



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 581

APPLICANT EN
RESPONDENT HM
 t/a TT

The Tribunal orders:

HM is to pay EN \$1,284.95 by the 18 December 2023.

Reasons:

1. EN purchased a [rifle] from HM trading as TT on the 30 July 2023 for \$1284.95.
2. EN claims that when he received the rifle it had a faulty safety mechanism which failed to lock the bolt and the picatinny rails were not as described in the advertisement.
3. EN rejected the rifle and sent it back to HM and asked for his money back. HM refused to give EN his money back but has offered a replacement rifle. EN does not want a replacement rifle and has claimed in the Tribunal for a full refund of the purchase price of 1284.95.

Is Darius entitled to a refund?

4. The rifle is a consumer good sold by a person in trade and is therefore covered by the Consumer Guarantees Act 1993. This means that the rifle must be of an acceptable quality. Acceptable quality means fit for all the purposes acceptable in appearance and finish; and free from minor defects, safe; and durable. (see s7 CGA).
5. If goods are not of an acceptable quality, and the defect is of a substantial character, then the consumer is entitled to choose a refund or replacement (s22 CGA).
6. A defect is of a substantial character if the goods depart from the description, are substantially unfit for purpose or are unsafe (see s21 CGA).
7. I am satisfied that the rifle was not of acceptable quality and that defects were of a substantial character because:
 - a) The locking mechanism was faulty. The safety mechanism failed to lock the bolt when engaged. This made the firearm unsafe.
 - b) The picatinny rails were described in [online] advertisement as “comes with [brand] picatinny rails entirely machined from solid bars of steel”. The picatinny rails in the rifle that

EN received were made from alloy not steel. This was accepted by HM. This was a departure from the description in the advertisement.

8. Having determined that the rifle had defects of a substantial character, then EN is entitled to reject the goods in accordance with section 22 of the CGA and choose a refund or replacement.
9. As EN has chosen to have the purchase price refunded then HM must refund EN the purchase price in full.

Referee: T Prowse

Date: 22 November 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>.