



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

[2023] NZDT 616

**APPLICANT** BO

**RESPONDENT** NI

**The Tribunal orders: NI is ordered to pay BO the sum of \$1,999.00. Payment of this sum is ordered no later than 20 December 2023.**

Reasons:

- 1) In December 2022, BO bought an e-scooter from NI. The price paid was \$1,999.00. About six months after the purchase, the scooter stopped working. BO has requested a refund. This has been declined by NI, on the basis there is evidence of water damage. More particularly, NI says that he has checked the scooter and it is “severely water damaged, and all parts are now broken.”
- 2) The relevant law is the Consumer Guarantees Act 1993 (‘the Act’); in particular, the guarantee [section 6] that a good supplied to a consumer should be of ‘acceptable quality.’ The issues to be determined by the Tribunal are:
  - a) Is the scooter supplied by the NI of acceptable quality?
  - b) If not, is the BO entitled to the refund sought?
- 3) A good will be of ‘acceptable quality’ [section 7 of the Act] if [amongst other things] it is as fit for all the purposes for which goods of the type in question are commonly supplied, and as durable as a reasonable consumer, fully acquainted with the state and condition of the goods, would regard as acceptable, having regard to a range of factors, including “any representation made about the goods by the supplier or the manufacturer.”
- 4) I accept, and it appears to be agreed, that the scooter is affected by significant water damage. NI suggests that because of the water damage, it should not be liable for the refund sought. The scooter was used contrary to the supplier’s instructions that it should not be ridden in the rain.
- 5) I do not accept NI’s submission. The scooter was clearly, and expressly, sold on the basis that it was suitable for commuting, and even, off-road use. BO acknowledges that he did sometimes ride the scooter when it was raining, but says that when this was the case, it was unavoidable. It was kept under cover, when not in use.
- 6) In my view, it simply beggars belief, and defies common sense, to suggest, as NI is, that a mode of transport suitable for commuting, cannot be used when it is raining. BO acknowledges a passage in the manual, supplied with the scooter, that states not to ride it when it rains. I would tend to agree with BO that this wording appears in a section under the heading: “safety precautions,” together with other guidance, such as not listening to music, or riding in ‘dangerous areas.’ BO says that he did not understand the statement about not riding in the rain to be [I paraphrase here] an absolute stipulation, and certainly would not have bought the scooter if he had any idea it could not be used, at all, if it was raining.

- 7) Further to the above, BO makes the further point that if this scooter was sold, as was the case, for possible 'off-road' use, then [again, I paraphrase] naturally, and inevitably, it should be able to be taken over ground that is soft, and potentially, wet. Again, I accept this argument, which I consider has substance.
- 8) To the extent that this scooter became contaminated with water after what I believe was about 6 months of normal commuting use, the machine was not, I conclude, reasonably resilient, and of 'acceptable quality,' for the purposes of the Act.
- 9) A consumer has a right to a refund if the failure for the good to meet the relative guarantee is of a 'substantial character.' Where a machine has completely stopped working, this requirement is clearly met. NI does not suggest that the scooter is capable of being repaired. In these circumstances, a case for a refund is made out.

**Referee: G.P.Rossiter**

**Date: 8 December 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>.