[2026] NZTT 9073664, 9073784, 9088604

TENANCY TRIBUNAL AT WHANGAREI | TE TARAIPIUNARA RETIHANGA KI WHANGĀREI-TERENGA-PARĀOA

APPLICANT: Body Corporate 172676

FIRST RESPONDENTS: Tue Vamarasi Jiosefa and Margaret Roselyn Josefa
Owners of Unit/Flat I/11, 58 School Road, Paihia, Paihia 0200

SECOND RESPONDENTS: Roger Marsden Scampton and Valerie Joy Scampton
Owners of Unit/Flat H/10, 58 School Road, Paihia, Paihia 0200

ORDER

1. Tue Vamarasi Jiosefa, Margaret Roselyn Josefa must pay Body Corporate 172676 **$20,763.63** immediately, calculated as follows:

Descriptions	Applicant	Respondent
Debt owed	$10,651.35	
BC recovery costs	$1,753.75	
Legal costs	$6,825.00	
Interest: to 22 July 2026	$1,033.53	
Filing Fee	$500.00	
Total award	**$20,763.63**	
Total payable by First Respondents to Applicant	**$20,763.63**	

2. Roger Marsden Scampton and Valerie Joy Scampton must pay Body Corporate 172676 **$25,828.47** immediately, calculated as follows:

Descriptions	Applicant	Respondent
Debt owed	$11,198.98	
BC recovery costs	$373.75	
Legal costs	$12,675.00	
Interest: to 22 July 2026	$1,089.74	
Filing Fee	$500.00	
Total award	**$25,828.47**	
Total payable by Second Respondents to Applicant	**$25,828.47**	

Reasons:

Introduction

1. The Body Corporate brought separate applications for unpaid debts against each of the respondent Unit Owners. Application 9073664 against Mr and Mrs Scampton and application 9073784 against Tue Vamarasi Jiosefa and Margaret Roselyn Josefa.
2. Following an initial remote hearing, the Tribunal noted that Mr and Mrs Scampton had counter claims they wanted considered. A Tribunal Order dated 4 February 2026 ("February Order") required that they file an application setting out those claims. Mr and Mrs Scampton did so, through application 9088604.
3. The February Order noted the overlap between the Body Corporate's claims. For that reason the claims were scheduled for hearing on consecutive days.
4. Subsequently, Tue Vamarasi Jiosefa and Margaret Roselyn Josefa, who are out of New Zealand, appointed Mr and Mrs Scampton as their representatives. They and Mr and Mrs Scampton are adjoining unit owners, their opposition to the Body Corporate's claims are based on the same grounds and rely on the same factual considerations.
5. It was agreed that the claims should be heard together and this Order determines all three applications.

The Complex

6. This property is a former motel, later converted onto individual properties through a unit title development.
7. There are 21 units, most of which are in blocks of 4 units, two on ground level and two above ("blocks"). The upper units, which were a later addition, are set back

from the lower ones, so the upper unit decks form the roof over part of the lower unit interior.

8. Tue Vamarasi Jiosefa and Margaret Roselyn Josefa own Unit I (#11), which is a ground floor unit in one of those 4 unit blocks. Mr and Mrs Scampton own Unit H (#10) which is the adjoining ground floor unit. The upper units in that block are S (#11A) and T (#10A).

9. Mr and Mrs Scampton have owned their unit for many years and Mr Scampton is a former Body Corporate chair.

10. The Body Corporate employs a Body Corporate manager. The Manager's representative Ms O'Sullivan gave evidence for the Body Corporate.

11. Many of the blocks have developed issues with weathertightness. The Body Corporate has approached those issues block by block, with the four owners of each block able to agree on their preferred solution. Some block owners opted to have the roof of their block replaced. Others opted for remediation/ repair.

12. In each case the four unit owners in the block have borne the cost for the remediation work on their block. I understand that in some cases they have agreed differential cost sharing.

13. This block has had water ingress issues that appear to have most seriously affected Units 10 and 11. Mr and Mrs Scampton have described the effect of the leaks on their occupation of their unit and on the adjoining unit. Photos show water ingress damage.

14. Mr and Mrs Scampton have provided in evidence a copy of an e-mail to the Manager dated 23 April 2024 when the unit above theirs was being sold. It asked that the Disclosure Statement to be provided to prospective purchasers include, *"…reference to the existing weather tightness issues we are experiencing and which the current owner and the BC Committee have been made aware of. The Committee has chosen to isolate themselves from the issues."*

15. The owners of this block were not able to agree on the need for remediation work, what it should entail or how any costs should be shared between the four unit owners.

