2012-004-000711, 29 November 2012. Judge Taumanu increased the Tribunal's costs award applying the conventional civil litigation principles.
[8] *Civil Procedure: District Courts and Tribunals* Westlaw online service at TE3.05.
[9] [1997] 3 NZLR 143.
[10] Ibid p 149.

> injured party, rather than the other way. (2) Court time is a valuable public resource. It is expensive, and in short supply. It always has been, and I fear it always will be. As a matter of public interest, Court time must not be wasted. There should be corresponding disincentives to unwarranted proceedings, or elements of proceedings, and to inefficient practice within proceedings. An injured party can expect some initial leaning towards a high level of recovery from the wrongdoer, but there must be a significant leaning the other way to the extent the injured party's own proceeding has been misguided or inefficient. The unsuccessful party should be placed under the same discipline. So far as disincentives to waste are concerned, this public interest coincides with and shelters the opposite and affected successful party. In reaching any final decision as to "reasonable contribution", Courts should include a broader consideration in principle along these lines, as well as focusing on traditional specific factors.

Analysis

26. This case requires a “hybrid” application of rules. The Tribunal must consider costs under s 124 of the UTA and under common law principles.

27. Mr Wood makes some pertinent observations about the amount of time, while also conceding that I agree with Mr Wood’s submission that, “Due to the brief nature of many of the narrations it is difficult for us and for the Tribunal to assess whether the work claimed was reasonably necessary for the proceeding”. Possibly, the PBB lawyer then assigned to the file “overprepared” early in the levies proceedings, or perhaps they delved into the protracted history between the parties, rightly anticipating that Lyon was bound to launch further proceedings.

28. I note, however, that PBB’s first invoice for professional fees was not sent to the body corporate until after 17 March 2024 (after Lyon had filed its claim) and covered almost a year’s work and that the invoice was discounted by about $3,600.00 (perhaps about 10 hours) so it is possible the potential overpreparation and unrelated attendances were eliminated. Nor am I confident that I can exclude the four hours of work that Lyon identifies as not relating to the claims.

29. I am attracted to a pragmatic approach along the lines that Mr Wood suggests:

> Given the foregoing is it difficult for Lyon to advocate for a figure that is a reasonable amount on an objective basis that can be awarded for the body corporate's legal costs. We suggest that the Tribunal look at the $75,721.04 claimed... in the round and apply a discount that it regards as fair in the circumstances.

30. I consider the following approach is fair in the circumstances.

31. I begin by deducting the bulk of PBB’s last invoice. Most of that invoice is for the body corporate’s costs submissions. Costs should lie where they fall on those costs because costs submissions were properly required, and Lyon has succeeded in persuading the

Tribunal it should award significantly less costs than the body corporate sought. I do allow $220.00 of that invoice for the body corporate having to clarify that the Tribunal's stay ordered pending the rehearing consideration had lapsed.

32. The body corporate's claim for costs was straightforward but the case was prolonged so required additional work. I allocate $8,000.00 of the legal costs to that claim and allow the filing fee. That is a figure which is broadly commensurate to the work required in my experience. It is not an exact figure, but it is a fair one. The remainder of legal costs are to be dealt with under common law principles.

33. From the starting point of legal costs of $75,721.04, $4,555.00 is deducted and $220.00 is added back in. The subtotal is $71,386.00. From that sum, I take out the $8,000.00 ringfenced for the levies' costs. The subtotal of costs to be considered under common law principles is $63,386.04.

34. I consider a reasonable rate of contribution to order is 70 percent. The higher rate is due to the untidy way that Lyon conducted the litigation leading to the Tribunal having to spend more time on delivering its substantive decision than should have been the case. Consequently, I find that Lyon's contribution towards the body corporate's legal costs for Lyon's claim is $44,370.23.

Experts' fees and disbursements

35. On the experts' costs, I disallow August Millard's first invoice dated 29 September 2023. That work was carried out prior to Lyon filing its claim on 31 October 2023 and it does not appear to have been done in contemplation of the proceedings.

36. Lyon challenges August Millard and Kwanto's invoices for 30 June to 30 August 2024. Mr Wood helpfully sets out a test for ascertaining the whether the other expert fees are claimable:

> [W]e refer to the definition of a disbursement in the High Court Rules 14.12 as a guide - "disbursement, in relation to a proceeding means an expense paid or incurred for the purposes of the proceeding ..."

37. These invoices from Kwanto and August Millard appear to be for scope of works and quantity surveying to show that Lyon's claim for a work order would exceed the Tribunal's monetary jurisdiction limit.

38. Lyon's claim was filed on 31 October 2023. The contested invoices are dated 30 June 2024, 31 July 2024, and 30 August 2024. Saliently, on 10 September 2024 PBB filed a memorandum in the Tribunal submitting that Lyon trustee's claim for a work order could

not be heard because it was outside the Tribunal's monetary limits in reliance on August Millard's report dated 8 July 2024 and Kwanto's cost estimate dated 23 August 2024. On 28 November 2024 abandoned its claim for a work order.

39. Therefore, it appears to me that the August Millard and Kwanto's invoices were expensed incurred for the purposes of the hearing.

40. The total for expert costs and disbursements is $19,154.23.

Filing fee

41. Lyon must reimburse the body corporate for the filing fee.[11]

R Kee

15 July 2026

[11] UTA s 176(1) 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 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.