



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 17

APPLICANT CA

RESPONDENT DX

**SECOND
RESPONDENT OX**

**APPLICANT'S
INSURER CJ Ltd**

The Tribunal orders:

DX and OX are to pay to CA the sum of \$1,015.15 on or before 15 March 2023.

Reasons:

1. CA was the owner of a cat named Oliver.
2. DX and OX were the owners of a dog named Buddy.
3. The parties lived in properties that shared a common boundary at the back of the property.
4. On 16 October 2022, Buddy was found in the garden of CA. Oliver had suffered injuries and was taken to the vet. Buddy was taken and handed over to the animal control section of District Council ("DC").
5. Sadly, Oliver was not able to survive his injuries and had to be euthanised later that day.
6. DX and OX were contacted by DC in relation to Buddy. Following on discussions with DC, DX and OX made the decision to have Buddy euthanised. Buddy was euthanised later that week.
7. CA forwarded the vet costs to DC to be passed onto DX and OX.
8. DX and OX were advised by DC that as the decision had been made to euthanise Buddy, the Council would not be taking any steps to prosecute DX and OX and DC's involvement in the matter was at an end.
9. CA is seeking an order for \$4,999.00. She said that figure was made up of the vet costs, costs of having Oliver cremated and an ashes box, mileage for travelling to and from the vets, one day's

pay taken by way of sick leave, time spent on 16 October 2022 dealing with the matter, an insurance premium that was not refunded, mental distress and the Disputes Tribunal filing fee.

10. The issues the Tribunal has to consider in this matter are:

- a. Are DX and OX liable for any damage caused by Buddy?
- b. If yes, is CA entitled to the amount sought of \$4,999.00 or any other amount?

Are DX and OX liable for any damage caused by Buddy?

11. The relevant law on this issue is the law of negligence and the Dog Control Act 1996. ("DCA") Section 5(b) and s52 of the DCA places an obligation on dog owners to ensure that the dog is kept under control at all times.
12. Section 52(2) of the DCA means that a dog is deemed to be not under control if it is found at large on any land or premises, other than a public place or a private way, without the consent (express or implied) of the occupier or person in charge of that land or those premises.
13. On 16 October 2022, Buddy was found on the land of CA without her consent. The properties are fenced, and it is likely that Buddy had jumped or somehow managed to get over the fence. This had happened on one previous occasion.
14. Buddy was not under control at the time the damage was caused.
15. Section 63 of the DCA sets out that the owner of a dog is liable in damages for damage done by the dog. There is no requirement under the DCA for the person seeking damages to show a previous propensity on the part of the dog to act in such a way. While I appreciate the comments made by DX and OX about Buddy's friendly nature for example with children and in general, they are not matters I can take into account when determining liability in this claim.
16. DX and OX told the Tribunal that part of the reason they have not paid anything to CA was because they were told by DC that they were not liable for the vet bill.
17. From what the Tribunal was told, and an email produced from DC, it appears that DC decided not to prosecute DX and OX once Buddy was euthanised. That, however, does not affect CA's right to seek compensation for damage caused by Buddy before this Tribunal. The email produced from DC states that the matter was now between the parties involved and DC would not be getting involved in further discussions including payment agreements. This email does not state that DX and OX were not liable for the vet bill.
18. As it was accepted by all parties that Buddy caused damage to Oliver, DX and OX as owners of Buddy are liable for the damage caused.

If yes, is CA entitled to the amount sought of \$4,999.00 or any other amount?

19. An owner is liable for damage caused by a dog. Damage can include both the immediate physical consequences and reasonably foreseeable consequences.
20. I will deal with each of CA's claim for damages in turn.
21. CA originally sought to claim the total vet bill of \$2,990.20. At the first hearing in this matter, CA confirmed that she did have insurance for Oliver and her insurance had covered \$2,242.65 of that bill. CA was seeking to claim the balance of \$747.55 from DX and OX.
22. CJ Ltd was joined as a party to this claim. It confirmed in an email to the Tribunal that it had paid CA \$2,242.65 in respect of the vet bill and was not seeking to recover that from DX and OX.

