



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 22

APPLICANT **DQ**

RESPONDENT **CC**

The Tribunal orders:

The claim is dismissed.

Reasons

1. DQ says CC did a lot of damage while CC was a guest in her home on the evening of 12 November last year. Specifically, DQ says her soundbar did not work and required replacement as well as the cost of a TV specialist, H, to reconnect it and get her TV working. DQ's claim is for \$629 which is the cost of a new soundbar (\$549) and the cost of the TV specialist (\$80). CC denies liability.

Is it more likely than not that CC damaged DQ's soundbar and TV? If so, what was the reasonable cost to repair that damage?

2. This dispute appears to have arisen during a social evening at DQ's home with cards being played and some drinking by some of the people present that night. I accept the law can recognise a general obligation to take reasonable care with another's property.
3. It is clear DQ is very upset regarding what she has explained was having her property touched in her absence while she went out to collect someone from the airport and I accept that she has evidence that she has spent \$629 in purchasing a new soundbar and having H attend to install it.
4. However, in considering the totality of the evidence given today including that from DQ and CC, KL and ST (the other guests that evening) and H, DQ has not persuaded me it is more likely than not that CC damaged her soundbar and TV. This is for the following reasons:
 - a. I cannot find there was any contractual agreement with CC not to touch the soundbar or TV or remotes as DQ claimed. This was plausibly denied by CC and in any event would be an unenforceable promise.
 - b. Given KL and ST's evidence, I cannot find CC was the only person who had anything to do with DQ's TV being used that evening as it appears ST also had some involvement in touching the various remotes.

- c. More importantly, DQ has not provided any technical evidence as to what the damage was that caused the soundbar and TV to stop working. In other words, while I accept DQ's experience was her TV and soundbar did not work as she expected after that evening, there has not been a technical diagnosis linking that to any particular physical act that evening that caused DQ's property to be legally "damaged".
5. As I am not satisfied it is more likely than not that CC caused the damage claimed I do not need to consider repair costs further and I dismiss the claim.

Referee: J Costigan
Date: 28 February 2024



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>.