

Rental Damages Claim in NSW Construction Disputes

It is common that homeowners suffer from rental loss as a result of their builder's delay with completing construction work. The case of *Hassos v Beechwood Homes [2022] NSWCATCD 121* offers guidance of a successful and less common instance where the owners successfully claimed rent damages. This article not explores how homeowners can claim rental income loss due to a builder's delay or [defective work](#) and the application of the important principle of causation.

The Essence of Rental Damages in Construction Disputes

Rental damages refer to the income you lose because you can't rent out your property, usually due to a builder's delay in completion or defects in construction.

Hassos v Beechwood Homes

In *Hassos v Beechwood Homes*, homeowner Polly Polixeni Hassos couldn't rent her property as a holiday home due to significant [construction defects](#). This case is an example of how NCAT recognizes and rewards rental damages.

The Tribunal considered and applied 2 legal principles to determine the rental damages claim. The 'But for' test and Causation, and ultimately applied the Common Sense view.

The 'But For' Test and Common Sense

A foundational method to establish causation in law is the "but for" test, asking: Would the damage have occurred if not for the builder's breach or [negligence](#)?

The "but for" test is a common method to establish causation: but for the builder's breach (like delay or defective work), would you have suffered the loss?

It's important to remember that this test is a guideline rather than a rigid rule. In the context of [construction disputes](#), this means considering whether the specific issues like delays or defects are the primary reasons for your loss. The ultimate factor is whether, in a common-sense view, the breach caused the loss.

The High Court's discussion in *March v E & MH Stramare Pty Limited [1991] HCA 12; (1991) 171 CLR 506* highlights the limitations of the "but for" test, underscoring the need for a common-sense approach to causation. This common-sense approach, preferred over a strict adherence to the "but

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for" test, is important in determining causation in construction disputes. It allows for a more nuanced understanding of how a builder's actions might lead to specific losses.

Understanding Causation in Legal Terms

To successfully claim rental damages, establishing a causal connection between the builder's breach and your loss is essential. This is where the legal principle of causation comes into play. As referenced in the Hassos case, causation in legal terms differs from scientific or philosophical notions. It's about applying common sense to determine whether the builder's actions (or lack thereof) are a cause of your loss.

In construction disputes, this means identifying if the builder's actions directly led to your loss.

Justice McHugh emphasised applying common sense in determining legal causation in the case of *Chappel v Hart (1998) 156 ALR 517*. In complex cases, while a detailed analysis might be required, the judge generally bases the conclusion on a straightforward assessment of the evidence.

Legal causation is not just about theoretical connections. It's about applying practical, everyday reasoning to determine if there's a link between the breach (like defective work) and the damage suffered.

Tribunal's Approach in Hassos Case

The Tribunal, applying these principles, found that the defects in Hassos' property were the substantial cause of her inability to rent it out. It wasn't her lack of funds or other factors; it was the unresolved defects left by the builder.

Key Lessons for Homeowners

1. **Document Potential Rental Income:** Keep records of what you could have earned in rent.
2. **Prove the Impact of Defects:** Show how the defects directly hindered renting out the property.
3. **Understand Legal Causation:** Recognize how establishing a causal link between the builder's breach and your loss is crucial.

Preparing Your Case

- **Gather Solid Evidence:** Besides documents on potential rental income, you need to show how the builder's actions caused your loss.
- **Expert Opinions Matter:** An expert's viewpoint on potential rental income can significantly bolster your claim.

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- ****Link Defects to Your Loss:**** Clearly demonstrate that the builder's breach was the primary reason for the loss of rental income, applying common sense to your situation.

Homeowners for Fair Compensation

Whilst it is not common for owners to recover rental damages, the *Hassos v Beechwood Homes* case is an example of how homeowners can successfully claim rental damages. Understanding the legal aspect of causation and preparing your case with solid evidence are key steps towards a successful claim.

Facing a construction dispute in NSW? Remember, your potential rental income loss is a significant part of your claim. With the right approach and understanding of legal causation, you can effectively argue for the compensation you deserve.

We offer homeowners who are claiming more than \$30,000 in damages against their builder a free [15 minutes consultation](#).

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