



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 399

APPLICANT DF

RESPONDENT H Ltd

The Tribunal orders:

1. The claim by DF is dismissed.
2. LH is removed as the respondent party and H Ltd is added as the respondent party.

Reasons

1. In June 2023, DF's family stayed for one night at the [accommodation provider] operated by H Ltd. A charge of \$179 for the accommodation and an additional charge of \$120 for cleaning was made.
2. On arrival at the property at approximately 9.30pm, DF's family noticed ants on the skirting board in the kitchen and a cockroach on a kitchen drawer.
3. DF contacted H Ltd who was unable to come over as they were an hour and a half away, and who advised that they could not get a cleaner out due to the lateness of the hour. They advised that there was insect spray in the kitchen cupboards,
4. DF's family used the spray which resolved the issue of the ants and the cockroach, however DF felt that more assistance should have been available, such as someone to come and deal with the insects at the time.
5. DF initially claimed for a refund of both the accommodation cost and the cleaning charge, but at the hearing wished only to pursue a claim for the \$120 cleaning charge as she says the property was not clean for her family.
3. At the hearing there was a preliminary question raised about whether the correct party was named as a respondent. The claim had been brought against LH personally, but it was agreed that the correct respondent party is H Ltd, the owner of the [accommodation provider] property. Accordingly, I order that LH is removed as the respondent party and H Ltd is added as the respondent party.
6. The issues to resolve this claim are:
 - a. Were the accommodation services fit for purpose? In other words was it acceptable that there were insects in the property and these were not dealt with by the property owner?

b. If not, what is the remedy to which DF is entitled?

Were the accommodation services fit for purpose?

7. No concerns were raised about any other aspects of the accommodation, other than that on arrival, there were a number of ants along the skirting board and a cockroach on the front of one of the kitchen cabinet drawers.
8. Obviously, this was an unpleasant sight for DF's family to encounter upon arrival at their accommodation. however, I do not find that this means the accommodation was not fit for purpose for the following reasons:
 - a. The insect infestation was of a relatively small scale and was in a very confined area.
 - b. The property allowed for seven people to sleep, and therefore the affected area relative to the total size of the accommodation was minor.
 - c. The insect problem was resolved upon the single use of the insect spray, and they were not seen further by DF's family.
 - d. LH had checked the property the day before and there is no evidence of any insects. She also came the next morning to address any concerns, but there was no evidence of the insects again. LH stated that they had not had any experience of ants previously.
 - e. It does not appear that the insects caused any significant disturbance to DF's family enjoyment of their stay.
 - f. Although no-one on behalf of H Ltd came to the property at 9:30pm when the insects were noted, the fact that H Ltd did answer the call, had spray available on the property that could be used to address the problem, and that LH promptly attended the next morning, all show reasonable attempts to deal with DF's concerns on behalf of her family.
9. For these reasons, I conclude that the accommodation was fit for purpose.

If not, what is the remedy to which DF is entitled?

10. As I have found that the presence of ants and a cockroach in the property was not a problem which meant these services were not fit for purpose, this question does not need to be answered

Referee: S Simmonds
Date: 7 September 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>.