



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 177

APPLICANT DF

RESPONDENT Q Ltd

The Tribunal orders:

Q Ltd is to pay \$475.59 to DF on or before 5 May 2023

REASONS

Brief Details of Claims

1. On 14 January 2021, DF engaged Q Ltd to manage the rental of her home at [Address] while she was away working in [Country]. A Portfolio Management Agreement was signed by both parties. DF home was fully furnished and her belongings were left in the property and garage. DF provided QK (Q Ltd) a comprehensive chattels list. Part of the agreement was that Q Ltd would choose tenants who were agreeable to feeding and caring for DF two cats. QK was to buy cat food when required and deliver it to the tenants, the cost of the food to be deducted from rental income.
2. DF returned and took possession of her house on 10 January 2023 and noticed that items were missing or damaged. QK contacted the last of the three tenants, who returned some items inadvertently packed by his removers. However, a number of items are still missing.
3. DF claims that Q Ltd failed to properly inspect the chattels and failed to carry out a full final inspection at the end of the last tenant's tenancy.
4. DF claims a total of \$2,550.00 from Q Ltd to compensate for the cost of the missing and damaged items, plus \$72 for 6 trips to [Town] to buy replacement goods, plus \$45 Tribunal filing fee.
5. Q Ltd claims \$629.36, being \$579.36 for 24 trips to the supermarket and to deliver cat food to the tenants and \$50 for 2 hours of Q Ltd's EF's time helping DF sort her belongings in the garage.

Issues

6. The issues for the Tribunal to consider are:
 - (a) Whether Q Ltd failed to provide its service to DF with reasonable care and skill.
 - (b) If so, whether DF is entitled to compensation and if so, how much
 - (c) Whether Q Ltd is entitled to travel costs to feed the cat and for EF's time.

Has Q Ltd failed to provide its service to DF with reasonable care and skill?

7. I am satisfied that the Consumer Guarantees Act (CGA) applies to this contract because a property management service while a home owner is out of the country for work is a service that would be ordinarily acquired for personal use (S.2 CGA).

8. There is a guarantee in the CGA that a service provided to a consumer will be carried out with reasonable care and skill (S.28 CGA).
9. I find that Q Ltd did not provide its service with reasonable care and skill for the following reasons:
 - (a) DF was asked for and provided a chattels list. DF could reasonably infer that Q Ltd required the list as part of its management agreement.
 - (b) The Residential Tenancies Act (RTA) provides that a Tenancy Agreement contain minimum information, which includes a list of any chattels provided by the landlord (S.13A(12)(o) RTA.
 - (c) Taking into account the above, I am satisfied that having accepted the management of a fully furnished house, and being provided with a chattels list, a property manager exercising reasonable care and skill would include the chattels list as part of the Tenancy Agreement and have a responsibility to make a reasonable inspection of the chattels during the management period.
 - (d) QK said she provided the chattels list to the tenants of the first two tenancies but not to the tenant of the third tenancy. QK said that the chattels list was not provided as part of the Tenancy Agreement for the first two tenancies. QK did not check the chattels list during or between tenancies or at the end of the final tenancy, other than to make a visual inspection of the larger furniture items in the tenancy.
 - (e) QK considered she did not have a responsibility for the chattels, and would not have taken on the management of the property had she known this was expected of her, because the chattels list contained over 600 items.
 - (f) However, QK did take on the management of the property. If she did not consider she had responsibility for the chattels, after asking for and receiving a chattels list, a careful person in QK's position would have had a conversation with DF about expectations in relation to chattels. However this did not happen. As a result, DF reasonably believed the chattels were part of the management agreement.
 - (g) Q Ltd took a Bond for each of the three tenancies. Because of the failure to include the chattels list in the Tenancy Agreements and because there was little focus on chattels during Q Ltd's property inspections, DF lost an opportunity to recover, or attempt to recover, costs of missing or damaged items from any of the tenants who may have been found responsible for the loss or damage.

Is DF entitled to compensation and if so, how much?

