



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 115

APPLICANT ET

RESPONDENT CN

The Tribunal orders:

The claim is dismissed.

Reasons:

1. ET purchased a caravan from CN for \$72,000 after seeing it advertised on [Online]. The caravan was advertised as being “*set up for freedom camping or permanent living*”.
2. ET uplifted the caravan on 5 May 2022. On 13 May, ET noticed a leak coming in from the skylight. ET texted CN to ask if he had had any leaking issues. CN suggested the skylight may not have been shut. On 14 May, ET texted CN again and advised him “*Crisis averted. Someone didn’t shut the skylight down properly*”. CN also told ET that many people lift the front of caravans so water doesn’t pool. On 15 May, ET advised CN that it had “*rained last night and caravan was dry this morning*”. ET however claims the caravan did continue to leak and that the problem was not related to the skylight as stated in her text.
3. At some point, ET tested for a leak by directing a hose at the roof. No water came through initially however ET claims it soon became evident water was pooling and came through later. CN was not advised by text when this happened so the date cannot be confirmed. On 21 June, ET took the caravan for a service. [Service Centre] found the roof was starting to sag, resulting in water pooling and leaking through the vent. [Service Centre] also found evidence of mould around the shroud under the skylight. CN was advised of the need for repairs on 29 June.
4. ET claims CN misled her when selling the caravan by failing to disclose a leak. ET has therefore claimed in the Disputes Tribunal for compensation for the cost of repairs.
5. The issues for the Tribunal to determine are as follows:
 - i. Did CN misrepresent the condition of the caravan?
 - ii. If so, is ET entitled to compensation for her losses? If so, what are the losses?

Did CN misrepresent the condition of the caravan?

6. Section 35 of the Contract and Commercial Law Act 2017 states that a person may be compensated if they have been induced to enter into a contract by a misrepresentation, whether innocent or fraudulent.

7. ET claims the wording of the advertisement, that the caravan was set up for freedom camping or permanent living, represented that it was in good working order and that as such, no leaking issues would be evident. In addition, ET claims she specifically asked CN if it leaked. CN agrees he was asked this question and states he declared a previous leak that had been repaired with silicone. CN states he was unaware of any other leaking issues and that he had maintained the caravan well in the two years he owned it.
8. In the event the caravan had been leaking when purchased, I consider there would have been a misrepresentation in view of the advertisement and specific representations made by CN, however the question is whether there is sufficient evidence the roof was leaking when the caravan was purchased by ET.
9. CN has suggested the hollow on the roof, that has now been identified as causing the leak, could have been caused by Mr or Mrs T walking on the roof to check the leak on the 13th or to clean the caravan. Although it is disputed, CN stated ET had told him she had been on the roof. NL from [Repair shop] stated it is possible the cause of the hollow, where water pools, could be due to someone sitting or standing on the roof.
10. Evidence has been presented, in the form of a video, to show the skylight did leak on the 13th of May, however texts at that time indicate the problem was due to the skylight not being shut properly. There is no evidence of a leak being mentioned again until the caravan was seen by [Service Centre] on 21 June. If the caravan had continued to leak, I would have expected ET to tell CN, particularly after her advice to him on the 14th that the skylight had been left open, and on the 15th that it had rained the night before.
11. [Service Centre] provided photos showing mould on the shroud on 21 June, however the amount of evident mould at that time is minimal on one side of the shroud. Slightly more was evident when repairs were carried out by [Repair shop] in February 2023.
12. The existence of the mould is problematic, however no evidence was presented to suggest the age of the mould or whether it could have grown in the period from 13 May to 21 June. Other than a little mould around the shroud, there is no evidence of water ingress in the caravan, which would have been expected if the leak had been present for some time to the extent shown in the video taken on 13 May. The caravan does not have a damp smell, and there is no evidence of mould, timber rot or water stains in any other places. The shroud is MDF however there is no evidence of it swelling. ET suggested CN kept the caravan tilted, however both agree that is not likely when the caravan is in use. CN provided evidence that he regularly used the caravan, with statements from friends confirming they were unaware of leaks.
13. After consideration of the above, I find it has not been proven the caravan skylight leaked prior to sale. I am therefore unable to find CN misrepresented the condition of the caravan when selling to ET. Although the caravan did leak on the 13th of May, I find this was more likely due to the skylight being left open. I make this finding due to the texts sent on 14 and 15 May and as no further advice was sent to CN advising him of continued leaks until after the caravan was serviced at the end of June. Due to the time that elapsed between the date of sale and when [Service Centre] found the roof hollow, the possibility exists damage could have been caused after sale. ET had the onus of proving damage was evident prior to sale, thereby resulting in misrepresentation, however I find the standard of proof has not been met.

If so, is ET entitled to compensation for her losses? If so, what are the losses?

14. As ET has been unable to prove misrepresentation, I find she is not entitled to compensation for her losses.

Referee: K Edwards
Date: 23 March 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>.