



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

**District Court**

**[2023] NZDT 252**

**APPLICANT FI**

**APPLICANT IS**

**RESPONDENT M Ltd**

**The Tribunal orders:**

M Ltd is to pay FI and IS \$513.00 on or before 7 July 2023.

**Reasons:**

1. FI and IS booked a move from [City A] to [City B] with M Ltd. FI and IS paid a deposit of \$527.88 to M Ltd. Around 5 weeks before the move FI and IS cancelled the move and asked for their deposit back. M Ltd said the refund would be processed soon. Later M Ltd said that they would not pay a refund because their terms and conditions said the deposit was not refundable. FI and IS seek an order that M Ltd is liable to refund them the deposit of \$527.88.
2. The hearing was held by teleconference. I rang M Ltd three times, but all of my calls went to voicemail. The hearing went ahead without M Ltd.
3. The law that applies is the law of contract. There was a contract between M Ltd and FI and IS. FI and IS cancelled the contract and the issue to be resolved is whether they are entitled to a refund of the deposit they paid M Ltd.
4. FI and IS booked the move with M Ltd in late November 2022. They paid a deposit on 23 November 2022. The deposit was \$513.00 with a credit card processing fee of \$14.88. The total cost of the move was to be \$1,540.00.
5. On 23 December 2022 FI and IS cancelled the move. They asked M Ltd for the deposit back. M Ltd replied by email on 6 January 2023 that the refund would be processed the following Monday.
6. The deposit was not returned, and FI and IS followed up with M Ltd, who said that their terms and conditions provide that a deposit is non-refundable if a cancellation happens too close to the moving date.
7. Whether a deposit is refundable or not will depend on the terms of the contract between the parties. If there is no written provision for a deposit to be non-refundable, it will depend on what the parties agreed. In this case the invoice provided by M Ltd does not contain any terms about whether the deposit is refundable or not. There do not appear to be any terms and conditions on M Ltd's website either.

8. M Ltd initially said that the deposit would be repaid to FI and IS, and then changed their position on this, and said the cancellation had happened too close to the move date and so the deposit would not be refunded.
9. The cancellation happened more than a month before the proposed move, and M Ltd said soon after the cancellation that a refund would be provided. In these circumstances I consider that even if it was a term of the contract that a deposit would only be refunded if a cancellation was made with sufficient notice, that in this case sufficient notice was given to M Ltd of the cancellation and so M Ltd is liable to refund the deposit.
10. I therefore find that M Ltd is liable to repay FI and IS \$513.00 which is the amount they were invoiced for the deposit. I do not consider that FI and IS are able to recover the credit card processing fee, because this is an actual cost incurred as a result of their choice to pay by credit card.
11. For these reasons I find that M Ltd is liable to pay FI and IS \$513.00.

**Referee: L Trevelyan**

**Date: 7 June 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>.