16. Gator Holdings was asked to inspect units 10 and 11. Its report dated 19 June 2024 recommended that the decking be removed to assess the water flow on the upstairs decks. It concluded that Butyunol on the decks had reacted with a product applied later, affecting the flow of water to the gutters. The report notes, *"Gator Holdings are not qualified inspectors. Our assessment of damage and works requires at School Road is based on past experience."*

17. The Body Corporate then had an inspection of the roof carried out by Flood Roofing. Mr Flood reported to the manager on 10 September 2024 that the gutters were in good condition, having been replaced within the past few years, but that, "*We found the roof is in very poor condition, the roof is badly rusting and very*

clearly leaking in multiple areas. The roof is well beyond repair and requires urgent replacement." Photos provided with the inspection report illustrate that assessment

18. Mr Flood gave a quote for the roof replacement of $19,500.00 plus GST.

19. The Body Corporate engaged building surveyors Quintons Ltd to, *"…undertake a review of the roof and balcony construction, to comment on the defects that are present, the cause of the same and the associated damage."*

20. That review dated 6 November 2024, contains the following relevant conclusions & recommendations:

    a. *"The roof sheeting is at the end of its useful life…It would be appropriate to replace the roof, ideally laying new sheeting to an increased fall with underlay and perimeter eave/ guttering;*

    b. *"The fire wall will need to be reconstructed once the roof has been addressed.";*

    c. *"The single layer Butyunol rubber membrane to the 1st floor balconies, whilst now mostly removed had reached the end of its life. We are also of the opinion that the membrane will not have been fully performing due to nails placed through the membrane below the tiles.";*

    d. *"The application of tiles, directly applied to the membranes laid on balconies is no longer an acceptable solution nor is the installation of membranes not laid to a fall. The balcony plywood will need to be replaced to a fall and the tiles below replaced either on tile jacks or a decoupling slip layer.";*

    e. "*We have reviewed the material previously laid over the tiles. This does not appear to be the cause of the balcony leaking. The installation appears not to have been screw fixed through the surface of the balcony."*

    f. *"The performance of the roof sheeting, intertenancy wall flashing and balcony membrane is crucial for the passive fire linings to remain dry, which all units depend on. The balcony membrane also forms the roof over part of the ground floor units. We are therefore of the opinion that costs associated with works noted above should be shared by the building owners, ideally based on their respective unit entitlement."*

21. The Body Corporate committee resolved on 28 March 2025 that:

    "Replacement of Roof Units 10-11A
    The basic facts:
    a. the roof of Units H, I, S and T is damaged and no longer watertight;
    b. investigations with Quintons (building surveyors) and roofing contractors that the roof should be replaced;
    c. based on this advice, the Committee's opinion is that the roof is at the end of its useful life and no longer fit for purpose;
    d. the roof is a building element that relates to and serves more than one unit;
    e. the Body Corporate has a duty to repair and maintain the roof under section

138 of the Unit Titles Act 2010 and this duty extends to replacement; and

f. replacement of the roof does not require building consent.

It was resolved to replace the roof of Units H, I, S and T and accept the quote from Flood Roofing in the amount of $18,850.00 plus GST and engage Flood Roofing to carry out the work; and apply section 126 to the cost of the works and recover the costs from the owners of Units H, I, S and T on pro-rata utility interest shares because the work substantially benefits the Units H, I, S and T more than it benefits any other unit."

22. Evidence from the Committee chair is that because the reroofing work could be done without consents being required, it was decided to proceed with that as Stage 1 of the remediation project, with design, consenting work and pricing Stage 2 and completion of the remaining remediation work as stage 3. That approach is recorded and approved in a Committee minute dated 20 August 2025.

23. The Stage 1 and 2 work was done and the following on charge invoices, calculated on a utility interest basis, have been issued to the respondents:
    a. to Tue Vamarasi Jiosefa and Margaret Roselyn Josefa;
        i. due 10 May 2025 – 50% stage 1 roof replacement - $2,347.59
        ii due 23 May 2025 – 50% stage 1 roof replacement - $2,347.59
        iii due 30 September 2025 – stage 2 - $5,956.17
        TOTAL $10,651.35

    b. to Mr and Mrs Scampton;
        i. due 10 May 2025 – 50% stage 1 roof replacement - $2,468.29
        ii due 23 May 2025 – 50% stage 1 roof replacement - $2,468.29
        iii due 30 September 2025 – stage 2 - $6262.40
        TOTAL $11,198.98

24. The upstairs Unit 10A and 11A owners were invoiced for their share of those costs and have paid.

Are the Respondents liable for those on charges?

