



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 703

APPLICANT CQ

RESPONDENT LM

The Tribunal orders:

LM is to pay CQ the sum of \$421.43 by no later than 19 January 2024.

Reasons:

1. In April 2023, CQ rented a sleepout from LM following cyclone damage to his [Suburb] home. The sleepout had one open room with bathroom, laundry and kitchen facilities in the main house. Kitchen and laundry facilities were shared with LM. The agreement was for CQ to pay \$295 per week in advance, and a bond equivalent to two weeks rent.
2. CQ gave LM notice he was going to leave on 10 August, and left on 16 August. CQ's last rental payment was on 7 August, paying rent up to 13 August.
3. When giving notice, CQ asked if he could leave his bed in the sleepout "*until he arranged a mate with a van to retrieve it*". LM responded "*thanks for letting me know. Will catch up with you this weekend*".
4. On 27 August, LM asked CQ to remove the bed as she had someone else wanting to move in. CQ removed the bed and asked for his bond back, however the parties disagreed on how much bond should be returned. CQ therefore claimed in the Disputes Tribunal for a refund of the full amount paid. It is for the Tribunal to determine if CQ is entitled to a refund.

Is CQ entitled to a refund of the bond?

5. As facilities were shared with LM, CQ is deemed to have been a flatmate. In a flatting situation such as this, a bond is generally paid to cover unpaid rent and expenses, and any damage to the property. Flatmates usually agree beforehand on such terms, and on the notice required.
6. CQ does not recall a notice period being stipulated however LM stated she asked for one weeks notice. As flatmates generally give between one and two weeks notice, I find that to be reasonable.
7. CQ claimed he told LM's son, XX, at the end of July that he intended to leave, however he did not give XX a date. As CQ's contract was with LM, not XX, and as he did not have a date to vacate until he gave LM notice, I find notice was given on 10 August. As one weeks notice was required from that date, rent should have been paid up to and including 17 August.

8. LM initially offered to refund one weeks rent from the bond, however now considers the full bond should be withheld as CQ left the bed in the sleepout until the 27th and retained a key.
9. I have considered whether or not rent should be paid until the 27th when the bed was removed, however I find there is no evidence LM made it clear the bed could only remain if CQ continued to pay rent until it was removed. If she had made it clear, CQ could have made alternative arrangements. I have also reviewed the texts dated 30 August, which indicate it was not LM's intention to charge rent until the 27th.
10. In view of the above, I find rent was payable up to 17th of August only. CQ paid up to and including the 13th, meaning he has shortpaid 4 days rent, being \$168.57. I find it reasonable to deduct this amount from the bond held and order the balance of \$421.43 be refunded.

Referee: DTR Edwards
Date: 16 December 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>.