

Legal Q&A

Your legal questions answered

Despina Priala explains how to handle a dispute with neighbours caused by a defective stormwater drain

Q I own an investment property and a neighbour has started harassing my tenant due to flood water draining into his property. His property is located lower than our rental property and, of course, we are not deliberately dumping water into his backyard. He's threatening to sue and claim for damages to his property. The floodwater in question is coming from a defective drain along the road, which is the council's property, but it's in front of our property, so he blames us for it.

Whose responsibility is this and what are my legal rights in relation to fixing the problem, given that it is being caused by the drain on council property? Can my neighbour actually sue us for damages? Can I sue him for harassing my tenants?

A This is quite an interesting situation. To be able to answer this, we need to go back to the cause of the floodwater damage. It appears that the floodwater damage to the neighbouring property has been caused by a defective drain, and that drain is on Council property.

It seems clear then who is responsible, and who has to fix the problem. Or does it? Council is generally responsible for ensuring that Council stormwater drains, pits, along with the kerb and channel are operating effectively and are clear from blockages. This includes blocked stormwater drains and broken pit lids.

However, property owners are also

generally responsible for ensuring that each stormwater drainage pipe from the boundary of their property to a Council drain (in the road reserve) is properly constructed and repaired, under general local laws relevant to where the property is situated.

So, if the neighbour continues to harass the tenant, the only thing the property owner should do is contact Local Council, initially by phone and then in writing. These days Local Council will not pursue any complaint or issue unless it is in writing, which can simply take the form of an email communication to the right department within Council.

An appropriate person from Council will or should attend the property location and conduct an inspection of the drain in question to ascertain firstly, whether in fact the drain is the property of Council, and secondly that the drain is defective and requires repair. If Council disputes the issue (i.e. liability), then the owner may need to obtain an independent report from a qualified plumber or drain cleaning company as to the cause or possible cause of the flooding and damage sustained, and what is required to fix the damage.

However, before the owner does this it may be wise for the property owner to warn Council upfront, and in writing, that if liability is denied, and the property owner can prove otherwise with an independent report, that Council will be liable for the costs associated with obtaining such report.

What if it is proven that the flooding is also caused, in part, by the natural lay of the land? Could the property owner then be partly responsible? Possibly. For any party to sue another party for damages, that party must be able to prove a loss was suffered, and then they must be able to quantify such loss, with sufficient evidence. Therefore, for the neighbour to sue the property owner for damages, they must be able to prove that the property owner is responsible for the damage, and thus liable. Clearly, the first step in this situation is to make a complaint to Council and request they deal with the matter.

Insofar as the issue of harassment is concerned, the property owner cannot sue their neighbour for harassing the tenants. The 'aggrieved person' in this scenario is the tenant, not the homeowner. Depending on the extent and type of harassment and means of communicating such harassment (e.g. emails, texts or verbal), the tenant should contact local police.

Disclaimer: The information in this article is of a general nature only and should not be relied upon as legal advice. You should seek advice for your particular circumstances before entering into any transaction.

Legal expert



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