



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 365

APPLICANT BX

APPLICANT Q Ltd

RESPONDENT QH

RESPONDENT HB Ltd

The Tribunal orders:

1. HB Ltd is joined as a respondent to this claim.
2. QH and HB Ltd are jointly and severally liable to pay to BX and Q Ltd as Trustees of the Q Trust the sum of \$5,465.94 on or before 29 June 2023.

Reasons:

1. The Q Trust owns land at [address], in [area].
2. In January 2020, BX, a trustee of Q Trust, and QH discussed an agreement for the lease of the land.
3. Rent was paid initially by HB Ltd.
4. Rent was not paid for August and September 2020 and had also been missed for two other months earlier in the year.
5. In November 2020, Q Trust entered into a new agreement to lease the land to a third party.
6. Q Trust is seeking \$6,983.32 which it says is the amount of rent due to it by either QH or HB Ltd.
7. The issues the Tribunal has to consider are:
 - a. What was the agreement regarding the lease of the land?
 - b. When did the agreement end?

- c. Is QH or HB Ltd liable to Q Trust in the amount sought of \$6,983.32 or any other amount?

What was the agreement regarding the lease of the land?

8. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce.
9. The parties agreed that there was nothing committed to writing in relation to the lease of the land. It was not disputed that the agreement was that the land would be leased on a month-to-month basis and the rent was \$1,820.83 per month. There was no agreement about the length of the term of the lease or what notice, if any, was required to terminate the lease.
10. The agreement between the parties was a short-term lease as defined under the Property Law Act 2007. ("PLA")

When did the agreement end?

11. While the parties did not discuss notice periods for the termination of the lease, the PLA contains some implied terms that apply to a lease such as this. Under s210 of the PLA, this lease could be terminated at will. That means no reason needed to be given by QH or HB Ltd as to why it wanted to end the lease and no specific notice period was required.
12. There was a dispute between the parties as to when the lease was terminated.
13. QH says the lease was terminated by him in June 2020. He says at the point he moved all his stock off the land and was no longer using it. He says he believed he made it clear to BX at an earlier meeting that if he could not get the rabbit problem under control, he would be unable to continue with the lease. He accepted some hay and a boat were still on the property after June 2020. He also accepted some sheep were visible on the property in photos taken by BX in July 2020.
14. QH said the hay was not his and belonged to another third party who had kept it there prior to QH taking over the lease. He said the boat belonged to another third party who may have asked QH if he could keep the boat on the property. He said that when he removed stock from the property in June 2020, there was some stock not accounted for and he did not know where they had gone. He believed they may have been stolen. He said the sheep visible in the photos may be the unaccounted for stock.
15. I am not satisfied that the agreement was terminated in June 2020. The account given by QH to the Tribunal is not consistent with text messages exchanged between the parties in 2020.
16. After June 2020, QH continued to communicate with BX about the lease. On 27 July 2020 he messaged BX stating "...was wondering weather (sic) we could catch up this week, I've got a few ideas that I'd like to run pass you regarding the lease block of yours..."
17. There then followed a series of messages between QH and BX regarding rabbit control on the property including measuring up for rabbit netting and discussions about the use of poison or gas to control the rabbits.
18. The messages exchanged are not consistent with the claim that QH and HB Ltd had terminated the lease and was no longer using the land. While stock may have been removed from the land, that does not mean it was no longer occupied by QH or HB Ltd.
19. On 23 September 2020, BX messaged QH to let him know that two rent payments had been missed and asking if there was a problem. QH replied the next day stating he had had a pretty tough couple of months and "...I've been unable to keep payment up, sorry I've lost close 20k on the lease so far, just because rabbits, so I will not be able too carry with it, at them prices sorry."

20. The cancellation of a contract does not take effect before the time at which the cancellation is made known to the other party or before the time at which the party cancelling the contract shows, by some clear means that is reasonable in the circumstances, an intention to cancel the contract or if it is not reasonably practicable for the cancelling party to communicate with the other party, or the other party cannot reasonably expect to receive notice of the cancellation because of that other party's conduct in relation to the contract. (*section 41 of the Contract and Commercial Law Act 2017 ("CCLA")*)
21. The cancellation may be made known by words or by conduct showing an intention to cancel, or both. It is not necessary to use any particular form of words, so long as the intention to cancel is made known. (*s41 of the CCLA*)
22. QH did not make his intention to cancel the contract known to BX until the 24 September 2020. I am not satisfied that his conduct prior to that showed an intention to cancel as he continued to communicate with BX about the property and in particular about rabbit control on the property. Some stock appeared to still be on the property in July 2020. Rent was also paid in July 2020 with no indication given by QH that this was for rent which was missed in March or May 2020. When BX enquired about the missed rent in September 2020, QH did not claim that he had already terminated the lease.
23. I am satisfied that the agreement ended on 24 September 2020 when QH made it known to BX that he could not carry on with it.

Is QH or HB Ltd liable to Q Trust in the amount sought of \$6,983.32 or any other amount?

