



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 333

APPLICANT CE

RESPONDENT FG Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

Introduction:

1. CE and FG Ltd entered a contract in July of 2022. FG Ltd was to install a laminate floor in CE's house. The laminate was to sit on top of the existing concrete floor. The total cost was to be \$3835.80.
2. The work was not completed by the due date being the 5th of August 2022. CE thought that the work that had been done was substandard and he contacted BG, the owner of FG Ltd.
3. FG Ltd attended on at least four occasions to try to fix the problems CE had identified.
4. In January of 2023, CE emailed BG wanting to cancel the contract. He asked for a full refund of the deposit and for FG Ltd to uplift the floor and take it away.
5. BG offered to vary the contract. FG Ltd could complete the remedial work with payment on completion or supply CE with the materials to complete the work at no cost and apply a \$700.00 discount to the total price. The parties agreed on a discount of \$800.00, CE would accept the materials to complete the work and engage another installer to complete the work.
6. CE engaged another installer to complete the work.
7. CE is claiming a full refund of \$3,835.80 because he has been told that the flooring must be taken up and started from scratch.

Issues:

- a) Was the failure of the flooring substantial and did this allow CE to cancel the contract?
- b) Did the parties agree to vary the contract when CE accepted supplies to complete the flooring and an \$800.00 discount?
- c) Is CE entitled to cancel the contract and get a refund of \$3035.80?

Was the failure of the flooring substantial and did this allow CE to cancel the contract?

8. The Consumer Guarantees Act 1993 implies terms into contracts in New Zealand to ensure that the providers of services meet a guarantee of reasonable quality and skill in the provision of services to consumers. If the service does not meet that guarantee, the consumer may have a remedy.
9. The floor to be provided was to be a laminate floating floor and was to be installed in the kitchen and the entrance foyer.
10. CE produced photographs in evidence that he said showed careless workmanship. In the photos there were walls that were left with black marks, areas where the flooring did not meet the wall, excessive silicon and the underlay was put down the wrong side up. He showed a video of flooring in the foyer area where a person pushing down on the flooring with their foot caused the flooring to sink in a way that was clearly visible. CE thought that the movement in the floor was about 5mm.
11. CE said that the products used were fine, the problem was with the installation. He said the first FG Ltd staff on the job had only been doing the job for a couple of weeks.
12. CE did concede by the 12th of August he was happy with the work in the kitchen and the problem was the foyer entrance.
13. BG said that he had over 20 years in the flooring business. He agreed there were some issues and FG Ltd attended 5 times in total to remedy them.
14. BG said that he did the work CE had asked him to do, though he considered the need for it to be marginal. The movement in the floor was within tolerance for laminate, being 3mm. He conceded that the movement seen in the video was excessive but said the work required to remedy it was minimal.
15. In respect of the underlay being laid the wrong side up he said the underlay could have been laid either way. The way his team had laid it met his expectations. This was because the green material provided a barrier against moisture when placed against the concrete.
16. CE had another installer come in to complete the work. He was told that they could patch it up but that because the floor had not been prepared properly it would likely start to show problems within a couple of years.
17. The installers did not provide any written report for the tribunal and when asked, CE said they would not give evidence over the phone.
18. BG disagrees strongly with the evidence given. The evidence cannot be tested and the weight to be given to the evidence must be considered accordingly.
19. In the absence of clear evidence that the defects were substantial, I find it has not been proven defects could not be remedied either by FG Ltd or by another installer.

Did the parties agree to vary the contract when CE accepted supplies to complete the flooring and an \$800.00 discount?

20. CE agreed to a variation of the contract proposed by BG. The variation failed when CE was told by the new installers that the floor would have to be ripped up and started over because there had been a lack of preparation by the previous installers.
21. CE was aware there were failures in the work when he agreed to the variation but was not aware of the extent of the failure as described by the installer he had engaged.
22. BG was adamant that the work required to remedy the failure was quite minor.

23. I find there was a variation to the contract that was agreed to by the parties.

Is CE entitled to cancel the contract and get a refund of \$3035.80?

24. The original claim was for a full refund of all money paid by CE being \$3835.80.

25. CE affirmed the contract when he agreed to the variation. I find CE is not entitled to a refund.

26. The claim against FG Ltd is dismissed.

Referee:
Date:

Verdun Tawhara
13th day of 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>.