

# Claiming compensation for general inconvenience

## Background

The TUV has been successful in claiming for “general inconvenience” in tenancy disputes, often in circumstances where it has otherwise been difficult to show that an actual financial loss has been suffered.

It is normally only considered in cases where there has been a serious interference with a tenant’s rights and those rights can be tied to a tenant’s right to quiet enjoyment of the property.

This practice note sets out the legal basis for such claims, some practical considerations in making the claims and some examples of successful claims.

Rooming and caravan park residents, and site tenants, would also be able to include inconvenience where there is a serious interference with their quiet enjoyment.

## What is the issue?

The general principle of claiming compensation for inconvenience arises from the Supreme Court decision of *Reardon and Reardon v Ministry of Housing (SCV Appeal Div, unreported, 13/11/92)* per Smith J. In that case compensation was awarded for inconvenience in circumstances where the landlord had breached the duty to provide quiet enjoyment to a tenant.

The Court noted that prior to the introduction of the Act, and at common law, a breach of a tenant’s quiet enjoyment was traditionally compensable by damages for general inconvenience. The compensation that can be claimed by tenants under the Residential Tenancies Act (the Act) is broad, and allows a claim for “compensation for loss suffered”.

As this is a wide expression, the Court stated:

*I would expect an express limitation to be included (as in s.106(4)) if it was intended by the Parliament to exclude compensation for a typical consequence of disruption to quiet enjoyment and one that is compensable at common law.*

In short, the Act should not be read to limit the traditional right to claim for inconvenience for breach of quiet enjoyment.

## Application by VCAT

The only VCAT “precedent” available online for the application of this principle was in *EL v EA [2006] VCAT 2049*, where Deputy President Steele held that VCAT’s compensatory power in the Residential Tenancies List is not limited to pecuniary loss, and compensation for inconvenience was available (see paragraph 19). In that instance, the Tribunal awarded compensation of \$1000 for interference with quiet enjoyment arising from wrongful eviction.

The Tribunal characterized this as “causing serious inconvenience and distress to the tenants. The landlord should compensate the tenants for their loss and damage and for the real inconvenience they suffered” (para 26).

Similar outcomes with awards of \$1000 for wrongful eviction have been obtained on numerous occasions. Some examples of cases are set out below.

The main circumstances where awards of this type have been made are where there is an illegal eviction, or some other substantial interference with a tenant’s quiet enjoyment. In addition we have had some success in claiming where there has been an interference with a tenants goods, a notice to vacate issued that was not bona fides leading to the tenant leaving the property, or failure by the landlord to comply with the fixed term of the tenancy agreement.

These are areas where the landlord’s conduct can be linked to breach of their duty to provide quiet enjoyment.

### What should you do?



Where you have a client with a claim that involves a serious interference with quiet enjoyment you should obtain instructions from your client about lodging a claim for compensation for inconvenience. If your client wishes to include this, it should be included in the VCAT application as one of the bases for claiming compensation and listed as “general inconvenience”.

The amount claimed is likely to be between \$500 to \$1000. Some tips for determining the amount are discussed further under practical considerations below.

Obtain instructions from your client about the inconvenience they suffered. It must arise from factors or circumstances that are not already covered by another claim for compensation. For example you could not claim inconvenience for missing 3 days work, and claim for lost pay for those three days as well. If possible it is best to give specific and detailed evidence about the inconvenience suffered. Some examples are set out below. Ensure that the tenant is prepared to give evidence about this inconvenience.

### Practical considerations

#### 1. Evidence

Some examples of evidence that has been considered by VCAT includes stress and distress, the impact on family members and people who have provided support, time spent by the tenants on things such as looking for alternative accommodation, additional travel at a new premises, and the inconvenience of moving house in a hurry or without being able to plan. The focus is on any consequences of the landlord’s breach that are not trivial and which cannot be characterised directly as clear financial losses.

The most common claim for inconvenience arises where there has been a breach of quiet enjoyment because tenants have been evicted with little or no notice and in breach of the Act. It is often the case that there will be claims for financial loss and the inconvenience claim will sit alongside the financial aspect of the claim.

## 2. How much to claim?

To date we have only been successful in claiming \$1000 and in most cases this is the amount awarded. There is one or two instances where the Tribunal has awarded less, often where there is not sufficient clarity about the circumstances of the breach, however as we are proposing to only lodge such claims where there is a serious interference with quiet enjoyment we recommend claiming \$1000 as a starting point.

It is possible that higher claims could be considered especially where there are two independent and substantial sequences of related events that interfere with a claimant's quiet enjoyment, or where there is more than one claimant, and the inconvenience suffered by each claimant is different.

It is also possible to imagine such a serious breach and consequent inconvenience that a greater amount could be claimed.

### Future developments

In NSW tenancy law there is an extensive body of case law related to claims for non-economic loss which include claims for more than \$1000, and which can be awarded in broader circumstances than those outlined in this practice note.

This case law arises in a different statutory context, but *Munoz-Erazo v Hanna (Tenancy)*[2006] NSWCTT 339 is an example of a claim where \$4000 in non-pecuniary damages, and it considers the principles and development of this area of law in some detail.

This Practice Note is a guide only and should not be used as a substitute for professional legal advice. If you have a question about this Practice Note or a specific case and you require advice, then you should contact us on **(03) 9411 1444**

### Tenants Union Legal Team

## Examples of VCAT Cases

EL V EA (VCAT, 11 October 2007 per Deputy President Steele) – Landlord failed to provide quiet enjoyment as misled the tenants as to LL ability to provide fixed term tenancy - \$1000 for serious inconvenience and distress – eviction because mortgagee took action against landlord – relevant evidence was distress, physical inconvenience, and impact on family (kids and extended family).

(VCAT, 4 August 2009, unreported, R2009/28206/00) per Member Kefford - \$1000 for “stress and inconvenience” – Against LL for mortgagee eviction during fixed term

(VCAT, 6 October 2009, unreported, R2009/32321/00) per Member Klingender - \$1000 for “general inconvenience” – T forced to leave due to disconnection of electricity supply without notice

(VCAT, 22 January 2010, unreported, R2009/46337/00) per Member McGarvie - \$970 for “inconvenience” – LL repeatedly and extensively interfered with quiet enjoyment – LL attempted to evict T in breach of fixed term – T eventually agreed to move out with two days notice.

(VCAT, 11 August 2009, unreported, R2009/13307/00) per Member Kefford \$1000 for “loss of quiet enjoyment and inconvenience”- related to loss of goods arising from eviction from room in breach of the RTA

(VCAT, 30 November 2007, unreported, R2007/46969/00) per Member Barrand - : Allowed sum of \$1000 where service of a Notice to Vacate that was not issued in good faith and caused considerable distress and inconvenience to the family.