



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 272

APPLICANT EN

APPLICANT ND

RESPONDENT QI and MI

The Tribunal orders:

QI and MI are to pay \$607.89 to EN and ND on or before 18 August 2023.

Reasons

1. In about May 2023, EN and ND bought [house] from QI and MI. Immediately after settlement EN and ND tried to use the toilet to dispose of dirty water from the carpet cleaning, but they discovered the toilet was blocked and did not work properly. They called a plumber who fixed the problem. Relying on clause 7.3(1) of the sale and purchase agreement the purchasers asked the vendors to pay for the work done. The vendors did not pay. EN and ND filed a claim in the Disputes Tribunal.
2. This is a claim for a breach of clause 7.3(1) of the ADLS Agreement for the sale and purchase of a residential property, because the toilet was allegedly not in working order, for the repair costs of \$607.89. The applicants have also claimed the filing fee in the Tribunal.
3. The issues discussed today were as follows:
 - a. In all the circumstances, has the clause in the sale and purchase agreement been breached by the vendors?
 - b. If so, what compensation can be claimed?

In all the circumstances, has the clause in the sale and purchase agreement been breached by the vendors?

4. The ADLS sale and purchase agreement governs the relationship between the vendors and purchasers of residential property when used, as in this case. Clause 7.3(1) provides that the facilities which includes the toilet must be in reasonable working order, subject to the condition they are in, at the time of settlement (the contract uses the phrase “when the goods are delivered to the purchaser”). When a clause in a contract is breached the person breaching the contract may be liable to pay for the losses the other party has suffered because of the breach.

5. In this instance, the allegation made by the Applicants was that at the first opportunity to use the toilet, it was apparent it was not working. The Applicants' plumber found that the drain was blocked with tree roots.
6. QI and MI disputed they were liable. Their daughter had been living in the property prior to settlement and had filed a sworn affidavit that said, amongst other things, that she had used the toilet without problem on the morning of the settlement day, before vacating the premises. The QI and MI also indicated that the purchasers should have tested the toilets during the pre-settlement inspection. During the hearing the QI and MI noted that the bucket of water tipped down the toilet as described by the Applicants must have had dog hair in it which could have blocked the toilet.
7. Whoever is found to be liable in this case could be said to be unlucky. Overall though I have decided that by a narrow margin, it is more likely than not that the vendors, QI and MI, are responsible for the cost. I accept their daughter's evidence that the toilet was used without problem on the morning of the settlement. I also accept the evidence of the Applicants that it was the first use of the toilet which showed it not to be in working order. I accept the evidence of the Applicants that the water tipped down the toilet was only dirty water, and while it would have had some dog hair in it, it would not have been enough to block the toilet. That means that the toilet must have stopped working right on the settlement date. I also note that the relevant date in terms of clause 7.3(1) is settlement day and not the pre-settlement inspection, because the clause provides that it is the condition of the items covered by the section when delivered to the purchasers, which can only mean the date of settlement, when the purchasers become the owners. Items could break down between the inspection date and the settlement date and if they did the contract would render the vendors liable.
8. However the factor that has the most bearing on it, in my view, is that the pipes had tree roots interfering with them which had had to be removed before the pipes could be repaired. This suggests that it was more likely than not that the problem with the toilet was imminent, and that it was therefore not in reasonable working order. I therefore find that QI and MI have breached their obligation by not paying for the repair.

If so, what compensation can be claimed?

9. The purpose of damages or compensation is to put the person suffering the loss from the breach of the contract back into the position they would have been in but for the breach.
10. QI and MI are to pay the cost of the repairs, which is \$607.89. EN and ND have claimed the cost of filing the claim in the Tribunal. However I am unable to award costs of this type because of section 43 of the Disputes Tribunal Act 1988. There are some exceptions to this but none of them apply in this case.

Referee: M Wilson
Date: 21 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>.