25. The relevant provisions of the Unit Titles Act are:
    a. Section 138, under which, *"The Body Corporate must repair and maintain….any building elements and infrastructure that relate to or serve more than 1 unit…"*; and
    b. Section126 UTA which provides that:
    "(1)……where the body corporate does any repair, work, or act that it is required or authorised to do, by or under this Act, or by or under any other Act, but the repair, work, or act….(b) is substantially for the benefit of some of the units only…(2) Any expense incurred by the body corporate in doing the repair, work, or act is recoverable by it as a debt…..apportioned among the units that derive a substantial benefit from the repair, work, or act rateably according to the utility interest of those units…".

26. The Tribunal can apportion the expenses between unit owners as it thinks fit, having regard to the relative benefits to those units, where apportionment on a utility interest basis would be inequitable.[1]

27. The questions that the Tribunal needs to decide in assessing the Body Corporate's recovery claims are:
    a. was the repair work required to meet the Body Corporate's obligations under s.138?
    b. if so, did that work substantially benefit these four units only?; if so
    c. would it be inequitable to apportion the costs on a utility interest basis?; if so
    d. what apportionment would fairly reflect the relative benefits to those units?

Analysis

28. Throughout, the Body Corporate has referred to the charges it is seeking to recover as levies. With respect, I disagree. These are not levies raised under s.121 to fund BC operations. They are on charges for recovery of BC expenditure under s.126 and are recorded as such in the 28 March 2025 Committee minutes. The distinction has relevance, particularly in considering costs.

Was the work required to meet the Body Corporate's obligations under s.138?

29. The Body Corporate says that the roof of the block and the upstairs decks are building elements that relate to or serve more than one unit. That view is supported by the report from Quintons. It relies on the reports obtained by the Committee from Mr Flood and Quintons, to show that the roof required replacing.

30. The Unit Owners' position is that the Committee's decision to replace the roof was negligent and wasteful. Their view is that the true cause of the leaks that have plagued their occupation of the unit, is leaking from the upstairs decks.

31. In taking that stance they rely on:
    a. a building report they say found that the leaking into their unit was caused from the upstairs deck, not the roof;
    b. photos showing dry framing inside the roof cavity;
    c. an acknowledgment from the manager that tarpaulins were placed on the upstairs decks to stop water getting onto their units
    d. their own interpretation of what the photos taken at the inspections show.

32. They also say the Committee was not entitled to rely on and accept the quote from Flood Roofing, because that business had a conflict of interest in recommending full replacement of the roof over a less expensive repair.

33. It is clear from the evidence that the respondents have suffered significantly from the effect of leaks into their units. Understandably, they want the Body Corporate to address the cause of those leaks as soon as possible. They have clear views about what those causes are.

[1] S.126(3) UTA

34. The issue though does not appear to be whether the cause of the leaks their units suffer from is the roof OR the upstairs decks. The Quintons report makes it clear that remediation work is required to both elements. It also quite clearly identifies that*, "There has been a leak from the main roof and possibly the cap flashing of the now deconstructed fire wall, that has affected the fire wall framing and linings, constructed on the 1st floor balcony. Water staining has extended down to below the balcony, resulting in some disturbance to the scotia to the living room ceiling below."*

35. The Committee was justified in its view that the roof needed replacing. It was appropriate to begin with that work first, given that it could be done immediately, without consents being required.

36. The minutes of 20 August 2025 record the resolution to proceed with the other remediation work, including the work on the decks and that once pricing for the remaining work had been received there would be a meeting with the four unit owners to discuss the work and funding. This dispute has now stalled further progress.

37. In terms of the extent and cost of the roofing work, it is routine for a qualified tradesperson to assess the cause of defects, recommend repairs and provide the price if asked to do the repairs. That does not of itself create a conflict of interest. The recommendation from Flood Roofing to replace the roof, was independently verified by the Quinton's report, before the decision to proceed with roof replacement was made.

