



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 697

**APPLICANT**      **EX**

**RESPONDENT**    **HG**

**The Tribunal orders:**

HG is to pay \$1,000.00 to EX before 6 January 2024.

**Reasons**

1. On 1 December 2022, the parties entered into an Agreement for the Sale and Purchase of Real Estate for [Address], with a settlement date of 13 January 2023. Prior to selling the home HG had engaged N Construction to undertake renovation work, who in turn had engaged K Electrical to complete work between 15 July and 11 August 2022 which included '*fit off heat pumps*'.
2. There were two heat pumps in the house. One in the lounge and one in the dining room. EX alleges that in late June 2023 she discovered that neither were in working order. She claims \$1,978.99 from HG made up as follows:

a. Reimbursement for replacement cost of dining room heat pump	\$ 1,278.99
b. Reimbursement for repair of lounge heat pump	\$ 500.00
c. Reimbursement of cost of purchasing heaters to stay warm	<u>\$ 200.00</u>
	\$ 1,978.99

3. The issues to be resolved are:
  - a. Were the heat pumps in reasonable working order as at 13 January 2023?
  - b. If not, is \$500.00 a reasonable value to restore the lounge heat pump to working order?
  - c. Is \$1,278.99 a reasonable value for the replacement of the dining room heat pump?
  - d. Is EX entitled to \$200.00 for the cost of purchasing heaters to stay warm?

**Were the heat pumps in reasonable working order as at 13 January 2023?**

4. The relevant law is the law of contract. When parties make promises to each other they must keep those promises. If they do not, they may have to compensate the other party to restore them to the position they would have been in had the promise been kept.
5. Here clause 7.3 of the Agreement for Sale and Purchase provided a warranty from HG to EX that the heat pumps would be delivered in reasonable working order on 13 January 2023.

6. I find, on the balance of probabilities, that the heat pumps were not in reasonable working order on 13 January 2023. I make this finding for the following reasons:
- a. EX provided an email from [heating and electrical company] dated 5 September 2023 which states that the lounge heat pump *'has not been gassed up and commissioned properly by a heat pump technician'*.
  - b. EX provided an email from [energy company] dated 8 September 2023 which states for the dining room heat pump that there *'was limited gas in the unit when we decommissioned it which would indicate that it had not been re-gassed properly by whoever re-installed the unit.'*
7. I have considered HG's recollection that she had the heat pumps running when she did work on the property prior to sale, and an email from the real estate agent EH who states in an email that *'the heat pumps were working fine for those open homes'*. Also the email from K Electrical dated 21 July 2023 where states that its electrician *'is 100% sure that he tested both units'* following working on them.
8. The statements in paragraphs 6 and 7 above are not readily compatible with each other. I prefer the evidence of [heating and electrical company] and [energy company] as they are qualified to make the findings they did and because although they are independent of each other they report substantially the same thing.
9. For completeness I record that this finding does not necessarily mean that HG and the real estate agent have deliberately made false statements. It is entirely possible that they had the heat pumps running but did not notice that they were not heating properly due to low gas levels. I note that the email from the electrician does not state that he checked the gas levels, nor give any details of the test that he performed.
10. I have also considered HG saying that she did not have an opportunity to run the claim that the heat pumps had a gas issue past her tradespeople. I accept this was the case at the time EX had the heat pumps repaired/replaced, however the hearing on 14 September 2023 was adjourned to give HG such time yet she said today that she had not given her tradespeople the [heating and electrical company] and [energy company] emails for their comment.

**If not, is \$500.00 a reasonable value to restore the lounge heat pump to working order?**

11. The normal measure of damages for breach of contract is the amount required to put the innocent party in the same position as if the contract had been performed.
12. I find that \$500.00 is a reasonable value to restore the lounge heat pump to working order. I am satisfied that it is more likely than not that this is the amount EX paid for the repair as I accept her evidence on this which she gave in a straightforward and plausible manner.

**Is \$1,278.99 a reasonable value for the replacement of the dining room heat pump?**

13. I do not find that \$1,278.99 is a reasonable amount of compensation for EX to receive for the replacement of the dining room heat pump. I make this finding for the following reasons:
- a. This value places EX in a better position than the one she would have been in had the contract been performed – i.e. with a brand new heat pump rather than an eight year old one in reasonable working order.
  - b. I am not satisfied that a brand new heat pump was the only option available to EX. There is no evidence that the old heat pump could not have been re-gassed.
  - c. The email from [energy company] notes that the outdoor unit was noisy due to compressor failure, indicating that it was not working properly which is common in heat pumps of this age.

However there is no evidence of when any compressor failure occurred. It is therefore difficult for EX to assert, seven months after settlement date, that failure occurred prior to that and so EX has not met the standard of proof required to be successful on this point.

14. In the absence of any better evidence, I find that \$500.00 would have been a reasonable value for the repair of the heat pump issue (gas) that I have found HG to be responsible for. This is pragmatically based on the likely repair value of the lounge heat pump as per paragraph 5 above.

**Is EX entitled to \$200.00 for the cost of purchasing heaters to stay warm?**

15. I find that EX is not entitled to \$200.00 for the cost of purchasing heaters to stay warm. This is because the remedy that she is entitled to is to be put in the position of having two heat pumps in reasonable working order, not to purchase further appliances. While I understand that she said she purchased these to stay warm, it would have been prudent for her to prevent such a situation occurring by testing the heat pumps in the seven months that she owned the house before heat was needed.

**Conclusion**

16. For the above reasons, HG is to pay \$1,000.00 to EX before 6 January 2024.

**Referee: L Thompson**  
**Date: 6 December 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>.