



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 640

APPLICANT CN

RESPONDENT NK

The Tribunal orders: NK is ordered to pay CN the sum of \$2,504.59. Payment of this sum is ordered no later than 6 December 2023.

Reasons:

- 1) In December 2022 the applicant bought a motorhome from the respondent. This was advertised on [online] marketplace. The price paid was \$83,000.00.
- 2) There were 2 pre-purchase inspections arranged by the applicant. In one of these pre-purchase inspections, it was noted that the temperature dial on the dashboard was “broken.” The van’s heating/air conditioning system would only blow cold and not hot air.
- 3) The respondent informed the applicant that the van’s “stepper motor” would need to be replaced in order for the heating issue to be resolved. The respondent would arrange the replacement stepper motor but that would not arrive in time for the settlement of the sale and purchase. As a result, the parties agreed to a deduction of \$200.00 from the purchase price.
- 4) The applicant says the stepper motor was not the cause of the heating issue. She had to arrange repairs to resolve this problem at a cost of \$3,120.99.
- 5) CN states that there have been other issues with the van since its purchase. A wheel alignment had to be arranged and a new tyre fitted. The battery (January 2023) had to be replaced. The throttle “seized.” The fridge in the van is not “cold enough.”
- 6) The respondent says that he sold the van in “good faith,” and followed a ‘transparent’ process. This was a private sale with no guarantees, or warranties. He believed the provision of a stepper motor would resolve the problem referred to above. The van underwent considerable travel before the applicant raised certain of the issues of concern to her. The fridge was “functional for internal use for food.”
- 7) The relevant law is the Contract and Commercial Law Act 2017. The issues to be determined by the Tribunal are:
 - a) Was there a misrepresentation or breach of contract by the respondent?
 - b) If so, what remedy is the applicant entitled to?

- 8) This was the private sale of a second-hand good. The laws that provide for guarantees or warranties with respect to good sold by businesses do not apply here.
- 9) A misrepresentation is a false or inaccurate statement made by one party to a contract (with respect to, in this context, the condition of a motorhome) to the other party. Where the party to whom the misrepresentation is induced to enter into the contract by the misrepresentation, that party may be entitled to compensation.
- 10) It is clear from the totality of the communications between the parties, at the time that their contract was formed, that the respondent sold the van on the basis of a) an acknowledgement that there was a problem with its heating/air conditioning system and b) a representation that this issue would be resolved by the installation of a replacement stepper motor. The applicant proceeded with the purchase with these expectations, and understandings.
- 11) As it transpired, the stepper motor was not the source of the problem. Reasonably substantial remedial work was, in the event, required as set out in the invoice of [auto mechanic] dated 8 August 2023.
- 12) There was a misrepresentation, although I accept that this was entirely 'innocent,' in the sense that, as stated, NK, honestly, on advice, believed that a replacement stepper motor would remedy this problem. As is also stated, this was not the case. Notwithstanding the respondent's agreed 'transparency,' he is liable to compensate the applicant for the reasonable costs incurred to properly rectify the heating/air conditioning system.
- 13) The [auto mechanic] invoice is for the sum of \$3,120.99. However, this includes (8 months after the sale) \$616.40 GST inclusive to 're-gas' the system. I consider this to be a normal maintenance cost which should not have to be borne by the respondent-seller. I will, therefore, allow the amount of this invoice, less the re-gas cost, which is net, \$2,504.59.
- 14) The applicant's claims with respect to the battery and wheel alignment also relate, in my view, to normal maintenance aspects which should not be the responsibility of the seller. I come back here to the point made above that this was the private sale of a second-hand vehicle. The applicant cannot expect the protections that may arise post-purchase in the situation of a sale by a trader.
- 15) As regards the fridge, there is no evidence, for example, a report from someone suitably qualified, that this is not working properly. The claim under this heading is dismissed. Finally, no evidence has been put forward in support of the claim with respect to a 'seized throttle.'
- 16) In the result, the respondent will be ordered to pay the applicant the sum of \$2,504.59 [see paragraph 13) above].

Referee: G.P.Rossiter

Date: 17 November 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>.