38. It would not be unusual for other quotes to be obtained before proceeding with major work such as roof replacement. However, it is apparent from Committee minutes provided in evidence that the same contractor (Flood Roofing) has been involved with roof replacement/ repair work on other blocks. It is not unusual for Bodies Corporate to have preferred providers they have a relationship of trust with. I find no breach of the Body Corporate's obligations in resolving to have the roof replaced and to accept the quote from Flood Roofing to have the work done.

39. The respondents raise questions about whether the block roof is a building element or is separately owned by the proprietors of the upstairs Units. They also have a concern that the Unit Plan is defective, with inaccurate measurements.

40. I am not clear about the evidential or legal basis for those concerns. The respondents' rights, interests and obligations flow from the strata title they hold and the provisions of the UTA. Those are not matters within the Tribunal's jurisdiction to question.

41. I find that the work undertaken by the Committee to have the roof replaced and to have the remainder of the water ingress remediation work planned, approved and priced, needed to be done. It concerned building elements that affect more

than one unit. It was work the Body Corporate was required to do to meet its obligations under s.138.

Did that work substantially benefit these four units only?

42. All of the roof repair work done at the development has proceeded on the basis that the four unit owners in each block are uniquely impacted by it, able (if they can agree) to determine what work should be done and responsible for the associated cost.

43. It is not a situation where the blocks are integrated so weathertightness issues in one block might affect units in another block.

44. The work therefore substantially benefitted these four units only. The Body Corporate was required to recover the expenditure from them on a utility interest basis.[2]

Would it be inequitable to apportion the costs on a utility interest basis?

45. What the Tribunal must consider here is whether, considering the relative benefits to the units, using a utility interest apportionment would be inequitable.

46. While the roof sits atop Units 10A and 11A, the roof is an essential part of the weather protection for the whole block and all four units within it. There is no basis for finding that it would be inequitable to apportion the re-roofing costs other than on a utility interest basis.

47. So far as the Stage 2 expenses incurred for plans, consents and pricing for the remainder of the remediation work that has been invoiced to the respondents, the approach taken by the Court of Appeal in *BC S73368* v *Ottway* and ors[3] is on point. In that case weathertightness work was done on deck membranes. The Body Corporate proposed recovery from some unit owners on the basis that they received a disproportionate benefit from the work.

45. The Court highlighted that*, "…the balcony works were not substantially for the benefit of the respondents' first-floor units and did not benefit those units substantially more than the remaining units in the building. We say this given that the repairs fixed an important part of the storm water system for the entire building."*

46. Even more directly, in this building, where the upstairs decks form part of the roof over the downstairs units, the integrity of those decks is a fundamental part of the weatherproofing for the downstairs units. In that regard there is no disproportionate benefit to the upstairs units from work done to ensure the block's weathertightness, including that of the upstairs decks. I do not find that utility interest sharing of the Stage 2 expenses would be inequitable.

[2] S.126(2)(b) UTA

[3] *Body Corporate S73368 v Otway* [2018] NZCA 612

47. I make no finding about how the expenses for the Stage 3 remainder of the remediation work should be dealt with. The evidence does not disclose the scope or cost of that work. The Committee have passed no recovery resolution and the intention is to confer with the four affected unit owners about that before proceeding.[4] I expect though that the same principles would apply as to the Stage 2 work.

48. Finally on this question, I address the respondents' position that the upstairs owners have been negligent in carrying out unconsented and inadequate work on their decks causing or contributing to the leaks into the downstairs units. They also say that a heavy washing machine was placed on a hard floor surface upstairs which created a noise nuisance in breach of BC rule 17b and caused damage though vibration, in breach of BC Rule 22, contributing to the leak issues.

49. In a nutshell, they say that the water ingress into their units is caused by leaking through the decks, that is through fault of the upstairs owners and the upstairs owners should pay for the repairs.

50. Unit owners have an obligation to, *"…repair and maintain the unit and keep it in good order to ensure that no damage or harm, whether physical, economic, or otherwise, is, or has the potential to be, caused to….. any other unit in the building."* and/or not to *"…make any additions or structural alterations to the unit that materially affect the use, enjoyment, or ownership interest of any other unit or the common property without the written consent of the body corporate."*[5]

51. The upstairs unit owners are not party to the proceedings and cannot be the subject of this Order. There is an argument though that if they have breached their obligations, which that led to the need for this repair work (not the re-roofing), they should be responsible for the costs.[6] They would therefore disproportionally benefit from the work being done by the Body Corporate instead.

