



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 667

APPLICANT **BB**
APPLICANT **TL**
RESPONDENT **A Ltd**
SECOND **AN**
RESPONDENT

The Tribunal orders:

A Ltd is to pay BB and TL the sum of \$1,737.60 within 30 days of the date of this order.

Reasons

1. In March 2021, BB and TL (the Applicants) purchased a new build property from A Ltd.
2. Prior to settlement, several defects in the property were noticed by the Applicants, whose lawyer notified A Ltd of the list of items that required remedying prior to settlement of the sale. The settlement went ahead before the defects were remedied and following settlement, the Applicants again requested that the defects be remedied. When the A Ltd did not address the request, the Applicants brought their claim to the Tribunal.
3. Following two hearings which were adjourned to allow the remedial work to be carried out, A Ltd remedied all the items on the list.
4. However, according to the Applicants, there was an item that was not notified to A Ltd as a defect prior to settlement, as the defect was not apparent at the time. The defect related to the laundry tub in the property, which developed rust within the first year of the sale. A Ltd was notified of the issue in writing 7 months after the sale.

5. At the third Tribunal hearing, having addressed all the issues on the list of defects, A Ltd denied liability for replacing the tub as it was not on the list that was provided to them prior to settlement. The Applicants claimed that the defective tub was covered by warranties under the Building Act 2004 that render A Ltd liable for replacing the tub.
6. *Issues: Is A Ltd liable for the cost of replacing the rusting laundry tub?*
7. Section 362Q of the Building Act 2004 provides that a building contractor or on-seller must remedy a defect identified in the building work (including repairing or replacing defective building products used in the building work) within a reasonable time of notification in writing of the defect.
8. The Applicants gave evidence that they notified A Ltd of the defective laundry tub in November 2022. Given that the laundry tub developed rust within 7 months of the Applicant's purchase of the new build property, the issue falls under the ambit of section 362Q of the Building Act 2004. As the on-seller of the property, A Ltd is liable to replace the defective laundry tub.
9. The Applicants provided the Tribunal with two quotes for the removal of the old laundry tub and supply and installation of an equivalent product. As the two quotes are for substantially the same work, I award the Applicants the amount of the lowest quote of \$1,737.60.

Referee: Kaho

Date: 24 November 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>.