



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 145**

**APPLICANT      BG**

**RESPONDENT    TQ Ltd**

**The Tribunal orders:**

BG is to pay TQ Ltd \$63.50 on or before 11 August 2023.

**Reasons:**

1. BG received a parking breach notice charging her \$65.00 by TQ Ltd (TQ LTD) for parking her car in the [mall] for 26 minutes without paying for her parking. BG has paid \$1.50 to TQ LTD which she says is the fee to park in the Mall for one hour. BG seeks an order that she is not liable to pay the rest of the \$65.00 fee. She also seeks an order that TQ LTD pay her filing fee for this claim of \$45.00.
2. I note that when she received her parking breach notice, BG quickly disputed it and paid the \$1.50 that she believed was a reasonable fee. TQ LTD told BG that her appeal of her breach notice had not been allowed, and then added an additional charge of \$20.00 in extra fees. At the hearing today TQ LTD agreed to waive the additional \$20.00 fee because it was clear that BG had disputed the original breach notice.
3. When a person parks in a private car park, they enter into a contract with the owner of the car park and can incur fees if they breach any terms and conditions that the owner of the carpark has made clear.
4. At the hearing BG accepted that she parked her car in the carpark, which had clearly posted signs that payment was required and enforcement applied. This meant that the only issue to be resolved is whether the \$65.00 fee able to be claimed by TQ LTD or is an unenforceable penalty.

**Is the \$65.00 fee enforceable?**

5. I find that the \$65.00 fee is enforceable by TQ LTD.
6. TQ LTD's parking terms and conditions at the Mall specify that liquidated damages of \$65.00 will be payable if the terms and conditions are breached (clause 10).
7. BG said that TQ LTD should only be able to recover their actual losses from her breach of contract. She said TQ LTD had not provided any evidence of the actual costs of operating the carpark and issuing a breach notice. She said that the car park was nearly empty when she parked there, and so she was not taking a carpark someone else could have used. She said that \$65.00 was an excessive charge for failing to pay less than \$1.50 that would have been due if she paid for the 26

minutes she was in the car park. She said that the fee for failing to pay for [council] provided parking for an equivalent time is only \$12.00 and that should set the benchmark for a reasonable fee.

8. TQ LTD said that \$65.00 is an industry standard for private carparking fees, and some places charge more. They said that the fee does not necessarily reflect their actual costs of enforcing the terms and conditions of parking in the Mall and is designed to encourage people to pay for their parking.
9. Parties to a contract may stipulate that a particular sum is payable in case of a breach of the contract. The stipulated sum need not precisely reflect the loss to that party but must be reasonable to protect the legitimate interests of the parties. While it can be sufficient to deter a breach, it must not be exorbitant penalty. In this case I consider the sum of \$65.00 for the breach notice fee to be reasonable. I accept that this is a fee that is similar to those applied by other private car parking owners at present and I consider this is the relevant point of comparison in this case.
10. For these reasons I find that BG is liable to pay the \$65.00 parking breach notice fee. BG has already paid \$1.50. This means that she is liable to pay TQ LTD \$63.50.
11. BG had claimed the filing fee for this claim. BG has been unsuccessful in her claim, but even if she had succeeded, I would have been unable to award the filing fee because that is a cost of the claim and the Disputes Tribunal Act 1988 only allows orders for costs in particular circumstances which do not apply in this case.

**Referee: L Trevelyan**

**Date: 3 July 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>.