52. The owner of upstairs unit 11A, Ms Kelleher, has provided an affidavit setting out the background to the dispute from her perspective. She notes repeated allegations made by the respondents that renovation works, and particularly work on her deck, caused the leaking. She notes the personal impact of the dispute on her, other owners and from the inability to have the rest of the remediation work done, that has now been planned approved and priced.

53. Ms Kelleher's evidence, corroborated by a joint statement signed by her, by the owner of 10A, by the builder who did the work and by Mr Evers from Gator Holdings, is that:
    a. the work entailed laying a further Butynol membrane over the existing deck tiles and constructing a floating timber deck over that; and that
    b. nothing was attached to or penetrated the existing surface.

[4] Committee minutes 20 August 2025
[5] S.80(1)(g) and (i) UTA
[6] S.127 UTA

54. That evidence is support by the Quinton's report.

55. The respondents highlight Quinton's finding that, *"We noted that the nails seen to the plywood below had been hammered through the Butynol membrane, prior to the tiles being installed. These were rusty and the nail heads had separated from the nail shaft in instances. The integrity of the membrane will have been compromised prior to laying of the tiles many years ago."* Whenever the tiles were laid, they were not laid by the current upstairs unit owners. The evidence does not show when that work was done or by whom or whether it was appropriate at the time.

56. I do not discount the possibility that the historic puncturing of the Butynol membrane was a wilful or negligent act on the part of the upstairs unit owner when the deck tiles were laid. It seems likely to have created the possibility of water ingress. However, given the evidence about the nature and extent of the other waterproofing issues in the block requiring remediation, the evidence falls short of proving that it was those nails that made this remediation work necessary.

57. There is no evidence on which the Tribunal could find the placement or use of appliances upstairs to have caused or contributed to the weathertightness issues needing to be remediated.

58. After concluding their assessment, with their awareness of the issues, Quintons recommended a sharing of remediation costs on a utility interest basis, with detailed reasons provided.

59. The four unit owners in this block received a substantial benefit from the Stage 1 and 2 work toward remediating water ingress issues. The Body Corporate properly apportioned the cost of that work between them on a utility interest basis. The evidence does not prove a disproportion of benefit such that utility interest apportionment would be inequitable.

60. For those reasons I find that the respondents are liable to pay the shares of the remediation expenses that have been invoiced to them.

Mr and Mrs Scampton's counter claims

61. As well as the claims made in opposing the expense recovery claimed by the Body Corporate, noted above, in their final amended cross application, Mr and Mrs Scampton claim that the Body Corporate:
    a. failed to remediate these leak issues earlier;
    b. breached their right to quiet enjoyment of their unit, and
    c. failed to recover remediation costs from the upstairs owner for leak damage
    d. failed to act on unconsented building work.

Failure to remediate leaks

62. This Order confirms and the Body Corporate agrees that it has an obligation under s.138 UTA to repair and maintain the roof and decks of this block.

63. Mr and Mrs Scampton say that for an extended period the Body Corporate were aware of the need to fix the cause of the leaking into the downstairs units but did not. They point to the letter sent to the Body Corporate about its Disclosure Statement for sale of 10A, referred to above and an e-mail sent to the Manager on 23 May 2024 expressing urgent concern about the proximity of leaks to electrical reticulation in #11.

64. Those communications are the first evidence of the respondents' concerns being formally brought to the attention of the Body Corporate although they suggest an earlier awareness of the issues. Certainly there is urgency to addressing water ingress into areas with electrical reticulation.

65. The evidence shows that by 19 June the Committee had commissioned and received the report from Gator Holdings. While that is a lengthy period if there is imminent threat to safety or property, the evidence provided by Mr and Mrs Scampton does not prove that to be a negligent response to their concerns. The Body Corporate has continued to progress the remediation work after the subsequent investigations.

66. The other difficulty with Mr and Mrs Scampton's claims about the lack of action by the Body Corporate in addressing the water ingress issues, is that they were only prepared to countenance actions that they themselves saw as necessary and on the basis that they didn't contribute to the cost, as shown by these proceedings.

67. The evidence does not prove a breach of the Body Corporate's obligations under s.138(1). That claim is dismissed.

Breach of Right to Quiet Enjoyment

68. Unit owners have a right to quiet enjoyment of their unit without interruption by other unit owners or the body corporate.[7]

69. Mr and Mrs Scampton wrote to Ms Kelleher in April 2019 expressing concern that the lack of sound deadening material on the floor of #10A interfered with enjoyment of their unit. They were unable to agree a way of mitigating the situation.

