



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

**[2023] NZDT 589**

**APPLICANT** BI

**RESPONDENT** LU

**APPLICANT'S  
INSURER** BC Ltd

**RESPONDENT  
INSURER** UV Ltd

**The Tribunal orders:**

Application dismissed.

**Reasons**

On 15 August 2022, a fire broke out at the respondent's home that spread to the applicant's home next door, causing damage.

The damage resulted in a repair cost of \$18,754.37, which the applicant, with the assistance of his insurance company, has now applied to the tribunal to recover from the respondent.

A fire investigation report determined that the cause of the fire was the incorrect installation by the respondent (with the assistance of a handyman), of a [baby pizza oven].

The applicant alleged that the respondent had been negligent in failing to obtain/follow certain installation specifications (that had been forwarded to him) when installing the pizza oven and was therefore responsible for the fire damage.

The respondent denied he had received the relevant specification and therefore denied liability.

***Was the respondent negligent when installing the [baby pizza oven]?***

The pizza oven was purchased by the respondent from FG approximately nine months earlier and had been used by the respondent on about a dozen occasions.

A very comprehensive fire investigation report was filed.

It was not disputed that the fire spread from the pizza oven and that earlier in the evening the respondent had used the oven. The respondent had then gone to bed about 10:00pm believing the pizza oven was of no risk.

An examination of the oven after the fire, revealed gaps in the fire bricks at the base of the oven. When the bricks were removed it was noted that the 10mm thick decorative tiles (under the oven) had been burnt through, allowing the plywood and the timber platform under the tiles, to effectively catch fire.

According to FG (as reported by the fire investigator), the respondent was provided with the FG specification and installation PDF. The specification clearly states that there must be a 100mm clearance from the combustible materials under and around the oven. And that the base is to be constructed of non-combustible material.

The fire inspection report concluded that the pizza oven had not been installed correctly in that there was not a 100mm clearance from combustible material, and the oven was placed on a combustible surface. Its installation was therefore non-compliant with the manufacturer's instructions.

A significant issue then arose as to whether the respondent actually received the subject specification that referred to the necessity for a 100mm clearance.

The respondent said he had not, and the fire investigator recorded that CD of FG stated he should have received the specification in the packaging, as that was normal practice.

When the respondent was informed of the 100mm requirement, the investigator records that the conversation went as follows:

*"Wow..ok, 4 inches thick, bloody hell....you were not aware of that?...No....So when you installed it, what was your understanding of the installation requirements? That it was self-contained, and it sat on like a, well, you know, like on the website, as long as it sat on an inflammable base, that was sufficient. Given the portability of the thing, I am a bit taken back by the 100mm thick base."*

The respondent explained to the investigator, that he had checked the FG website prior to the installation and referred to a specific paragraph which included ensuring the fire was affixed to a suitable non-combustible base but did not mention the 100mm requirement. He maintained he had achieved the non-combustible requirement via his 10mm tiles.

The investigator then reviewed the website and confirmed that the 100mm required clearance was not mentioned on the website, which was consistent with what the respondent had stated.

In the report CD informed the investigator that he explained to the respondent in person when receiving the order for the oven, that the base of the oven must be non-combustible. The respondent informed the investigator that he had no recollection of that discussion. At the hearing, the respondent stated he could only recall conversations about delivery dates and the purchase of a rotisserie, which was an extra.

CD also confirmed to the investigator that the letter the respondent says he received, did not include installation instructions and did not refer to the minimum 100mm clearance required.

When it was explained to CD by the investigator that the respondent did not receive a copy of the installation specification sheet and only received a brochure and a letter, the investigator then noted that:

*"CD stated that every customer should be sent a copy, but this cannot be guaranteed."*

The investigator then recorded:

*“ Since being notified of this event, FG have now implemented a procedure whereby they print off additional specification cards and secure them to the front of the fire with electrical ties. This means they need to be removed before installation.”*

### **Conclusion**

The fire investigation report records many relevant comments about whether or not the respondent received the relevant specification (including the views of the respondent and CD's views), but I am not going to repeat them all in this decision.

But the crucial liability issue in these proceeding, hinges on the answer to the question of whether or not the respondent received the relevant installation specifications, because if he did, it was negligent not to comply with them.

However, after reading the fire inspection report carefully, my view is that the fire inspector, having fairly included comments made by both the respondent and CD, did not unequivocally come down on either side. That was also my inclination from the hearing. To find the respondent negligent, I have to be sufficiently certain that the relevant specification was received by him. I am not sufficiently certain and my finding is that it is not open to me, on balance, to make a finding that the respondent has been negligent.

Accordingly, my order is as above.

**Referee: John Hogan**

**Date: 10 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>.