



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 268

APPLICANT AZ

RESPONDENT S Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In May 2021 AZ engaged S Ltd as her property manager, for her house in [suburb], while she was [overseas]. The property was tenanted until 4 July 2022. After the tenants moved out S Ltd and AZ's friend carried out a final inspection. A cleaner was then engaged, who discovered a leak in the kitchen. The leak caused damage to the kitchen cabinets, internal walls, and floors. This required extensive repairs, and only \$3,000.00 could be covered by AZ's insurer, as the damage was deemed to be gradual damage. AZ returned to New Zealand on 22 July 2022 but was unable to live in her home due to the damage, so rented elsewhere while repairs were carried out.
2. AZ claims the sum of \$19,722.00 for the cost of repairs, and rental costs.
3. The issues to be determined are as follows:
 - a. Did S Ltd breach the contract by failing to carry out sufficient inspections?
 - b. If so, did that failure cause or contribute to the damage?
 - c. What is the reasonable cost of repairs?

Did S Ltd breach the contract by failing to do sufficient inspections?

4. Parties to a contract are bound by the terms and conditions they agreed. If a party to a contract fails to fulfil its obligations under the contract, they are in breach of the contract.
5. Under schedule 3, clause 2 of the property management contract S Ltd was required to do quarterly inspections of the property. It did not do so, and only carried out one inspection on 26 April 2022. At the hearing S Ltd gave some explanation for the lack of inspections, including the lockdowns and alert level restrictions over the period it managed the property. While I accept that it may not have been possible to conduct inspections every three months, it ought to have been possible to do more than one inspection in the time the property was under S Ltd's management. For these reasons I find that S Ltd breached the contract.

Did that failure cause or contribute to the damage?

6. An innocent party who suffers a loss as a result of a breach of contract may claim damages for their losses.

7. Most of the damage is to the kitchen cabinet, wall, and floor. The insurance assessor's report describes the water damage as being due to a water leak that was gradual in nature. The report indicates that the damage was hidden, and that the insured should not have necessarily known about it earlier. The evidence presented is that the tenants did not inform S Ltd of the leak. However, in a later conversation with AZ they told her that they had noticed it around two months prior to moving out.
8. S Ltd's inspection took place in late April 2022. The leak wasn't noted then, and there is no damage visible in the photos taken at that time. In the July 2022 inspection neither S Ltd nor AZ's friend noticed the leak. However, the photos taken in July show that the flooring was beginning to lift near the kitchen cabinets. Those photos show that there was noticeable damage from the leak in July. However, it is not proven that the leak was in existence or noticeable in April 2022. It is possible that the leak began in May, around when the tenants noticed it.
9. S Ltd did breach the contract by failing to do inspections prior to April 2022. However, there is no evidence to show that the leak existed at the times those inspections ought to have taken place, so it is not proven that that breach caused or contributed to the damage.
10. It is also not proven that the leak existed or was discoverable in April 2022. The final inspection and discovery of the leak was less than three months later. As inspections were only contracted to be quarterly, S Ltd was not required by the contract to reinspect between April and July. For these reasons, it is not responsible for any damage that occurred between April and July 2022. Even though S Ltd and AZ's friend failed to notice the leak in the final inspection, the cleaner found it immediately afterwards. Therefore, the failure to notice it in the final inspection did not contribute to the damage.
11. For these reasons it is not proven that S Ltd's failure to do quarterly inspections caused or contributed to the damage.

Conclusion

12. For these reasons the final issue need not be determined, and the claim is dismissed.

Referee: K Rendall
Date: 28 June 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.