



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 541

APPLICANT DC

RESPONDENT MDC

The Tribunal orders:

MDC is to deliver DC's house keys to her letterbox at the agreed address by Thursday 12 October 2023; and

The balance of the claim is dismissed.

Reasons

1. DC and MDC are estranged family members, whose mother was seriously ill before passing away in late October 2022. Before her death their mother was living with MDC and family, and the household fridge failed.
2. In late September 2022 DC transferred \$1200.00 to MDC's account for the purpose of purchasing a new fridge. There was no discussion at that time about return of the fridge to DC or repayment of the amount transferred. A fridge was purchased and it remains at MDC's address.
3. DC's claim is for return of the fridge or payment of the \$1200.00 and also for the return of her house keys (which had been in her mother's possession when she died). MDC confirmed that they were found in her mother's handbag and given to DC's father, and that they are currently in his room at MDC's house. She has agreed to return these to DC's letterbox by the middle of next week and DC is happy with that solution.
4. The issue remaining to be determined is whether the fridge was a gift or a loan. DC says that the fridge was always hers and was for the use of her mother and father while her mother was alive and needed it for her medication.
5. MDC says that she had initially declined the offer of money from DC to purchase a fridge but DC showed her a bank account with savings in it from her brother's estate in an effort to convince her to accept the payment. She says she understood the money to be a gift, that DC was purchasing a fridge for their household because they needed one. MDC's husband as a witness, says several weeks after the fridge purchase, MDC offered to repay the fridge money and DC declined the offer.
6. MDC says further that no request for payment/s or return of the fridge or any mention about ownership of the fridge was made until after DC had exhausted all attempts to gain possession of one of her mother's rings after her death. Her mother did not leave a will and, after her

death, the rings went to the eldest daughter O and a dispute arose with DC about that. The police became involved and DC eventually accepted that she had no legal right to a ring. MDC believes the claim for the fridge is retaliation following the ring dispute.

7. When loans are made to family members or friends, usually there is some kind of discussion about repayment amounts or timeframes, even if that is as loose as 'pay when you can'. There is no evidence that there was any discussion of that kind in this case. Although the money was transferred to MDC's account, it had a clear intended purpose which was to purchase a fridge for the household in which DC's dying mother was resident. DC had reconciled with her mother in the months before her death and she wished to contribute to her wellbeing.
8. In this context, and in the absence of any evidence that a loan was intended or that DC intended to have ownership of the fridge (in which case she could have purchased it herself and had it delivered to MDC's household for her mother's use), I find that the fridge was most likely a gift, either to her mother, in which case it later became part of her mother's intestate property, or to the household generally. Either way, DC cannot succeed in her claim to have either the fridge delivered to her or to have the money she transferred for it paid to her.

Referee Perfect

Date: 5 October 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>.