70. Mr and Mrs Scampton later made submission for a Committee meeting on 2 December 2023, which asked that the Committee to address the noise issue which I summarise from their submission as, *"[the owner] has since installed gas bottles on the deck, a heat pump, washer/ dryer machines and metal outdoor furniture which is often relocated by dragging over the wooden floor supposedly for use within the unit. All the appliances vibrate during operation and all are mounted on the floating wooden deck which may be difficult to secure as a waterproof membrane can't be drilled through. All the vibrating noise from these appliances has transmitted directly into our entire unit."*

[7] S.79 UTA

71. The committee responded, *"While it is primarily an inter owner issue, the committee had considered the submission as it has been suggested it is a noise issue on site. The committee have identified that internally to the unit, the owner has made every effort to reduce the noise by allowing acoustic matting and rugs throughout. The noise emitting from the washing machine or plumbing cannot be controlled. The original deck remains with tiles and has had butanol painted over as a waterproofing method and the floating wooden deck put on top. The committee concluded the submission is primarily emotive with no solid facts. There is a possible resolution to abate the noise to unit 10 by injecting material in the ceiling. This would be at unit 10's cost. However it was noted that the professionals who recommended this in 2019 have advised that due to the construction methods in the 1970s there is no guarantee that the timber flooring will not cause sympathetic vibration. The committee considers the matter closed."*

72. BC Rule 17b requires that, *"… Where practicable an owner will ensure that all floor areas are covered or treated to an extent sufficient to prevent noise transmission from the unit that is likely to disturb the quiet enjoyment that could reasonably be expected by the owner of another unit."*

73. Here, Mr and Mrs Scampton have put a case to the Committee asking it to enforce that rule, which they consider was breached. The Committee have declined, with reasons given.

74. While only Mr and Mrs Scampton can give direct evidence about the experience of noise from the unit above, the evidence provided at this hearing does not prove that the Body Corporate's assessment of the situation was incorrect. It does not appear to be a current issue

75. Finally, any such claim should properly be brought against the upstairs unit owner for breach of s.80 duties.

Unconsented alterations

76. Mr and Mrs Scampton's final amended claim includes new allegations that there are unconsented additions to the upstairs units and stairway to them. They base those allegations on their own measurements and photos, as compared to the unit plan.

77. Counsel for the Body Corporate says that this claims should be dismissed because they were not brought until immediately before this hearing, so the Body Corporate hasn't had reasonable opportunity to consider and respond to them.

78. This is a claim that would require expert survey evidence for fair determination. It is not clear who the respondent to that claim should be.

79. It would not be fair to Mr and Mrs Scampton to dismiss the claim without proper consideration. Equally, it would not be fair to the Body Corporate to make a finding on such claims without it having time to consider and respond. I have

considered adjourning that claim for further hearing to give the Body Corporate that opportunity. I am concerned about the cost implications.

80. In my view the appropriate course is to decline to determine that claim as part of this proceeding. Because no finding on the claim has been made, that will not prevent Mr and Mrs Scampton bringing it again once they have assembled the necessary expert evidence and perhaps taken advice on who the claim should be brought against. It will allow the Body Corporate (or any other respondent) fair opportunity to address the claim.

Are the respondents liable for interest?

81. An on charge to unit owners made to recover expenses, is recoverable as a debt due to the Body Corporate.[8]

82. Interest on debts owed to a Body Corporate under s.127 accrues, to a maximum of 10% per annum.[9]

83. The Body Corporate has adopted a debt collection process involving specified steps and charges for debt recovery. It includes recovering interest at 10% per annum on unpaid debts.[10]

84. The Body Corporate has proved the amount of interest owing from the due date to the hearing date. It is entitled to recover that interest from the Respondents.

Are the Respondents liable for costs?

85. The respondents owe the Body Corporate a debt. They Body Corporate recovery charges are applied in accordance with debt recovery processes and specified charges adopted by the Body Corporate in general meeting. The respondents must pay those charges

86. Legal costs are claimed on a solicitor/ client basis relying on s.124 UTA.

87. Legal costs incurred by a Body Corporate in recovering levies, are claimable under s.124(2) UTA, which provides that:

"(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 by the person who was the unit owner at the time the levy became payable or by the person who is the unit owner at the time the proceedings are instituted."

