



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 519

APPLICANT BQ

APPLICANT LI

RESPONDENT J Ltd

The Tribunal orders:

J Ltd is to pay BQ and LI the total sum of \$5953.39 on or before Friday 3 November 2023.

Reasons:

1. In October 2020, the Applicants purchased a 2 storey, 2 bedroom duplex from the first owner who bought it new from J Ltd (the company) in 2017. The Applicants claim that the roofing has failed within 5 years of being built and that it is not fit for purpose, and that there was a leak over the sliding door, and cracks in the gib.
2. At the hearing LI was joined as an Applicant as I accept that he was a joint purchaser of the property.
3. The Applicants claim \$16,771.50 comprising repair costs and inspection report costs, 5 weeks and 4 days lost rental of \$1,782.86, being \$520.00 a week, less LI's former rental costs, \$3,190.00 in administration time and overheads; and \$6,927.25 for estimated additional repairs.
4. The issues to be determined are:
 - a. Was the construction carried out with reasonable care and skill and was the outcome reasonably fit for purpose?
 - b. If not, what is the remedy?

Was the construction carried with reasonable care and skill and was the outcome reasonably fit for purpose?

5. It was undisputed that there was no contractual relationship between the parties, and nor did the Applicants acquire the services of the company, so the CGA does not apply. Instead the Applicants rely on the implied warranties under the Building Act 2004.
6. Section 362I of the Building Act sets out the implied warranties that apply to a new build. These include that the building work must be completed with reasonable care and skill and that it is fit for purpose. Under section 362J the implied building warranties extend to subsequent owners of a household unit, who may take proceedings for a breach of the warranties, notwithstanding they were not a party to the original residential building contract.
7. The company did not dispute that the Applicants were entitled to the benefit of the implied warranties, and that the claim has been brought within the 10 year time limit under the Building

Act. Instead the company's position is that the roofing issue was due to inadequate maintenance, old sealant which is not covered by warranty, that no issues were identified within the first 2 years, that it built the roof and building to the specifications of the architect, that it passed the council inspection including a code of compliance certificate (CCC), and that the only remedial work required was to re-silicon one hole. It also stated that those issues should have been identified with the seller during the sale process, and that the issue with the sliding door was due to the design and water caused by the wind, and that the building received a CCC.

8. However, on balance, I find that the roofing was not reasonably fit for purpose. I say this for reasons which include:
 - a. New roofing should last 15 years, and I accept that defects were reported within 5 years;
 - b. I gave greater weight to the report by [Roof Company 1] an independent roof inspector that identified 7 issues with the roofing¹, and so on balance, I accept it is more likely than not that the issue was one of poor workmanship, over maintenance; and this was also supported by [Roof Company 2];
 - c. I also accept that this leaking occurred below the roof penetration, and so this was likely the most probable cause.
9. Also, regardless of the CCC, on balance, I gave greater weight to the [Inspectors] report which identified workmanship issues with the exterior windows not having scribes installed, which most likely caused the associated moisture ingress. I also accept that instead of 4 panel doors that the consented plan approved, a 3 panel sliding door was installed which more likely than not protruded out further than the house cladding, aggravating the situation. On balance I also gave greater weight to the report's findings that the interior faults "showed damp readings which should not be found on a building that is five years old" and included premature signs of deterioration around the window jambs and consistent gib cracking, pointing to 'sub-par building material' and sub-par paint and installation method given the age of the house, and I accept these in tandem with the roof failure as the likely cause of water ingress and consequential cracking.

If not, what is the remedy?

10. Section 362M of the Building Act 2004 sets out the remedies available to a person who is entitled to claim against the building contractor for a breach of the implied warranties. This includes compensation for the costs to remedy where the building contractor has failed to remedy faults within a reasonable period of time and reasonably foreseeable consequential loss.
11. In this case, I accept that the Applicants repeatedly raised issues with the company seeking remedial action. I also accept that while some limited remedial action was taken, overall it did not resolve the issues, and further work and compensation was refused.
12. The burden of proof rests with the Applicants to prove their costs. I accept that the Applicants incurred costs of \$2,183.29 for roofing repairs, comprising \$1934.30 from TC, and \$156.98 for silicone application and \$92.00 for the ladder. In addition, I accept they paid \$856.75 for internal repairs. However, whereas the Tribunal would expect 2 supporting quotes for work, the Applicants provided one quote of \$3927.25 for bathroom crack remedial work, which the Company considered was excessive. In these circumstances I award \$1500.00. Also, the Applicants did not provide any evidence to support their claim that it would cost \$4000.00 to

¹ Inadequate coverage by the mono-ridge flashing, fixings in the ridge flashing into the soft edge of the flashing, a penetration in the roof which was then overlaid with sealant, inadequate primary and secondary fixings in the barge flashing; an incorrect fixing pattern, flashing laps are too long and unsealed; and at the stop end the overlap of the roof sheet has been incorrectly prepared.

remedy the door leak, or to make any other repairs, so I do not award compensation for these estimated losses.

13. However, I accept that the Applicants are entitled to be compensated for the cost of the RDM roofing report of \$655.50 and \$757.85 for the [Inspectors] report as this was a reasonably foreseeable consequential loss.
14. But, in the circumstances, I am not satisfied that it was necessary for the house to be vacated while internal remedial work was undertaken, especially when the roof had been fixed, so I don't accept that lost rental was a reasonably foreseeable consequence. Also, while I accept that there was time spent communicating with the company, I do not accept that this entitles the Applicants to compensation. Nor do I accept that they are entitled to administrative overhead costs.
15. Consequently, I order J Ltd to pay BQ and LI the total sum of \$5953.39.

Referee: G.M. Taylor
Date: 13 October 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>.