



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 681

APPLICANT FN

RESPONDENT PL

The Tribunal orders:

PL is to pay \$400.00 to FN on or before 31 January 2024.

Reasons

1. FN and PL were formerly friends/friendly acquaintances. FN says that in 2022 he loaned \$400 to PL, paying it to him via internet banking payment around August 2022. The loan amount was repaid by PL the next day. FN says that in setting up the internet banking payment, he inadvertently set the payment to repeat weekly.
2. FN has provided bank records to show that \$400 went out of his account weekly from mid-August onwards, but was immediately reversed each time due to insufficient funds in his account, until 28 December 2022 when the payment was made into PL's account – this is when FN says he first noticed his error. He claims for the money paid in error to be returned to him.
3. PL says that he did not borrow money from FN as he has no need to, that more often he was in the position of paying for various goods or services on FN's behalf and being reimbursed by FN.
4. However the payment came about, and in what circumstances, PL agrees that he received a \$400 payment by internet banking in August 2022 and that he repaid the money back into FN's account the next day.
5. PL also agrees that he received a further payment of \$400.00 from FN on 28 December 2022. He says that FN had caused some damage to property at his house in September and he thought that the \$400 put through in December was compensation that PL had requested for the damage.
6. FN denies causing any damage to PL's property and denies he was ever asked for payment for any reason around that time.
7. PL's claim that he was owed money for damage caused to his property is effectively a distinct claim which he is asking to be set off against the claim made by FN. Each claim must be looked at separately and each is required to be proven 'on the balance of probabilities' which is the standard of proof in a civil Tribunal.
8. FN's claim and version of events is consistent with the bank account evidence he provided that shows weekly payments and reversals from mid-August until December 28th at which time a payment of \$400 went through to PL's account. Based on that evidence I accept his contention

that the payment was made in error, as a result of his mistake in setting up an earlier internet banking payment to PL.

9. PL's claim that FN caused damage at his property and therefore owed him money is entirely unsubstantiated and is disputed by FN. In order to prove such a disputed claim, some kind of evidence, even circumstantial evidence, such as a text from the time referring to the incident, or a request for payment, would be necessary, but there is no such evidence. I find that PL's version of events in this regard has therefore not been proven to the required standard.

10. For the reasons given above, I find that PL is liable to repay \$400.00 to FN.

Referee Perfect

Date: 20 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>.