10. Time cannot be wound back. Where there has been failure to comply with the guarantee as to reasonable care and skill, and the failure is one that cannot be remedied (as this failure cannot), a consumer is entitled to claim compensation for loss or damage resulting from the failure (S.32(b) and (c) CGA).
11. The chattels list was very comprehensive and contained over 600 items, many of which could not reasonably be accounted for at each inspection. A property manager cannot reasonably look in every cupboard and draw without risk of interfering with a tenant's privacy. In addition, trying to account fully for every item on the chattels list is not reasonably possible given that tenants also had their own belongings and furniture in the premises.
12. Therefore I have not allowed DF claims for the loss of a number of items such as duvets, a pillow, a basket, a free standing toilet roll rod, the lid of a black bin, 7 towels, 4 facecloths, 2 pillow cases, single bedding and a cat feeder. I have deducted the claim for a shelf, as it is likely to be found stored under the single bed. I have not allowed the claim for a glass table that was broken when it blew over on the deck in wind.
13. I have not allowed the claim for items that were not included in the chattels list. Having received a comprehensive chattels list, Q Ltd was entitled to consider it complete and cannot reasonably be found responsible for noticing items were present in the premises but missing from the chattels list, given the amount of furniture and belongings left in the premises.
14. However, furniture items ought reasonably to have been inspected for condition and accounted for. I find these items to be two bedside lamps, a desk, an office chair, two mats by the fold outdoor, a

swivel chair, two black stools, a BBQ and cover, a BBQ gas bottle two deck chairs, a weedwacker. These items were either missing, damaged, or had been thrown away by the final tenant without the prior knowledge of Q Ltd or DF. The total DF has claimed for replacing these items is \$1,422.

15. However, the items were not new. Although the age of each of the items is not known, I find the reasonable loss to DF is 60% of that amount, being \$853.20.
16. Q Ltd's failure to include the chattels list with the Tenancy Agreements, and a failure to make a reasonable inspection of the chattels between tenancies, and at the end of the final tenancy, has denied DF the opportunity to recover the cost from the tenants. Therefore I find Q Ltd liable to pay compensation of \$853.20.
17. I have not allowed the claim for \$72 for travelling to [Town] to buy replacement items. This is a cost that is unlikely to have been recoverable from a tenant, had a tenant been required to compensate.
18. I have also not allowed the claim for the Tribunal filing fee. This is a "cost" of proceedings. The Tribunal has very limited ability to make an award of costs and none can be awarded in the circumstances of this case (S.43 Disputes Tribunal Act).

Is Q Ltd entitled to costs associated with feeding the cats and EF's time?

19. I am satisfied that QK made 24 trips to supermarkets to purchase cat food and to then deliver it to the tenants during the two year management period. However, it was not part of the agreement that Q Ltd would charge for this time. EF did help DF for 2 hours and again there was no expectation of payment. QK says this was all done on a goodwill basis, and that she is only claiming for this time because of the claim against Q Ltd.
20. Because there was no agreement at the start that payment would be sought or expected, I could quite reasonably dismiss Q Ltd's claim. However, I have decided to look at the arrangement overall and to make a decision on this point on the merits and justice of the matter. I am satisfied that Q Ltd has carried out its property management duties in all other respects extremely well. The property has been kept tenanted, rents have been fully paid, the house and grounds have been left in good condition. In addition, QK arranged for a friend to stay in the house to feed the cats until the first tenant was found. When tenants were away, QK went herself to feed the cats. This care and attention is beyond what can reasonably be expected of a property manager. For these reasons, I have decided to take into account the costs Q Ltd has incurred feeding the cats, and for EF's time. To do otherwise in the circumstances would be unfair.
21. I accept QK's claim that the cost was \$24.14 per trip for 24 trips to the supermarket and the premises to obtain and deliver cat food. This amounts to \$579.36. There is no dispute that EF spent 2 hours helping DF and the claim for \$50 is very reasonable. The total costs claimed are \$629.36. I have decided to allow 60% of the amount claimed (\$377.61). I have made a deduction, because there was no prior expectation that a charge would be made.

Outcome

22. Q Ltd is to pay \$475.59 to DF, being the compensation Q Ltd owes to DF (\$853.20) minus the compensation DF owes to Q Ltd (\$377.61)

Referee: JF Tunnicliffe
Date: 19 April 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>.