88. Similarly, where a Body Corporate seeks recovery of expenses from a unit owner in default under s.127, reasonable collection costs are recoverable as part of the due debt.

89. Those provisions effectively provide for recovery of legal costs incurred in

[8] S.127(2) UTA
[9] S.128 UTA
[10] AGM 24 May 2025

collecting levies and expenses from a defaulting unit owner, on an indemnity basis. The authorities make it clear that the role of the Tribunal in assessing such costs claims is only to consider the reasonableness of the charges.

90. There is no equivalent provision in relation to costs incurred in recovering on charges under s.126, which is the relevant provision here. That distinction must be intentional.

91. Those costs must therefore be considered under the Tribunal's general jurisdiction under the Residential Tenancies Act 1989 ("RTA"), in proceedings such as these, where a party is represented by counsel to, "*…. order a party to pay…… to another party, the reasonable costs of that other party in connection with the proceedings."*[11]

92. In connection with s102(3) RTA costs, the following extract from *Residential Tenancy Law in New Zealand* - S. Benson (2018 Thompson Reuters NZ Limited), was cited with approval by the District Court in *BC346799* v *Ikeda*[12] *"An award of costs for counsel is usually a reasonable contribution to legal costs, not full costs. The usual range is 40 to 70% of actual costs and factors to consider include the party's success, length of hearing, amount involved, importance of the issues, complexity, urgency, time for effective preparation, any unnecessary steps, arguments without substance, abuse of process, poor presentation, whether hearing time was lengthened by a party's conduct and, for guidance purposes the District Court's scale of costs."*

93. This claim was decided in favour of the Body Corporate. The issues were of moderate complexity and although these issues have affected the parties for several years now, were not of themselves subject to urgency.

94. The proceedings were not conducted by either party in a way that unreasonably added to the cost. The Tribunal should take into account that it is a forum for lay litigants to have the opportunity to have their position heard without unreasonable procedural expectations.[13]

95. I take into account that in respect of the Body Corporate's debt recovery claims the proceedings against each of the respondents were identical in their nature, the evidence and the defences to be considered, and they were heard together, which should have significantly mitigated the Body Corporate's costs.

96. Tue Vamarasi Jiosefa and Margaret Roselyn Josefa should not be required to contribute to the costs associated with Mr and Mrs Scampton's counter claims, which were brought by them alone.

97. Actual legal costs as claimed by the Body Corporate and proved by counsel's invoices are as follows:
<u>Tue Vamarasi Jiosefa and Margaret Roselyn Josefa</u>
a. legal costs to hearing - $10,712.65; plus

[11] S.102(3) RTA
[12] *BC346799* v *Ikeda* [2020] NZDC 3669
[1313] See s.85 RTA

b. counsel hearing attendance - $3,231.77
c. witness and BC travel expenses - $260.91
TOTAL $14,206.33

Roger and Valerie Scampton
a. legal costs to hearing - $11,262.08; plus
b. counsel hearing attendance - $9,0220.02
c. witness and BC travel expenses - $260.91
TOTAL $20,545.01

98. I would not consider it reasonable that the respondents meet the costs of travel for the BC chairperson and member who attended the hearing. The BC was represented by counsel and though Ms Insley's attendance was very helpful, she was not a required witness. The need to travel for the hearing was not caused by the respondents.

99. In looking at the District Court 1B scale costs, I have approached this as one consolidated proceeding, allowing 1.5 x the time allocations for preparatory work to reflect that there were 2, though very nearly identical applications considered, in addition to Mr and Mrs Scampton's cross claims.

100. On that basis, the scale costs for preparing and filing the claims, preparing for and attending at the February hearing, preparing witness' evidence, preparing the bundle of evidence, considering the cross applications, filing submissions and attendance at a shortened 1 day hearing would suggest costs of around $19,500.00, 56% of actual costs as claimed.

101. Weighing those considerations I find that would be a reasonable contribution to the legal costs incurred by the Body Corporate in recovering these debts.

102. For reasons given, I find those costs should be apportioned 65/ 35 between the respondents to recognise the contribution to total costs from Mr and Mrs Scampton's cross applications, which also meant the matter could not be heard in February.

103. Because the body corporate has succeeded with the claim I have reimbursed the filing fee. Section 176(1) Unit Titles Act 2010 and section 102(4) Residential Tenancies Act 1986.

THE SEAL OF THE TENANCY TRIBUNAL

B King
05 September 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.