



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

[2023] NZDT 635

**APPLICANT**      FP

**RESPONDENT**    T Ltd

**The Tribunal orders:**

T Ltd is to pay FP \$4,132.00 on or before 6 December 2023.

**Reasons**

**Introduction**

1. In November 2022 T Ltd prepared and laid lawn seed at FP's house.
2. FP claims \$4,132.00 being the price paid for the preparation and laying of the lawn.
3. The issues to be resolved are:
  - a. What did FP and NN require from T Ltd for their lawn?
  - b. Did T Ltd complete the job with reasonable skill and care?
  - c. Was the lawn fit for purpose?
  - d. If not, is FP entitled to claim \$4,132.00

**What did FP and NN require from SD for their lawn?**

4. A contract is an agreement that the parties agree to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms.
5. I find that FP and NN agreed to T Ltd preparing and laying of lawn seed as per the estimate provided by SD, dated 30 June 2022. The parties agreed that this was the arrangement.

**Did SD complete the job with reasonable skill and care and was the lawn fit for purpose?**

6. The Consumer Guarantees Act 1993 ('the Act') applies to this dispute. Any service that is provided comes with a guarantee that it is completed with reasonable care and skill<sup>1</sup> and is fit for a particular purpose<sup>2</sup>.

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<sup>1</sup> Section 28 of the Act

<sup>2</sup> Section 29 of the Act

7. I find that the preparation and laying of the lawn seed was not done with reasonable care and skill for the following reasons:
  - a. Even though T Ltd provided photographs of the area during the preparation and after the topsoil and seed had been laid and that the photographs clearly show the area has been prepared to a reasonable and acceptable standard; part of the process was the spraying of the area prior to the topsoil being laid. FP was adamant it wasn't and said that NX told her that it was not necessary. The photographs provided, did not show any yellowing or limp effect, that is normally experienced with spraying when the area was being prepared for the topsoil. NX said that the area was scraped and rotary hoed and his contractor confirmed this. Of note NX also said in the hearing that by rotary hoeing, old seed will be brought to the surface and that can be killed off with broad leaf spraying and fertilising. However, I noted in the photographs that there were signs of the earlier ground cover coming through the topsoil that should have been killed off by the spray if it had been applied. The initial preparation by spraying off the area does not appear to have been done since the original growth has come through the topsoil, therefore the preparation has not been completed with reasonable skill and care.
8. In addition, I find that the resulting lawn was not fit for purpose because:
  - a. Notwithstanding that NX says that he always tells people that they need to water the newly laid area, he could deny saying to FP and NN that, "*due to the weather* [that was being experienced at the time] *that they didn't need to water it, and to wait until it rains, then it will take off*". He conceded that he may have said this. This delay in watering the area, meant that the area dried and began to crack. FP and NN did begin to water the area but by mid-November the grass had not taken off and when heavy rains came at that time, the topsoil and seed washed away with some of it filling the cracks.
  - b. NX attended shortly after this and stated the lawn could be saved and offered solutions of placing more topsoil and seed in the areas that had been gouged by the rain run-off and by applying fertiliser and eventually broad leaf spray. He advised he would return within two weeks to complete this and he didn't. Subsequently, when he did arrange for it to be done, the contractor he sent out formed the opinion that due to the state of the lawn that, it needed to start over.

**If not, is FP entitled to claim \$4,132.00**

9. Under the CGA, if the services are not provided with reasonable care and skill, and the supplier is unable or unwilling to remedy the failure within a reasonable time, then the consumer is entitled to have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied<sup>3</sup>.
10. FP has provided copies of the communication with NX to have the lawn remedied. The communications show FP and NN trying to get NX to attend or his contractors to attend and remedy the lawn as proposed by NX. However due to the delay, when a contractor did turn up, it appears that the lawn was beyond remedy.
11. Therefore, FP would be entitled to have it remedied elsewhere. She has provided costing to do this, however, only seeks the cost she incurred from T Ltd. Accordingly, I order that T Ltd are to pay FP \$4,132.00.

**Referee: Nigel Wolland**  
**Date: 17 November 2023**

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<sup>3</sup> Sections 28,29 and 32 of the Act



## 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>.