



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 294

APPLICANT DT

RESPONDENT KI

The Tribunal orders:

The claim is dismissed.

Reasons:

1. DT, the applicant, and BI, acting as a representative for her mother, KI, the respondent, both attended the hearing by teleconference.
2. DT claimed \$80.00 from the respondent, which included a claim for \$35.00 in unpaid lawn mowing services and the \$45.00 filing fee.
3. DT said his business provided lawn mowing services for KI on 6 occasions but was only paid for 5 of those mows. The 6 occasions he claimed he mowed KI's lawns were 9 January 2023, 23 January 2023, 7 February 2023, 6 March 2023, 20 March 2023 and 3 April 2023. After this KI stopped his mowing services. He said he could not provide mowing services during the period of Cyclone Gabrielle, from 14 February 2023 for a couple of weeks.
4. BI said she is her mother, KI's, caregiver, lived with her at that time and managed her mother's bills and finances, due to her mother's medical issues. She has no issue with 5 of the occasions claimed for mowing by DT but disputes the one alleged for 7 February 2023. She said she was present at the house all day on 7 February 2023, and had a visitor attend the property that day, but that nobody came to the property or mowed the lawns on that day. She said her mother's house is small, that you can hear anyone coming in the gate and can see or hear anyone in the lawn area from the window. She questioned the reliability of the person alleged to have attended the property to mow the lawns that day, who is now a former employee of DT, as she alleged DT had not immediately received cash payments given by her mother to this employee at an earlier service.
5. The price of the mowing service changed from \$25.00 to \$35.00 during the period claimed. DT said that \$75.00 in cash was paid by KI, which was to cover the first three mowing services. He said then the new fee of \$35.00 was to be paid by customers and he had told KI this. In his view, the new charge of \$35.00 was to begin for the 6 March 2023 service, given the cash payments had been applied to the first three services on occasions he outlined above. This would mean, he said, that KI had not paid \$35.00 due for the last mowing service on 3 April 2023.
6. KI was adamant that the mowing service had not occurred on 7 February 2023. Because of this, she said that, in her view, the last cash payment of \$25.00 was applied to the 6 March 2023

mowing service and then the 2 payments of \$35.00 provided by her mother after the \$75.00 cash payments, were to be applied to the 20 March 2023 and the 3 April 2023 services. Thus, she said her mother did not owe DT anything.

7. DT called a witness, QK, who said he had completed the mowing services on 6 March 2023, 20 March 2023 and 3 April 2023. He said that the lawn condition on 6 March 2023 was not out of the ordinary and was not overgrown. He maintained that, if there had not been a mowing service on 7 February 2023 at the property, he would have expected the lawn on 6 March 2023 to look very overgrown, but it was not. He said that lawns grow quickly at that time of year.
8. DT said the lawns were mowed on 7 February 2023 by his former employee. He did not have a witness statement from this former employee to this effect. He said his employees usually enter a service completed on an app used by his business and then he sends out invoices to customers based on this. He said the former employee had entered a service for 7 February 2023 in the app.
9. DT must prove it more likely than not that his business mowed the lawns on 7 February 2023. The other dates are not in dispute. When each party has a different version of an event, the Tribunal looks to whether there is any additional supporting evidence. Here, there is no evidence from the former employee who allegedly mowed these lawns on 7 February 2023. In my view, QK's evidence about the condition of the lawn on 6 March 2023 is inconclusive as to whether there was a mowing service provided on 7 February 2023 for which KI must pay, especially given the extreme weather conditions generated in Cyclone Gabrielle around 14 February 2023. As a result, I find that DT has not proved that it is more likely than not that his business mowed the lawns of KI on 7 February 2023, and thus whether it is more likely than not that KI owes him \$35.00 for unpaid services. The claim is therefore dismissed.
10. The filing fee of \$45.00 cannot be claim, pursuant to section 43 Disputes Tribunal Act 1988, so the claim for this is also dismissed.

Referee: C Price
Date: 19 July 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>.