



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 87

APPLICANT **BI Ltd**

RESPONDENT **NS**

The Tribunal orders:

NS is to pay to BI Ltd the sum of \$1,170.00 on or before 3 April 2023.

Reasons:

1. BI Ltd operate accommodation in [Town] known as the HB.
2. In December 2022, NS made a booking for a 2-bedroomed apartment from 15th to 19th January 2023. The booking was made on the [Online site].
3. NS did not make the full payment for the booking and did not turn up for the booking.
4. BI Ltd is seeking \$1,200.00 for the booking.
5. There was no attendance at the hearing by NS. The hearing took place by way of teleconference and NS had been advised by the Tribunal that he needed to dial into the hearing and given the number to call. No call was received by the Tribunal at the scheduled hearing time.
6. IU of BI Ltd advised that he received a message from NS on 9 March 2023 indicating that he was aware there was an issue with a booking, and he wanted to sort out the payment. IU said he replied to NS but has not heard anything from him since and no payment has been made. It appears therefore that NS is aware of this claim and hearing. The absence of a party does not prevent a hearing from going ahead.
7. The issues the Tribunal has to consider are:
 - a. What was the agreement between the parties regarding cancellation of the booking?
 - b. Is BI Ltd entitled to the amount sought of \$1,200.00?

What was the agreement between the parties regarding cancellation of the booking?

8. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce.
9. A party cannot cancel a contract at will. It must be entitled to cancel as a result of what is set out in the contract in relation to cancellation or under a statutory provision such as the Contract and Commercial Law Act 2017 ("CCLA")

10. The booking in this claim contained a clause dealing with cancellation. IU explained that NS's booking was fully refundable if it was cancelled within 7 days of the start of the reservation. As the booking was due to start on 15th January 2023, NS could have cancelled up to 8th January 2023 and not been charged anything.
11. IU explained that on 8th January 2023 the system automatically charges the credit card on the booking for the reservation. BI Ltd was able to charge \$150.00 and after that the credit card was declined.
12. BI Ltd contacted NS who advised that he would put some more money on the card and BI Ltd could try again later to charge the card. At that stage BI Ltd assumed the booking was proceeding as there was no indication by NS that it was not.
13. When the credit card again failed to take the payment, BI Ltd contacted NS. IU said that NS said on the phone that he no longer needed the booking and hung up. That occurred on either the 9th or 10th January 2023. BI Ltd advised NS on 11th January that the full amount remained owing and if not paid, legal proceedings may issue.
14. The booking was not cancelled by NS on the system. IU said for that reason BI Ltd was unable to release the room and had to keep it available in case NS turned up. He said even if it could have released the room, given the last minute nature of the cancellation, BI Ltd was unable to fill that room with other guests.
15. The document produced to the Tribunal showed that the conditions on the booking were that the guest would be charged the total price of the booking if cancelled after the reservation. IU explained that is said this because this document was printed after the 7 day cut off period for cancellation. He said in fact, the agreement was that NS could cancel up to 7 days prior to the booking.
16. I am satisfied that the parties agreed that if the booking was cancelled within 7 days of the start date of the reservation, the full amount was payable by the guest.

Is BI LTD entitled to the amount sought of \$1,200.00?

17. From what the Tribunal was told at the hearing, NS cancelled the booking on the phone by indicating he no longer needed the booking. That occurred less than 7 days prior to the start of the booking.
18. NS is liable for the total cost of the reservation. The total cost was \$1,320.00. A sum of \$150.00 was paid using the credit card on the system. That leaves a balance of \$1,170.00 owing.
19. I accept from what IU told me at the hearing that BI Ltd were unable to let out the room to other guests and were unable to recover any of its losses in that regard.
20. BI Ltd sought \$1,200.00 to allow for a 2.5% credit card charge they impose. I do not intend to allow anything for the credit card charge. There is no indication that this amount will be paid by credit card. The contract itself does not refer to credit card charges in the event of cancellation.
21. NS is to pay to BI Ltd the sum of \$1,170.00 on or before 3 April 2023.

Referee: P Byrne
Date: 13 March 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>.