23. I am satisfied that the vet bill was incurred as a result of the immediate physical damage caused by Buddy to Oliver. DX and OX are liable to CA for the vet bill. However, as CA had already received a payment from CJ Ltd for a large portion of the vet bill, she is only entitled to the amount that she has not been able to recover on her insurance. That is a sum of \$747.55. That is her loss in respect of the vet bill, and she is entitled to be compensated for that.
24. As CJ Ltd did not wish to pursue a claim for its loss, I make no order in respect of that amount paid to CA by CJ Ltd.
25. DX and OX are liable for \$747.55 for the vet bill.
26. CA sought \$250.00 for the cost of having Oliver cremated and an ashes box. She said she was given an option of a more expensive rimu box, but she chose the less expensive box. An invoice was produced from the vet for this cost, and it was not covered by insurance.
27. I find that the cost of having Oliver cremated and an inexpensive ashes box is a reasonably foreseeable consequence of the damage caused by Buddy. I appreciate that DX and OX were unable to pay a similar cost for Buddy once he was euthanised. However, that does not affect the position that as owners of Buddy, DX and OX remain liable for the damage caused by him.
28. CA is entitled to \$250.00 for the costs of the cremation and the ashes box.
29. CA claimed mileage of \$17.65 for travel to and from the vets on 16 October 2022 and \$8.80 for travel to collect the ashes box on 23 December 2022.
30. I find that the claim for travel on 16 October 2022 was reasonably foreseeable. CA found herself in a position where she had to urgently bring Oliver to the vet for immediate treatment. The amount claimed is in accordance with the Inland Revenue mileage reimbursement rate of \$0.83 per km for two 10.6 kms return trip. That is 21.2kms @ \$0.83 per km which is \$17.60. I allow that amount.
31. I do not allow the amount claimed for the collection of the ashes box in December 2022. That was not a trip that was required with urgency and CA could have arranged to collect Oliver's ashes at a time when she was carrying out other errands in that area.
32. CA sought \$40.26 for an insurance premium paid on 28 October 2022. She said she was unable to get that refunded from her insurance company. I am not satisfied that is a reasonably foreseeable loss arising out of the damage caused by Buddy. CA had insurance on Oliver and has received a payment from her insurance company. Once Oliver was deceased and insurance was no longer required, the automatic payment could have been halted. While the Tribunal understands that CA may have had other matters on her mind at that time, I am not satisfied that is a cost DX and OX are liable for.
33. CA sought \$250.00 for one day of sick leave on 17 October 2022 and \$154.41 for time spent dealing with this matter on 16 October 2022.
34. I am not satisfied that it was reasonably foreseeable that if Buddy caused damage to Oliver that DX and OX would have to pay for CA's sick day or time dealing with the matter.
35. CA had a sick day approved by her employer and she received payment for that day. There is insufficient evidence before me that she suffered any financial loss as a result of that, such as later having insufficient sick days to take at other times. DX and OX are not liable for this amount claimed.
36. I am not satisfied that CA can claim, as she has sought to do, an hourly rate for time spent dealing with this matter on 16 October 2022. CA was not working on this day and did not have to take time off work to deal with this matter. She has not suffered any financial loss in relation to the time she spent dealing with this matter. DX and OX are not liable for this amount.

37. CA sought \$1,157.43 for mental distress. She said the incident was very emotional for her and she still has issues dealing with it. It was evident during the hearing that this entire incident has had a huge impact on CA. The claim for \$1,157.43 was for possible future costs of attending counselling in relation to this incident. CA says she has not attended any such counselling as yet but plans to do so in the future. She said she was only asking DX and OX to pay this amount, even though the counselling may cost her more than this amount.
38. It may be reasonably foreseeable that if a dog causes damage to another animal there will be emotional distress. However, I am not satisfied that it is reasonably foreseeable that psychological counselling will be required. Nor has any such counselling taken place as yet. I note that this incident occurred in October 2022. At the time of this hearing in February 2023, CA had not sought any form of professional counselling or assistance in relation to the matter. She has therefore not suffered any financial loss in relation to this. I am not satisfied that DX and OX are liable for these costs.
39. I acknowledge that DX and OX have also had to make the difficult decision to euthanise Buddy. They also told the Tribunal of the effect this entire incident has had on them and their young family, in particular one of their daughters. While the DCA places the liability on DX and OX as owners of Buddy, they too have suffered significant consequences as a result of this incident.
40. The Tribunal notes that OX operates a small cake making business. In late November. CA accepted that she posted a one star review on Google in respect of OX's business and left a negative comment online about it. CA accepted she had never purchased any item from OX's business.
41. While this was not part of any claim before me, CA stated at the hearing that the comment had already been removed and she would, after the hearing, remove the one star rating. The Tribunal cannot make any order in this regard, but the Tribunal notes CA's promise to remove the one star rating and encourages her to do so as soon as possible.
42. CA sought \$90.00 for the Disputes Tribunal filing fee. Section 43 of the Disputes Tribunal Act 1988 ("DTA") means that costs cannot be awarded against a party to a Tribunal hearing except in certain circumstances. I am not satisfied that any of the exceptions as set out in s43 of the DTA apply. I cannot, therefore, make any award in respect of those costs.
43. DX and OX are to pay to CA the sum of \$1,015.15 on or before 15 March 2023.

Referee: P Byrne
Date: 21 February 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>.