



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**[2023] NZDT 647**

**APPLICANT**      **DL Ltd**

**RESPONDENT**    **DX**

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. DL Ltd entered into an agreement to build a custom vanity for DX. After the vanity was installed and the plumbing had been completed, including the sink installation, the top vanity draw would not close. DL Ltd took the top draw away, made some changes to it and then reinstalled it. DL Ltd sent DX an invoice for the additional work, along with a charge for a missing sign and a credit for some spice inserts returned by DX. DX disputed the charges on the ground that DL Ltd made an error and they needed to fix it. In addition, DX says she did not remove the sign.

2. DL Ltd claims \$624.08 for the additional work and the missing sign.

3. The issues to be decided are:

a) Was the change to the vanity drawer a variation to the contract? If it was a variation, is DX liable to pay the invoiced charge?

b) Did DX breach her duty of care by taking the DL Ltd sign? If so, is she liable to pay \$89.00 plus GST to replace it?

**Was the change to the vanity drawer a variation to the contract? If it was a variation, is DX liable to pay the invoiced charge?**

4. The general principles of the law of contract apply to this dispute. A contract is an exchange of promises and becomes binding when the parties agree on clear and certain terms. A contract can be varied with the agreement of the parties.

5. I find that the change to the drawer was not a variation to the contract, therefore DX is not liable to pay for it. I make this finding for the following reasons:

a) There is no evidence to prove that the plumbing was in the wrong place and was stopping the drawer from closing. Ms L, director of DL Ltd, says that the vanity drawer would not shut properly because the plumbing was in the wrong place. Her witness, Mr G (installer) gave evidence that the drawer would not shut properly because it was hitting the sink and the hose which goes from the wall to the tap. However, there are no photos showing the drawer hitting a hose. DX took a photo under the

sink showing a hose in behind the waste pipe. It is clear that the hose is well behind the sink, therefore, it would not be possible for the drawer to hit it, before hitting the sink.

b) There is clear evidence, in the photos provided by DX (and confirmed by Mr G), that the drawer was hitting the sink and that the back of the drawer had to be modified, so it wouldn't hit the sink (a square area was cut out). DX did not change the sink, therefore DL Ltd made an error when the back of the drawer was not constructed in a manner that would allow it to go past the sink.

c) Therefore, the claim to modify the drawer is dismissed.

**Did DX breach her duty of care by taking the DL Ltd sign? If so, is she liable to pay \$89.00 plus GST to replace it?**

5. Ms L says that DX took the DL Ltd sign because; she has a personal feeling about it, she could tell from observing the body language of DX, and the sign was removed cleanly which is not what a vandal would have done.

6. However, DX says that she did not take the sign and that anybody could have taken it.

7. I find that DX did not breach her duty of care by removing the sign. There is no evidence to prove that DX took the sign. Therefore, the claim for \$89.00 plus GST is dismissed.

**Referee: Sara Grayson**  
**Date: 6 November 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>.