



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 701

APPLICANT ED

APPLICANT KD

RESPONDENT NQ

The Tribunal orders:

The claim is dismissed.

Reasons:

1. ED and KD and NQ own adjoining properties at [Town]. Currently there is an area of approximately 25 metres on the boundary that is unfenced. ED and KD approached NQ with fencing proposals. As they did not get a definitive response, they issued a fencing notice on 20 September 2023. NQ did not issue a cross notice however states he advised ED and KD verbally that he did not want to build a fence.
2. As a cross notice was not received, ED and KD claim in the Disputes Tribunal for an order requiring NQ to contribute to the cost of a concrete tilt slab fence at a cost of approximately \$20,000 each, for a length of approximately 20.1 metres, with the fence being built 600mm within NQ's property.
3. The issues for the Tribunal to determine are whether a valid fencing notice was issued, and if so, whether NQ is liable for the costs claimed.

Was a valid fencing notice issued? Is NQ liable to contribute as per the Fencing Notice?

4. The relevant law is the Fencing Act 1978. The Act states owners of adjoining lands not separated by an adequate fence are liable to contribute in equal portions to work on a fence.
5. The Act provides that an owner requiring a neighbour to contribute to the cost of a fence to be built shall give notice to the neighbour. The notice shall specify the line of the fence, the nature of work and the materials to be used, and shall provide an estimate of the cost of the work.
6. The notice provided by ED and KD estimated a total cost of \$40,220.00 for the 20.1m fence.
7. The estimate however was not supported with quotes. ED has researched the proposal and has provided an estimate based on his enquiries. Most material costs are PC sums. The estimate is also subject to NQ providing the specific engineering designs for tilt slab fencing used when he built his house. No time frame was added to the proposal or contractors that would be undertaking the works. It was EDs intention to shop around. ED stated some costs could be subject to

increases, and there were additional unexpected costs, eg the need for health and safety management on the Golf Course boundary of NQ's property. In addition, ED has included costs for his time researching and managing the proposal, and a margin covering his time when buying materials.

8. A fencing notice should include the cost of work on the fence only. Work is defined in section 2 as including the erection, replacement, repair, and maintenance of a fence in whole or in part, and the preparation of the land along or on either side of a boundary between adjoining occupiers for any such purpose. It does not include the time of the person requiring the fence to research options and prepare notices.
9. A notice should also include sufficient information to enable the person receiving the notice to estimate the costs involved.
10. After reviewing the notice, I find the information to be inadequate to enable NQ to gain a proper estimate of the true costs that he could be liable for. I therefore find the notice was not valid as it did not comply with the requirements of section 10 of the Fencing Act.
11. In addition, NQ raised the following objections. His Building Consent and approval from the [Town] Design Control Committee was for the boundary to be planted with griselinia trees. The boundary had been planted as such however the trees died in 2020 and were removed in 2021. NQ stated he had been very busy since, however anticipated replanting in 2024. NQ considered the fence proposed by ED to be excessively expensive, unnecessary and unrealistic. NQ would not agree to the fence being 600mm within his property, nor would he agree to the large heavy machinery on his property that would be necessary to lift the concrete tilt slabs.
12. ED and KD asked for a decision to be made on the basis of evidence presented, however due to the lack of adequate information in the fencing notice, and as the proposed costs appear excessive for a 20m fence, I find the claim must fail. The claim is accordingly dismissed.

Referee: DTR Edwards
Date: 19 December 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>.