

**IN THE DISTRICT COURT  
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE  
KI TĀMAKI MAKĀURAU**

**CIV-2019-004-001125  
[2020] NZDC 14716**

IN THE MATTER OF	AN APPEAL FROM THE TENANCY TRIBUNAL
BETWEEN	ROBYN KATHLEEN STENT Appellant
AND	BODY CORPORATE 324525 Respondent

Hearing: On the papers

Judgment: 29 July 2020

---

**DECISION AS TO COSTS OF JUDGE G M HARRISON**

---

[1] In my decision of 6 July 2020 I dismissed the appeal by Ms Stent from the decision of the Tenancy Tribunal of 25 October 2019 and reserved the question of costs.

[2] My decision was confined to the interpretation of s 131 of the Unit Titles Act 2010. The appeal against two further decisions of the Tribunal were dealt with by Ms Stent withdrawing her appeal in relation to the “annual” levy.

[3] In a further decision of 25 October 2019 the Tribunal granted a rehearing in respect of:

- (i) the Body Corporate’s application of monies paid by Ms Stent for levies; and

- (ii) the quantum of the second levy amount claimed by the Body Corporate.

[4] Those orders appeared to me to include two aspects of the appeal to this Court, the appeal against the annual levy being withdrawn and also the cashflow levy and I therefore adjourned the appeal against the cashflow levy to enable the Tribunal to rehear the issues cited above.

[5] That leaves for determination costs payable on the appeal to this Court. Such costs are assessed pursuant to Schedule 4 of the District Court Rules 2014, as to time allocations and Schedule 5 as to appropriate daily recovery rates. The usual daily recovery rate for appeals to this Court is fixed as category 2 and I see no reason to depart from that in this case. As far as time allocations are concerned items 22 – 25 specify the appropriate time allocation for steps taken by the successful respondent with regard to the appeal. These are:

Items 22

Commencement of response to appeal  
Time allowed – 0.2 days  
Daily rate - \$1910  
Award - \$382

Item 23

Case management  
Time allowed – 0.2 days  
Daily rate - \$1910  
Award - \$382

Item 24A

Preparation of written submissions  
Time allowed – 1.5 days  
Daily rate - \$1910  
Award - \$2826

Item 25

Appearance at hearing  
Time allowed – 0.5 days  
Daily rate - \$1910  
Award - \$955

TOTAL - \$4545

[6] The respondent sought allowance of a further item, 24 for preparation of case on appeal. That however was unnecessary.

[7] Section 117(7) Residential Tenancies Act 1986 provides:

As soon as practicable after a notice of appeal has been filed under this section, the Registrar of the Court shall cause a copy of the notice to be lodged with the Tribunal's records relating to the proceedings to which the appeal relates, and, on receipt of that copy, the Registrar of the Tribunal shall send the Tribunal's file on the matter to the Court.

[8] The Tribunal did that and filed an extensive volume including:

- (i) Notes of evidence;
- (ii) Tribunal orders;
- (iii) Notice of appeal;
- (iv) Robyn Kathleen Stent documents;
- (v) Body Corporate documents.

[9] There was therefore no requirement for the respondent to prepare a bundle of evidence and exhibits before the Tribunal and no direction was made by this Court that it should do so. I accordingly disallow that item.

[10] The respondent also sought that I fix costs incurred before the Tenancy Tribunal. I decline to do so. Section 102 of the Act empowers the Tribunal to make an award of costs on grounds specified in subsection (2), the relevant one in this being that the parties were represented by counsel before the Tribunal. In those circumstances subsection (2) provides that the Tribunal may make an order...for costs.

[11] As in this Court the power to award costs is discretionary. As previously noted there are matters that require to be reheard in the Tribunal. I am not prepared to make an award of costs in respect of the hearing appealed against because it is for the Tribunal to assess in its discretion what an appropriate award of costs might be. It may wish to take into account numerous factors in reaching a decision, including any

further costs award that may be considered appropriate following determination of the matters yet to be decided.

[12] I am mindful of the respondent's concern that the unit holders will have to bear their share of the Body Corporate's costs, but I can discern no jurisdiction for this Court to relieve that burden, unlike the relevant provisions of the Unit Titles Act which permits a Body Corporate to recover the actual costs of recovering unpaid levies from unit holders.

[13] This was a straightforward appeal from the Tenancy Tribunal and I can see no basis on which a usual award of costs should not be made.

[14] By the same token I decline to award any reduction on the category 2B as sought by the appellant by reason of the appeals against the levies not proceeding. The appeal against the annual levy was withdrawn at the commencement of the appeal, and the appeal against the cashflow levy, while referred back to the Tribunal by me, was not in any event advanced at the hearing of the appeal, but in both respects the respondent was required to prepare.

[15] The appellant is accordingly directed to pay costs to the respondent in the sum of \$4545.

G M Harrison  
District Court Judge