



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

District Court

[2021] NZDT 1395

**APPLICANT**      **FD**

**RESPONDENT**    **CE**

**SECOND**          **CJE**  
**RESPONDENT**

**The Tribunal orders:**

Both claims are dismissed.

**Reason**

1. The parties share an adjoining boundary which had an existing fence which stopped short of the boundary towards the road. The claim today concerns the new fence erected by the respondents for which they seek half the costs pursuant to a fencing notice. The applicant says the fence is 10cm inside their boundary but do not seek the removal of the fence, instead they want a mirror installed on the opposite side of the road or the fence reduced in height and trellis added if necessary, all to avoid hitting children walking past when using the driveway.

**The issues to decide are:**

2. Was a valid fencing notice issued?
3. Should the fence be lowered, or a mirror installed?

**Was a valid fencing notice issued?**

4. For the respondent to rely on a fencing notice to enforce a contribution by the applicant it must show the notice was valid. A valid notice is one that meets the requirements set out in s10 of the Fencing Act 1978 which says;

*(1) Any occupier who desires to compel any other occupier under this Act to contribute to the cost of work on a fence shall serve on him a notice in form 1 of Schedule 1 or to the like effect.*

*(2) The notice shall—*

*(a) specify the boundary or line of fence, or the parts of the boundary or the line of fence, along which the work is to be done; and*

*(b) specify (whether by reference to a fence described in Schedule 2 or otherwise) the work proposed to be carried out with sufficient particularity to enable the occupier on whom the notice is served to—*

*(i) comprehend the nature of the work proposed and the materials to be used; and*

*(ii) estimate the cost of the work; and*

*(c) specify the consequences of failure to comply therewith.*

5. The notice issued by the respondents on 28 May 2020 was not valid because it did not provide an estimate of the cost of work or specify the consequences of failure to comply. Because of this the notice is not enforceable.

6. If I am wrong on this, which I believe I am not, and the notice was valid the respondent has a further problem because it carried out work before the notices was issued which s10(4) says the applicant is not liable for.

*(4) Except as provided in section 16, in the absence of agreement to the contrary the occupier of any adjoining land shall not be liable to contribute to the cost of any of the following:*

*(a) any part of the work on a fence that is done before notice relating to the work has been duly served on him:*

7. Further, s14 says that where a notice is issued, and no cross notice is issued, if no work is commenced within 90 days of the prescribed period the notice shall lapse. Work was commenced but before the notice was issued and from then on, no work was further commenced until 25 September 2020, which is more than 90 days after the expiry of the 21 days' notice period.

8. For these reasons the respondents claim must be dismissed.

#### **Should the fence be lowered, or a mirror installed?**

9. The applicant says the fence is compliant with council regulations and is not seeking an order for its removal. The Tribunal has no power to order a mirror to be erected or to order the respondent to contribute towards the cost of a mirror. As the fence height is permitted by Council I cannot grant the applicants request for it to be reduced.

10. For these reasons the applicants claim must also be dismissed.

**Referee: P McKinsty**  
**Date: 22 April 2021**



## 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 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.