



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 731

APPLICANT D Ltd

RESPONDENT M Ltd

The Tribunal orders:

M Ltd is to pay D Ltd \$1,776.06 within 30 calendar days of the date of this order.

Reasons:

1. During 2022 and 2023 D Ltd provided cleaning services for M Ltd. M Ltd complained several times to D Ltd about the quality of the cleaning that was being provided.
2. In early 2023, D Ltd was purchased by a new owner. D Ltd's new owner requested that M Ltd give them another chance to provide the cleaning services. M Ltd agreed but after some time was still unhappy with the service being provided by D Ltd's cleaner.
3. M Ltd then terminated D Ltd's cleaning contract and hired another cleaning company. D Ltd sent through their final invoices for work completed, but M Ltd refused to pay the invoices for the last 2 months and 1 week of cleaning services on the basis that the service provided to M Ltd were not adequate.
4. D Ltd now claim the total of \$3,552.12, the amount of the unpaid invoices, from M Ltd.
5. On 1 November 21, D Ltd's new owner visited the premises and was showed the cleaning tasks that were required. M Ltd told him they were fed up with the poor standard of cleaning that was being provided, and that they were about to find a new contractor to take over. D Ltd's new owner NN asked for another chance to complete the cleaning to a satisfactory standard. M Ltd agreed to this to give D Ltd another opportunity to improve the service.
6. At the hearing on 19 October, both parties submitted evidence to the Tribunal. M Ltd submitted photographic evidence of the results of the cleaning carried out by D Ltd, as well as email evidence of correspondence between the parties where M Ltd has made successive complaints about the standard of cleaning. For example, on the 9th February 2022, evidence shows that M Ltd complained that the cleaning was not satisfactory and D Ltd agreed to speak to the franchisee and put in place a monthly audit.
7. Despite this, the evidence shows further complaints from M Ltd on 31 March and 14 April 2022. The photographic evidence from 4 May 2021 provided clearly shows dirt visible in a number of areas after the clean. M Ltd at the hearing described the cleaning as 'disgusting' and 'neglected.' The complaints were acknowledged by D Ltd and a better standard of again work promised by D Ltd. Around this time questions were also raised by M Ltd around the number of

hours spent on cleaning. When asked, D Ltd said they worked for 10 hours per week, but security data showed only 6 hours access to the centre. D Ltd claimed this was because 2 cleaners, not one, were doing the work. On this matter the evidence is not clear as to what the actual situation was.

8. On 9 and 10 May further follow up invoices were sent to D Ltd asking for a discussion about the cleaning standard. Eventually, M Ltd found and contracted another cleaner and D Ltd's services were terminated.
9. There was a contract between M Ltd and D Ltd regarding the cleaning services. The contract was for a 12 month period with a rollover clause. The contract, which survives the ownership of the two named companies by different purchasers, states at clause 13:

In the event that the Cleaning is substandard and the Client has notified us, D Ltd has the opportunity to change the franchisee. If the Client is still not happy with the services provided, they must give D Ltd 3 months' notice to terminate.

10. If a term of a contract is deemed by the Tribunal to be 'harsh or unconscionable,' the Tribunal has the power to vary the agreement or contract. I consider this clause to be unduly harsh and unconscionable under the circumstances and therefore vary the agreement to exclude the requirement for 3 months' notice for termination. M Ltd notified D Ltd on numerous occasions that the cleaning was sub-par, and that cleanliness and hygiene was especially important for a daycare centre. D Ltd had ample opportunity to rectify the situation, but they did not.
11. D Ltd carried out the 2 months and 1 week worth of cleaning services that M Ltd have so far refused to pay for. M Ltd allowed them to continue the work for that period even though they were not happy with the standard of the work. Excluding the effect of the aforementioned clause 13, while Clause 12 of the contract requires a 2 month notice period prior to the termination of the contract, I consider because M Ltd gave D Ltd no notice before terminating yet continued using their services, that a fair and just outcome is that M Ltd pay for 50% of the amount claimed by D Ltd. M Ltd is to pay D Ltd \$1,776.06.

Referee: Kaho

Date: 13 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>.