

What's the Damage? Details & Damages involved with OC's failing to Repair & Maintain the Common Property

Most people may already know that an owners corporation has a strict duty to repair and maintain the common property of a strata scheme. But do they know that if the owners corporation fails to fulfil its strict duty of repair and maintenance that they have a right to claim damages (compensation) in the sum of tens of thousands of dollars for its breach of such statutory obligation?

Section 106(5) of the Strata Schemes Management Act 2015 (NSW) provides that a lot owner in a strata scheme may claim damages (compensation) from the owners corporation for any reasonably foreseeable loss suffered by the owner relating to the owners corporation's breach of its strict duty to repair and maintain the common property. For example, the circumstances that may give rise to a lot owner the right to claim damages (compensation) include the following:

- An owners corporation's failure to rectify water penetration issues originating from the common property that consequently damage the lot property which then renders the lot uninhabitable.
- An owners corporation's failure to rectify essential fire safety equipment which consequently leads to the issuance of a fire safety order that may potentially restrict the occupation of the building.
- An owners corporation's failure to repair and maintain defective balustrades on a lot's balcony which consequently leads to the lot's balcony to be unsafe and unusable.

Relevantly, the above circumstances may provide the lot owner with the right to recover costs from the owners corporation, including loss of rent and/or costs for undertaking rectification works by the lot owner (in the absence of the owners corporation effecting the repair and maintenance of the common property).

The below table provides an overview of the quantum of damages (compensation) typically awarded to lot owners by the courts and the NSW Civil and Administrative Tribunal for an owners corporation's breach of its statutory duty to repair and maintain the common property:

Name of Case	Quantum of Damages (in approximate amounts)	Basis of Damages
<i>Smith v The Owners – Strata Plan 3004</i>	\$6,400.00	○ Loss of rent.
<i>Vickery v The Owners – Strata Plan No 80412 [2020] NSWCA 284 & The Owners – Strata Plan</i>	\$97,000.00	○ Loss of rent.



T: (02) 9929 0226

E: dbannerman@bannermans.com.au

P: PO Box 514

M: 0403 738 996

W: www.bannermans.com.au

NORTH SYDNEY NSW 2059

ABN: 61 649 876 437

AUSTRALIA

<i>No 74835 v Pullicin; The Owners – Strata Plan No 80412 v Vickery [2020] NSWCATAP 5</i>		
<i>Rosenthal v The Owners - SP 20211 [2017] NSWCATCD 80</i>	\$8,800.00	○ Cost of the rectification of the damage.
<i>The Owners Strata Plan No 30621 v Shum [2018] NSWCATAP 15</i>	\$28,000.00	○ Loss of rent; ○ Outgoings; and ○ Interest.
<i>Shih & ors v The Owners - Strata Plan No 87879 [2018] NSWCATCD 74</i>	\$540.00	○ Loss of rent.
<i>Carli v The Owners - Strata Plan No 56120 [2018] NSWCATCD 55</i>	\$51,000.00	○ Cost of alternative accommodation.
<i>Huang & Giang The Owners Strata Plan No.65865 [2021] NSWCATCD 15</i>	\$7,730.00	○ Loss of rent.
<i>Zanetti v The Owners – Strata Plan No 43300 [2018] NSWCAT</i>	\$70,598.09	○ Loss of rent; ○ Cost of property manager in defending claim by tenant in NCAT; and ○ Cost of expert evidence.
<i>Liberant v The Owners – Strata Plan No 62713 [2019] NSWCATCD</i>	\$55,510.12	○ Loss of rent; and ○ Interest.

If you have suffered or believe that you may have suffered losses (financial or otherwise) as a result of an owners corporation's failure to repair and maintain the common property, please contact our experts at Bannermans Lawyers at enquiries@bannermans.com.au or call us on 02 9929 0226.

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T: (02) 9929 0226

M: 0403 738 996

ABN: 61 649 876 437

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W: www.bannermans.com.au

P: PO Box 514

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