



(Disputes Tribunal Act 1988)  
**RESULT OF APPLICATION FOR REHEARING**

**[2023] NZDT 557**

**APPLICANT** ED  
person or organisation making  
the original claim

**RESPONDENT** MA  
person or organisation originally  
claimed against

**Result of application for rehearing:** Rehearing Granted

The Order of 18 April 2023 is set aside. In due course the parties will be advised of the date and time of the new hearing.

**Reasons for decision:**

1. On 18 April 2023 I decided a claim between ED and MA. MA did not attend the hearing by telephone conference. I ordered MA to pay \$110.00.
2. On or about 26 April 2023 MA filed an application for a rehearing. I granted a stay of execution on the order and set the matter down for the application to be heard, as to whether a rehearing should be granted, at the first available opportunity.
3. The issue to be determined in this hearing was to decide whether a rehearing should be granted.
4. Under s 49 of the Disputes Tribunals Act 1988, a rehearing can be granted on terms the Tribunal thinks fit. In general, a party should show that there may be a miscarriage of justice that justifies a rehearing, taking into account prejudice to the other party and the need for an end to litigation. If a party did not appear, that party should provide good reason for their non-appearance.
5. In respect of her absence at the hearing, MA submitted that she was unfamiliar with the Disputes Tribunal and its processes and had not understood what the significance was of the papers she was served with. She also claimed that she had not been advised of the date for the hearing. She indicated that she would have had difficulty attending at that time and on that date in any event because of childcare responsibilities, and would have sought a new date. She filed her application for a rehearing promptly after receiving a copy of my decision.
6. ED was opposed to the rehearing. He said that MA could have attended if she had wanted, the amount was small and a finding had been made, and it should remain in place, particularly as he also noted that the evidence he had submitted was, in his view, clear that the Consumer Guarantees Act had been breached.

7. I have some sympathy with ED's submissions. It is a relevant factor as to whether a miscarriage of justice has taken place to consider that there is a need for an end to litigation, and this is sometimes said to be especially so in cases of very small claims, as this is.
8. On the other hand, MA has indicated that she has evidence that shows that the kitten could not have had a pre-existing condition, which if so, may result in a different decision at a rehearing (though I note I have not considered any evidence about that aspect that has already been submitted by her in deciding whether or not to grant this rehearing). I note that the address for MA on ED's claim form was not correct at the time the notice of the hearing date was sent out, and while the email address was correct, it is not clear to me whether the notice of the time and date for the hearing was emailed.
9. Ultimately, I find that it is appropriate to allow MA an opportunity to be heard even though the amount is small. The size of the amount has, in effect, an impact both ways, since it is not enough to significantly inconvenience ED if a rehearing is granted. It is an important principle of justice that people are given an adequate opportunity to participate in a hearing reflecting on their interests, and though I cannot be sure that MA did not actually receive the notice of the hearing, I note that she applied for a rehearing almost immediately she received the decision.
10. The Order of 18 April 2023 is set aside, and the claim will be set down before another Referee, by telephone, for hearing in due course.

**Referee:** M Wilson  
**Date:** 20 June 2023