



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 427

APPLICANT BU

RESPONDENT Q Ltd

The Tribunal orders:

Q Ltd is to pay BU the sum of \$4,500.00 on or before 26 July 2023.

Reasons:

1. BU purchased a new build property from Q Ltd in October 2022. In November 2022 she had [Company] come to connect the fibre to the property. The technician told her that there had been a failure to install the fibre optic cable in a conduit or pipe from the ETP to the Home Distributor Box. He also told her that the cable was tight and likely to break without the protection of a conduit. BU asked Q Ltd to fit a conduit, but they declined saying there was no requirement for a pipe to protect the cable.
2. BU claims the sum of \$4,500.00 for the cost of fitting a conduit.
3. The issues to be determined are as follows:
 - a. Does the absence of a conduit amount to a defect?
 - b. If so, is the amount claimed reasonable to remedy the defect?

Does the absence of a conduit amount to a defect?

4. Under the Building Act 2004 there is a requirement that the building contractor or developer must remedy any defects notified within one year of completion (s362Q). The onus is on the building contractor or developer to prove that an item identified by a purchaser is not a defect.
5. BU argued that a conduit is a requirement, or standard practice expected in a new build. She says that without one, the fragile fibre cable is likely to break. She referred to guidelines published by [Company] in support of her position. In contrast Q Ltd argued that a conduit was not required, and that it had met the minimum standards required by [Company].
6. I accept that there is some inconsistency in the information given by [Company]. Each party relies on an email from a [Company] representative, supporting their position. They have both also referred to guidance published by [Company]. BU presented a booklet entitled "[redacted]" in which it states in words and in diagrams that pipes are required between the ETP and home distributor box. Q Ltd referred to a different pamphlet with the same title, which has a sub-heading

“[redacted]” and says “Conduit/pipe (or at least fibre and copper cabling) from ETP to home distributor box”.

7. The expectation of a pipe is stated without qualification in the booklet published by [Company] in 2019. In contrast the minimum requirement in the pamphlet refers to new builds, and also major renovations. It may be that in some renovations it is not practical to instal a pipe, and the fibre and the copper cabling referred to might be an acceptable solution. However, it was not argued that a pipe could not have been installed in this new build. Given the expectation of a pipe in other information from [Company], I find it is not demonstrated that “fibre and copper cabling” is an acceptable alternative in this new build. I find, on the balance of probabilities, that a pipe or conduit is required to meet the standards expected.
8. I do not accept the argument that BU must wait until the cable breaks for it to be require fixing, or for it to be defined as a defect. The evidence is that the cable has been installed tightly, without leaving much slack, which makes it particularly prone to breaking. There is a known issue, and it is not reasonable to require BU to leave it until it breaks, as that could cause significant inconvenience to her.

Is the amount claimed reasonable to remedy the defect?

9. When a building contractor fails to fulfil its obligations under the Act, the purchasers may claim damages for losses the suffer as a result of that failure.
10. Q Ltd has declined to have a conduit installed. Therefore, BU is entitled to have it remedied by another contractor and claim the reasonable costs.
11. BU claimed \$4,500.00 for the cost of the installation of a conduit. She did not have a quote to support that figure. However, in discussion, Q Ltd representative gave indications of likely price ranges for the company to organise the work, and for outside contractors to do the work. On the basis of that evidence, I accept that the amount BU is claiming is reasonable to repair the defect.

Conclusion

12. For these reasons Q Ltd is to pay BU the sum of \$4,500.00 by the date stated in the order.

Referee: K Rendall

Date: 5 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>.