



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 549

APPLICANT BT Ltd

RESPONDENT XN

The Tribunal orders:

XN is to pay \$5701.05 to BT Ltd on or before 8 November 2023.

Reasons

1. XN entered into a written storage agreement with BT Ltd ('BT') in June 2007 and had paid a monthly rental ever since to store belongings in a unit at their facility.
2. In around 2017 when the current owner of BT bought the business, XN's account was in arrears of \$938.92 – he continued to pay the monthly rental and the arrears stayed the same until April 2019 when BT notified an increase to the monthly rental. Whether or not XN received notice of the increase, he did not increase his monthly payments so further arrears began to accrue.
3. By July 2022, when the monthly rent was once again increased slightly by BT, XN's arrears were at \$2688.92, and all BT's attempts to reach XN re payment had been unsuccessful. It appears he had relocated without advising BT of a new address, and all their attempts to call and email were unanswered.
4. In November 2022 BT engaged a tracing agent and notice was given, once XN was located, for him to clear his belongings out of his unit.
5. A written agreement in the form of an "Admission of Debt" was signed by both parties on 17 March 2023 whereby BT would allow XN to remove his goods if XN agreed to pay the arrears amount of \$4305.05 in instalments of \$200 per week. The agreement further provided that if XN made the agreed payments BT would waive contractual interest charges of 15% on the arrears amount.
6. XN has paid a sum of \$525.00 to BT since 17 March 2023, bringing the arrears amount outstanding down to a balance of \$3780.05, but breaching the agreement.
7. BT therefore claims \$3780.05 plus interest of \$2409.00 over the entire period arrears were owing.
8. XN did not attend the teleconference hearing today – he had requested an adjournment this morning on the basis that he had a mechanical issue with his car, was away from home and did not have documentation on him and was outside phone and email coverage. No supporting

evidence or further details were supplied, and noting that a Tribunal staff member had been able to phone him and talk to him, the adjournment request was declined. Two attempts to phone XN at the beginning of the hearing time were unsuccessful. The absence of a party does not prevent a hearing from going ahead or an order from being made.

9. The arrears of \$4305.05 (now \$3780.05) were acknowledged by XN in the signing of the agreement on 17 March 2023. While the agreement provides that 15% contractual interest will not be charged if the agreed instalments are paid, it does not quantify interest charges to date or otherwise provide for a time period over which interest will be charged if XN breaches the agreement, which he has.
10. The issue to determine therefore is what interest is payable by XN under the contract.
11. BT has worked from a basis of determining a reasonable 'median' figure for arrears over the entire 6 year period. While parties that are owed money have a duty to mitigate their losses, I accept NG's (for BT) argument in this case that XN's failure to provide them with a forwarding address left them unable to contact him for many years.
12. Further, the nature of the service BT provide is such that they wished to take a reasonable and responsible approach to protecting the stored goods and to hopefully reuniting XN with his belongings. While the contract provides for a rate of 15% interest in the event of default, BT has not applied this as compounding interest and I consider the rate reasonable when taking into account that BT eventually had to go to the lengths of engaging a tracing agent to locate XN.
13. I therefore make no reduction to the contractual interest rate, nor to the period over which interest is applied. However, on considering the arrears figures provided in spreadsheets, I do not find NG's 'median' arrears figure to be accurate. When looking at the arrears balances in the final column of the spreadsheet, only some of those balances can be read as 'true' arrears, and not the balances which reflect the loading of a monthly rental payment due when, in almost every case, that monthly rental payment was made the next day. 'True' arrears are the balances read immediately after a monthly rental payment was made.
14. My calculations using the above approach leads me to a 'median' arrears figure across the 6 years of \$1900.00 (rather than NG's figure of \$2681.96). I have calculated 15% (pa) of \$1900.00 from August 2017 to March 2023, a period of 5 years and 7 months, being interest of \$1591.25.
15. From March 2023, when XN breached the further agreement, 15% interest on the amount of \$3780.05 is due, to October (a period of 7 months) being \$330.75. I realise that some of XN's small payments were not made until well into this 7 month period but over half of them were made within the first month, so I have not calculated what will be very small (additional) interest amounts that reflect the timing of his payments.
16. Total interest payable by XN under the contract/s is \$1921.00 and combined with the arrears balance payable of \$3780.05, XN is liable to pay \$5701.05 to BT.

Referee Perfect

Date: 11 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 wBT 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.

PLEBTE 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 wBT unfair and prejudiced the result of the proceedings. This means you consider there wBT a breach of natural justice, BT a result of procedural unfairness that affected the result of the proceedings.

PLEBTE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee hBT made a decision on the issues raised BT 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 BT 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, pleBTe phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.