



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

District Court

[2023] NZDT 281

APPLICANT BU

APPLICANT DQ

RESPONDENT NN

**The Tribunal orders:**

- A. NN is to pay \$3,256.49 to BU and DQ on or before 16 August 2023.
- B. NN's counterclaim is dismissed.

**Reasons**

1. BU, DQ and NN lived together as flatmates and co-tenants at [Address]. They had all signed a fixed term lease which commenced on 9 April 2022, and was to expire on 9 April 2023. In about May 2022, NN said she wanted to move out and did so in late May. Her flatmates did not agree to her being removed from the lease without finding a replacement. NN paid rent until about 15 June 2022. The landlords gave the Applicants some discount on their rent. The Applicants found a new flatmate from 19 November 2022 and the lease was changed. That flatmate did not actually move in however or pay rent. The Applicants asked NN to pay her share of the rent and other expenses that was unpaid, but NN did not pay. The Applicants filed a claim in the Disputes Tribunal. NN filed a counterclaim.
2. This is a claim for unpaid rent, expenses and damages for stress in the sum of \$15,000.00 by the Applicants. NN's counterclaim, apart from denying the Applicant's claim, is for stress, the return of her bond and costs in the form of legal fees, in the total sum of \$11,709.50
3. The issues to be determined were as follows:
  - a. Has either party breached a legal binding obligation to the other party or parties?
  - b. If yes, then what damages are payable, including any obligation on the applicants to mitigate or minimise their loss?

**Has either party breached a legal binding obligation to the other party or parties?**

4. When two or more parties reach agreement, involving an exchange of promises or items of value, a legally binding contract is formed. A contract can be written or oral, or partly both, provided all the legal elements required for a contract are present. Failure by one of the parties to fulfil their agreed obligations may allow the other party or parties to make a claim for damages, or compensation as it is also called.

5. In this case the parties had all signed a fixed term lease with the landlord to pay rent until the expiry of the lease. This is an agreement with the landlord, which was in writing, and any dispute about it would be resolved by the Tenancy Tribunal.
6. However, there was also an oral agreement between the parties between themselves that they had responsibilities to each other as flatmates. This agreement is also a legally binding agreement. This implied agreement is not in writing and so only the terms necessary to make the agreement with the landlord work, and anything specifically agreed in discussions between the flatmates, is part of this agreement. Disputes about this agreement fall within the jurisdiction of the Disputes Tribunal.
7. The terms of the agreement were self-evidently that the parties were all obligated to pay until the end of the lease or until the lease was varied. As a result, I find that NN has breached her agreement with the Applicants, and had an obligation to pay until the lease was varied, adding a new flatmate, and removing NN, which occurred on 19 November 2022.
8. Part of the agreement was that the utilities were also to be paid for. The law of contract however allows a party only to be able to claim losses they have actually suffered from the breach by the other party, and in this case it means that not all utilities can reasonably be claimed. I will discuss this issue further below.
9. NN claimed that she was entitled to her bond, her legal costs and damages for stress. To be successful in any of these claims she would need to show that BU and DQ had breached their obligations to her. In respect of the bond, the Applicants kept the bond but reduced the amount they had claimed from NN as a result. That is not a breach of the contract, and is actually an appropriate step. I am unable to see any other breaches by the Applicants.
10. I find that NN has breached the contract, and BU and DQ have not.
11. On a technical legal matter, NN has attempted to end the contract by saying she did not wish to complete it. In law, under the terms of the Contract and Commercial Law Act 2017, this is a repudiation and not a cancellation; and the Applicants had the choice of cancelling the contract and claiming their losses, or affirming the contract and claiming their losses. In this case they affirmed it, but I have not discussed this issue, except for completeness, because I do not think the results would be any different.

