



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 336

APPLICANT ET

RESPONDENT B Ltd

The Tribunal orders:

The claim is struck out.

Reasons

1. The company number for B Ltd was called at the time of the hearing and KX's mobile number was given by the employee. KX was phoned twice on his mobile but calls went to voicemail on each call.
1. ET has requested the Tribunal to order B Ltd (B Ltd) to repay him because joinery ordered for his building project in April 2022 has not been delivered within a reasonable time. ET has paid \$38,000.00 in total. In documentation from B Ltd, KX, disputes that the Tribunal can order payment because there is no contractual or statutory basis for the claim and the order would mean a cancellation of a contract that in total exceeds the \$30,000.00 jurisdiction of the Tribunal.
2. The important question to be answered first is whether the claim is within the monetary jurisdiction of the Tribunal. The claim is essentially one in which ET wants to cancel the contract for the windows where the value of the contract was \$38,000.00. ET cannot divide his claim into two claims of \$19,000.00 each. That is a divided cause of action. The claim cannot proceed because it requires the Tribunal to cancel a contract that exceeds the monetary jurisdiction of the Tribunal. The claim must therefore be struck out.

Referee: B M Smallbone

Date: Friday, 4 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>.