



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 415

APPLICANT **EH**

RESPONDENT **KS**

The Tribunal orders:

The claim is dismissed.

Reasons

1. EH contracted KS to build her a dog box to fit the tray of her Ute in July 2021. The box was to be black in colour and she provided the measurements of her tray. EH paid \$1200 into KS's account in September and was advised it was ready to be picked up in October.
2. EH travelled to [Town 1] to pick it up but found the dogbox had been painted grey and it did not fit her Ute not having made to the correct measurements. KS agreed to make her another box and allowed her to take the one he had just made with her so she could put her dogs in the box instead of in the cab with her on the trip back.
3. KS made a new box and had it delivered to [Town 2] in December 2021. When she went to pick the box up she found it had been badly damaged in transit. The pallet had been broken, welding had broken, paint was chipped and the divider between the bays in the box was bent. EH uplifted the box, took it home and advised KS.
4. EH states KS agreed to make a third one but resiled from this around June 2022 and told her to sell them.
5. EH had stored the boxes on the property she was renting and when her landlord complained and demanded she remove them, she alleges she told KS but when he failed to uplift them, she took them to the tip. They are now both destroyed.
6. KS denies being advised he was to pick them up and says if EH has destroyed them, he is no longer liable to build a third box.
7. The issues to be decided then are whether KS is in breach of his responsibilities under the contract and, if so, to what remedy is EH entitled.

Findings

8. Firstly, the area of law that applies to this claim is contract, overlaid by the provisions of the Consumer Guarantees Act 1993, (the CGA). Dog boxes are goods that are ordinarily acquired for domestic or personal use or consumption, that being the definition of a consumer purchase in the CGA.

9. Section 6 of the CGA requires goods sold to a consumer to be of acceptable quality. Acceptable quality is defined in s.7 and includes goods being acceptable in appearance and finish. If they are not of acceptable quality, the consumer is entitled to exercise the remedies set out in s.18.

Acceptable quality?

10. I find the box was not of acceptable quality because it was painted the wrong colour. EH was then entitled to exercise the remedies set out in s.18 which included requiring KS to remedy the failure.

11. I do not find the box was not of acceptable quality because, although EH has stated the box did not fit her Ute, it clearly sits in the tray, and she used it for some time waiting for the replacement. EH has not supplied the measurements of the tray as made but KS's evidence does show measurements.

12. In any event, KS agreed to remedy the failure by agreeing to make another box and allowed EH to continue to use the box that was painted the wrong colour.

13. KS then constructed another box, and it was agreed by the parties that KS would ship it to [Town 2]. However, he did not include EH's contact details on the despatch documents, so she had to ring round to find it. When she did, she found it to be damaged as described above.

14. She advised KS and took the box home and when KS refused to make another, and her landlord complained, she dumped both boxes.

15. EH's position then is that KS has failed to provide her with a box of acceptable quality, and she is entitled to her money back.

Remedy?

16. I find EH is not entitled to a remedy under the CGA.

17. Having gotten to the point where KS had failed to provide her with a new box of acceptable quality, EH was entitled to reject both boxes and receive back her purchase price pursuant to s.18(3)(a) of the CGA.

18. However, s.22 of the CGA provides that a consumer rejecting goods must return them to the supplier at their expense unless the goods, by their nature make that cost unreasonable in which case the supplier is required to uplift them at their expense.

19. I find the two dog boxes are too large for EH to be required to pay to return them and it would be too expensive. Although EH has not supplied a quote, KS states he paid some \$300 to have the second box delivered to [Town 2]. Returning two boxes then would cost some \$600.

20. EH says she advised KS that her landlord required her to remove them from her property and that she advised KS of this. However, she has provided no evidence of this, and the message thread provided by the parties makes no mention of it. This may be because KS banned EH from his Facebook account, but she had his address and there is no evidence of her attempting to notify him there. She may have spoken with him, but KS denies this.

21. When a party rejects goods and asks for their money back, the goods become the property of the supplier. By destroying the boxes, EH destroyed KS's property thus relieving KS of any further requirement to remedy the failure to provide a dog box of acceptable quality.

Referee: G R Meyer

Date: 25th August 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>.