24. Q Trust claims that the land was leased for a total of 9 months. It accepts that payments were made for five months. It says rent is due for four months which were not paid for apart from a \$300.00 payment made in February 2021. Q Trust says the amount due is \$6,983.32.
25. As there was no written contract, it is difficult to ascertain the start date of the lease. Both parties agree it was in January 2020, but no specific date is mentioned.
26. The Tribunal notes that the first payment was made on 20 January 2020. Evidence produced from QH shows some spraying and crop work being done after that date.
27. On the evidence before me, I find that the likely start date of the lease was 20th January 2020. Therefore, each monthly payment would pay up to 19th of the following month.
28. The lease ran from 20th January 2020 to 24th September 2020, that is a period of eight months and five days and not the nine months claimed by Q Trust.
29. Q Trust is entitled to rent for that period which at a rate of \$1,820.83 per calendar month amounts to \$14,870.09. ($8 \times \$1,820.83 = \$14,566.64$. $\$1,820.83 / 30\text{days} = \$60.69 \times 5 \text{ days} = \303.45 . $\$14,566.64 + \$303.45 = \$14,870.09$)
30. HB Ltd has paid Q Trust the sum of \$9,404.15.
31. That leaves a balance due to Q Trust of \$5,465.94.
32. I have to consider whether any of the other issues raised by QH should be taken into account when determining whether this amount is owed to Q Trust.
33. QH said the property was not fit for purpose because of the rabbit problem and that Q Trust had an obligation to control the rabbits on the property. QH says that the [Regional] Council places an obligation of landowners to control rabbits and Q Trust did not do that. QH stated that he and HB Ltd has never received an invoice and the document he did receive in December 2020 was not a proper tax invoice and not compliant.

34. I am not satisfied that there was an obligation on Q Trust to deal with the rabbit issue. BX said she had leased this property to farmers for over ten years and they always deal with the rabbits.
35. The [Regional] Council website has a section dealing with rabbits and states that “*land occupiers*” must control feral rabbits on their land. “*Land occupiers*” is defined as including a person who physically occupies the place, whether they own it or not. Reference is made to the Regional Pest Management Plan which at clause 3.3.1 refers to responsibilities of occupiers.
36. I am satisfied that QH and HB Ltd as occupiers of the land had primary responsibility of the control of rabbits.
37. There is no requirement on a lessor of land to ensure the land is fit for any particular purpose unless that is specifically discussed between the parties at the time the contract is entered into, and representations made in that regard. There was no such discussion between the parties here and there was no evidence that Q Trust made any representations about the land’s suitability for any purpose.
38. It was accepted by BX that she did not send any invoices to QH. She said she asked him at the start if he wanted a monthly invoice and he said no. QH denied that and said he wanted everything formalised and in writing.
39. I find it more likely than not that QH did not require an invoice. There is no evidence that he asked at any stage for one to be provided. Rent was paid for the first two months without an invoice being issued and there is no evidence that one was requested.
40. I am not satisfied that the absence of an invoice absolves QH or HB Ltd of the obligation to pay the rent.
41. Nor do I accept any of the issues raised in the written submissions about the format of the invoice absolve QH or HB Ltd of the obligation to pay rent. BX advised that the Trust is not GST registered and so there was no requirement for any invoice or statement to make reference to GST. It is likely that the document created by BX has been incorrectly described as a tax invoice. The notation describing the payment of rent as credits could be handled differently. However, overall, I am not satisfied that any of those issues absolve QH or HB Ltd of the obligation to pay the agreed rent on the land. There was no agreement that rent would only be paid on receipt of an invoice.
42. QH states that he and HB Ltd lost approximately \$20,000.00 on this farm venture. He says he had an agreement with the original lessor regarding the grazing of stock which that person did not continue with. He also says that the effects of Covid-19 had disastrous consequences for him financially and then personally. While I have heard what QH has had to say about these issues, I am not satisfied that any of these are the fault of Q Trust and nor do they absolve him of his contractual obligations to pay the agreed rent.
43. The claim was initially brought against QH in his personal capacity. BX said that was because she only ever dealt with QH and was not aware of the existence of HB Ltd until she received rent payments from that company. Likewise, QH believed he was dealing with BX and was not aware that he was renting the property from Q Trust.
44. QH was acting as an agent for HB Ltd. He negotiated and entered into the contract with BX and Q Trust. At the time the existence of HB Ltd was not disclosed to BX or Q Trust. It was only when HB Ltd started paying the rent that the existence of the company became known to Q Trust and BX.
45. The doctrine of an undisclosed principal applies here. Where an agent enters into a contract on behalf of another third party and does not disclose that to the other contracting party at the time the contract is made, both the agent and the principal can be found liable for any breach of contract.

46. For that reason, both QH and HB Ltd are liable to Q Trust in relation to the rent owed.

47. QH and HB Ltd are jointly and severally liable to pay Q Trust the sum of \$5,465.94 on or before 28 June 2023.

Referee: P Byrne
Date: 8 June 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>.