

UNDER the Weathertight Homes Resolution Services Act 2006

IN THE MATTER of a reconsideration of the Chief Executive's decision under section 49

**CLAIM NO. 7148: DAO HE AND PING
 QIN – 37C Hindmarsh Street,
 Johnsonville**

**ELIGIBILITY DECISION OF THE CHAIR OF THE
WEATHERTIGHT HOMES TRIBUNAL**

[1] Dao He and Ping Qin are the owners of 37C Hindmarsh Street which is a townhouse in a three unit three-storey multi-unit complex. Unfortunately their unit leaks and they have filed an application with the Ministry of Business Innovation and Employment for an assessor's report.

[2] While the assessor, and the chief executive, accepted that the unit leaks the claim was found not to meet the eligibility criteria because under s 15 of the Weathertight Homes Resolution Services Act 2006 a single unit in a multi-unit complex, such as the one at 37 Hindmarsh Street, can only be found eligible if the penetration of water has not caused damage to any other part of the complex. The assessor says there is evidence that unit A in the complex also leaks, or has leaked.

[3] Dao He and Ping Qin seek a review of the chief executive's decision under s 49 of the Act. In the application they state there are leaks to their unit and that no common area is damaged. They did not however address the issue of unit A. I accordingly referred the claimants to the assessor's conclusion that there had been damage caused by water penetration to unit A and gave them the opportunity to make submissions on this issue in light of the provisions of s 15 of the Act.

[4] The only further information provided is an email in which the claimants advise that they do not know what is happening in unit A. They submit that if the owners of unit A have not made a claim that means that they did not have a problem or had already fixed the unit.

[5] However the assessor considers that there are issues with the southern boundary wall to unit A similar to the foundation issues in unit C. He also saw signs that remedial work or temporary repairs had been carried out to unit A. Therefore he concluded the penetration of water had caused damage to other parts of the complex.

[6] Section 15 of the Act makes it clear that a claim in relation to a single dwellinghouse in a multi-unit complex can only be filed if the penetration of water has not caused damage to any other part of the complex. Based on the information provided I am satisfied that the penetration of water has caused damage to other parts of the complex. Therefore the only way a claim under the Act can be filed in relation to 37C Hindmarsh Street is if it is part of a multi-unit claim filed under s 16 of the Act. Unfortunately for the claimants the fact that the other unit owners may not be interested in filing a claim does not mean they are able to file a claim under either s 15 or as a standalone property under s 14 of the Act. It does not however prevent the claimants from filing a claim with the District Court.

Conclusion

[7] I have reconsidered the chief executive's decision pursuant to s 49 of the Act and for the reasons set out above conclude that the claim in relation to 37C Hindmarsh Street is not eligible as a single dwellinghouse claim as it is part of a multi-unit complex and water has caused damage to another part of the complex. I therefore conclude that claim 7148 does not meet the eligibility criteria as set out in ss 14 and 15 of the Weathertight Homes Resolution Services Act 2006.

DATED this 18th day of June 2013

P A McConnell
Tribunal Chair