



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

District Court

[2023] NZDT 283

**APPLICANT**      **DN**

**RESPONDENT**    **C Ltd**

**SECOND**          **D Ltd**  
**RESPONDENT**

**The Tribunal orders:**

DN is not liable to pay C Ltd Limited the \$1,038.08 demanded following the hire of a courtesy vehicle on 12 April 2021.

The counterclaim is dismissed.

**Summary of Reasons:**

[1] The hearing was convened by teleconference. All parties appeared at the hearing.

**Background**

[2] The applicant had his vehicle repaired by the respondent in mid-2021. During the repair, the respondent loaned the applicant a courtesy vehicle, a [car] [registration]. The terms of the loan are included in the courtesy car agreement dated 12 April 2021 and include a \$750 insurance excess and for the hirer to be accountable for any panel or paint damage incurred during the hire up to this amount.

[3] The respondent claims the applicant damaged the vehicle during the hire and seeks payment of the insurance excess plus collection costs of \$288.08 reduced to \$124.20 at the hearing.

[4] The applicant admits the vehicle loan but denies damaging the vehicle and any liability to the respondent. He seeks a declaration of non-liability from the Tribunal.

**Issues**

- i) Is the applicant liability under the hire agreement
- ii) Has the applicant proved any loss

**Issue 1**

[5] The respondent claims that before signing the contract the applicant was made fully aware of the

terms of the hire and was shown the vehicle in the presence of K<sup>1</sup> with both confirming that there was no preexisting damage.

[6] The applicant admits signing the courtesy car agreement but denies he was shown the vehicle before signing or confirming with K that there was no damage. The applicant denies damaging the vehicle and therefore any liability under the contract.

[7] The applicant signed the agreement and uplifted the vehicle. The terms of the written agreement are clear, and the applicant is bound by them. The applicant agreed among other terms to be liable for any damage he caused to the vehicle up to the insurance excess of \$750. There is no contractual term that allows the respondent to charge the applicant more than this amount for any paint or panel damage.

[8] What is less clear is that the applicant was shown the vehicle prior to taking possession or signing the agreement. Further there is no written record of the condition of the vehicle at the time the applicant took possession. I accept there are two photographs that the respondent claims were taken before and after the hire. These photographs are undated.

### Issue 2

[9] Having accepted the contractual terms, I now consider whether the respondent has proved any loss under the contract. The respondent claims the applicant damaged the front bumper during the hire. Its evidence of this is the hearsay evidence of K<sup>2</sup>, that he inspected the vehicle for damage before releasing it to the applicant and it was clear of damage and the later photograph which the respondent claims shows damage to the vehicle.

[10] As stated, the applicant denies any damage. As referred to at hearing, the Tribunal is required to apply an evidential standard. The burden is on the claimant, in this case the respondent to prove its claim of loss on the balance of probabilities.

[11] The respondent claims the vehicle was undamaged at the time of the hire. In determining this point, I place little weight on K's evidence. He has not attended the hearing and it is equally likely that he told his boss what he wanted to hear, that is that he followed protocol in inspecting the vehicle prior to the hirer as he did not, as claimed by the applicant.

[12] Further the photographs provided are of little benefit. They are not dated and despite careful inspection I can see not sign of damage. I accept a highly qualified professional may recognise some damage in the second photograph, but I certainly cannot. Of perhaps more concern is the respondent has not provided any evidence of the cost of repair other than reading out at hearing his estimate of this cost, despite providing extensive documentation of everything else referred to in evidence. It appears the respondent is simply seeking the maximum insurance excess. Neither has the respondent taken any account in assessing this cost, the obvious discount it was able to achieve had it not put this claim thought its insurer.

[13] The respondent is also claiming collection costs despite knowing the amount was in dispute when he placed this *debt* in the hands of its debt collector, D Ltd. It is now well- established law that disputed debt should not be placed in the hands of a debt collector nor listed as a default. Had the dispute not been resolved in a timely manner in 2021, the more proper cause of action is to refer the matter to the Tribunal. Had the respondent done so in 2021, the debt may have been more easily proved.

[14] For the reasons outlined above and, on the evidence presented to the Tribunal I am not satisfied the respondent has met its burden of proving on the balance of probabilities that the applicant is responsible for any loss. Therefore, the applicant is entitled to the declaration sought and the counterclaim is dismissed.

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<sup>1</sup> His last name was not given to the Tribunal, and he has not appeared or provided any direct evidence to the Tribunal.

<sup>2</sup> As stated, K has not appeared at hearing.





## 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 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/finances/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>.