



FLOODING NEIGHBOUR'S PROPERTY

Report by Despina Priala | Priala Legal Pty Ltd | 4 April 2012

This is quite an interesting situation. To be able to answer this we need to go back to the cause of the flood water damage. It appears that the flood water 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?

It is common knowledge that stormwater drainage systems carry rain water away from your property to a Council drain. This includes the pipes outside of your property in the road reserve, laneway or drainage reserve that connect to the Council drain.

Council is generally responsible for ensuring that Council stormwater drains, pits, and the kerb and channel, are operating effectively and are clear from blockages, and responsible for fixing any problems with Council drains, pits, and the kerb and channel. 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 what should the property owner and/or the tenant do in this situation?

Firstly, the tenant cannot be held liable or responsible for issues such as this as they are not the property owner, unless somehow the tenants have contributed to the damage caused. But that is not alleged here so we will not pursue this. Secondly, 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 his tenants. The 'aggrieved person' in this scenario is the tenant, not the home owner. Therefore, the only person that can take any steps towards a possible lawsuit for harassment is the tenant. Depending on the extent and type of harassment and means of communicating such harassment (for e.g. emails, texts or verbal), the tenant should contact local police to make a complaint.

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