**If yes, then what damages are payable, including any obligation on the applicants to mitigate or minimise their loss?**

12. When one party breaches a contract, the other party or parties can seek damages or compensation in the amount they have lost as a result of the breach, but must make an effort to minimise the amount of their loss. In the case of a flatmate agreement, that would require the remaining tenants to take reasonable steps to find a new flatmate.
13. The obligation to mitigate or minimise the losses they might suffer, which is on the Applicants, is only, in law, an obligation to take reasonable steps. NN said that she agreed to help the Applicants find a new flatmate and did some advertising, but she said the Applicants had been quite specific about prospective flatmates, for example saying that they wanted a female, and various other stipulations. BU explained this by saying that she and DQ were two young women who were uncomfortable with the possibility of a male flatmate, partly in general and partly because of personal circumstances. In my view the stipulations made were reasonable in the circumstances.
14. NN referred to a female flatmate candidate that the Applicants had said no to because they thought the candidate was male. BU however said that as soon as NN corrected them, the Applicants said she could come to view the property. However, by that time, NN had already told the prospective candidate the Applicants had said no.

15. I find that the Applicants have taken reasonable steps to mitigate or minimise their losses and were reasonable in the stipulations about flatmates that they made. They took other steps apart from the steps NN was making, placing advertisements on Trademe, and I find that they did all they reasonably could to get another flatmate in. The lease was varied in November and that is the point at which NN's obligations ended. The Applicants claimed that the new flatmate did not go through with their obligations, but that is clearly not NN's responsibility, legally or otherwise.
16. The Applicants asked the landlord whether they could help them during this time. The landlord reduced the rent for four weeks by \$200.00, to a total of \$800.00. This reduced the loss the Applicants suffered, and the party suffering this loss is the landlord, not the applicants. As a result of this Applicants cannot claim this amount from NN.
17. The bond was returned at the end of the lease. BU kept it and applied it to the rent debt that NN had accumulated, reducing it by the amount of the bond, \$966.67. (The bond paid by all three flatmates was a total of \$2,900.00, and NN's share of this was one third, or \$966.67. The figure discussed in the hearing was not quite accurate.)
18. The Applicants claim damages for stress, but this is not usually available for a breach of contract. Sharing a flat with people has its own inherent stresses, and the law does not consider it to be appropriate for damages to be awarded merely because there is a dispute. It would be unusual to award damages for stress in the Disputes Tribunal too, because there can be many causes of stress only some of which might possibly be caused by the breach of the contract. I do not think there are any circumstances in this case which would justify an award of damages of that kind against NN. NN also claimed damages for stress but this claim cannot succeed firstly for the above reasons, but also because I have been unable to find any breach of the contract by the Applicants.
19. As a result of all of the above then the amounts payable by NN in damages are calculated as follows:
  - a. NN has not paid 18 weeks and three days of rent (from 15 June 2022 to 19 November 2022) which at \$242.00 per week is \$4,356.00 for 18 weeks and \$103.71 for three days, totalling \$4,459.71. There was a discount of \$800.00 given by the landlords which reduced the Applicant's loss to \$3,659.71, and the bond of \$966.67 also reduced the Applicants' loss to \$2,693.04.
  - b. The electricity bill contribution cannot be claimed because with NN being absent and not using electricity, the account would be less. However, the internet bill was a fixed charge at \$69.19 per month, according to the sample invoice filed by the Applicants, for which NN must pay the cost for 18 weeks. For simplicity I have rounded that to 4 months, or \$92.25.
  - c. The Trademe advertisements that the Applicants paid for and the new tenant fee which would not have been charged are both losses the Applicants can claim, because these costs would not have been incurred but for NN's repudiation of the contract. These sums are \$121.20 and \$350.00 respectively, totalling \$471.20.
  - d. The Applicants have claimed the cost of the filing fee for the claim in the Disputes Tribunal (\$180.00) but section 43 prevents me making an award for costs, which includes the filing fee. I am not satisfied the very limited exceptions apply in that section either.
20. The total amount which NN must pay to BU and DQ is \$2,693.04, plus \$92.25, plus \$471.20, which is \$3,256.49.

**Referee:** M Wilson  
**Date:** 17 July 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>.