



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 662

APPLICANT **ET**
APPLICANT **KT**
RESPONDENT **CK**
SECOND **SK**
RESPONDENT

The Tribunal orders:

1. CK and SK, jointly and severally, are to pay ET and KT, as trustees of the N Trust, the sum of \$864.98 on or before 19 October 2023.
2. CK and SK are to return the key to the apartment to ET and KT at their own expense or pay an additional \$9.00 on or before 19 October 2023.

Reasons:

1. ET and KT engaged CK and SK to provide housekeeping services for an apartment in [City], that was being rented out for short terms stays via [accommodation website]. The services included cleaning and provision of linen, and consumables, at an agreed price of \$150 inc GST per service. ET and KT are dissatisfied with the service, as they believe the cleaning was substandard, consumables were not provided, bedding was removed from the premises, and that breaches of contract caused them to lose revenue and incur higher cleaning costs.
2. ET and KT claim the sum of \$963.98, plus an additional \$9.00 for a replacement key if CK and SK do not return the key.
3. The issues to be determined are as follows:
 - a. Was the cleaning service provided to the standard contracted for?
 - b. Are CK and SK responsible for the missing bedding?
 - c. Did CK and SK breach the contract by accepting a booking?
 - d. Did CK and SK breach the contract by cancelling cleaning services after they were booked?

Was the cleaning service provided to the standard contracted for?

4. In his written submission ET explained that he had contracted CK and SK to provide a cleaning service to a hotel standard. He presented evidence to show that there were issues with the quality of cleaning on a number of occasions. This included photos showing unemptied rubbish, areas of the apartment that are not clean, a lack of consumables in the kitchen, pots and pans in disarray, poorly made beds, and an unemptied vacuum cleaner. ET also referred to poor reviews regarding the cleaning, and an incident of a guest complaining about hair blocking the shower.
5. CK and SK accepted that some of the cleaning was substandard but queried how many times that had occurred. ET put it at 11 times, while CK and SK estimated 5 or 6 times. There were not photographs or records of every occasion on which cleaning had been an issue. For this reason, I find that only the six cleans conceded by CK are proven to have been substandard.
6. ET claims a \$40.00 deduction per clean, reducing it from \$150.00 to \$110.00 to reflect the poor service. CK argued that that would be below cost as staff are paid \$25.00 an hour, to which ET responded that sometimes they were only there half an hour. No timesheets or other financial information was presented by CK and SK. In the absence of sufficient evidence of cleaning costs, or mechanism for calculating a deduction, I accept ET's calculation of a \$40.00 deduction per clean. \$40 for 6 cleans comes to \$240.00.

Are the CK and SK responsible for the missing bedding?

7. A pillow protector and a mattress protector went missing from a bed in the apartment. ET and KT claim that as CK and SK staff were responsible for changing the beds, there was a high chance that they had accidentally been removed with the bedding by the staff.
8. CK argued that this was unlikely as all the linen goes to one place for cleaning and is marked and processed under their name. So, if anything unexpected was included, it would be returned by the laundry and CK and SK would be billed for it. He explained that this had not occurred. He suggested that a guest or friends of ET and KT may have removed the bedding.
9. I find that it is most probable that the bedding was inadvertently taken by CK and SK staff, as they were the people tasked with changing the beds. It seems highly improbable that a guest would remove such items, and also leave the sheets and all other bedding. While CK may have expected any error to be picked up by the commercial laundry company, it is also possible for items to be set aside, misplaced, or mischarged for in such a service, so this does not outweigh the fact that only his staff were responsible for handling the bedding.
10. I accept that the amount claimed of \$64.98 as the reasonable cost of replacing these.

Did CK and SK breach the contract by accepting a booking?

11. Under the agreement between the parties SK had access to [accommodation website] account, however only ET and KT had authority to accept bookings. SK accepted a booking without authority and ET claims that it lost them revenue.
12. It had been decided that the tariffs should be raised in the peak summer months, and this was in the process of being organised, at the time the booking was accepted. ET had received a request from a potential guest and had written back to him explaining the increased tariff and asking if he wished to book at that price. However, before the guest replied, SK accepted the booking at the lower rate. There is a difference of \$350.00 - \$370.00 between the rates for that stay.
13. CK argued that ET could have mitigated his losses by asking the guest to rebook at the higher amount, or cancelling the stay. However, once the guest's booking was accepted ET and KT had a contractual obligation to provide the apartment at the agreed price. They could not unilaterally change the terms of contract and increase the price, and should not have repudiated the contract by purporting to cancel it in order to rebook that or another guest at a higher tariff. I accept that the mistake meant ET and KT could not charge the higher rate and

suffered a loss of at least the \$350.00 claimed. Therefore, I find that they are entitled to that amount.

Did CK and SK breach the contract by cancelling cleaning services after they were booked?

14. CK and SK set up an online booking system under which ET booked seven cleans over the summer as the property was fully booked. His bookings were accepted, however CK then cancelled them all on seven November.
15. CK argued that the online system was just a booking system and that at no point was there a guaranteed service. He said that just because a clean is scheduled it does not mean it would be completed.
16. There is no further step available in the booking system for a clean to be confirmed. Therefore, once a clean is scheduled, it must be treated as accepted. While there is provision in the terms and conditions for customers to cancel cleans, there is no such provision for the service provider to cancel after booking. For these reasons I find that the cancelled cleans amount to a failure to fulfil CK and SK obligations under the contracts, and a repudiation of the contracts. ET and KT are entitled to damages for any losses suffered.
17. I accept ET's evidence that he was unable to get a cleaning service at the same price, so had to pay \$30.00 extra per clean. As there were seven cleans, this totals \$210.00.

Key

18. CK and SK are to return the key if they have not done so already, or pay \$9.00 claimed for its replacement.

Conclusion

19. For these reasons Mr and SK are to pay ET and KT the sum of \$864.98 by the date stated in the order.

Referee: K Rendall

Date: 28 September 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>.