



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 331

APPLICANT HD

RESPONDENT NN

The Tribunal orders:

The claim is dismissed.

Reasons:

1. HD and NN were neighbours until recently. HD says that NN has caused damage to his property and made an application for a restraining order against him which required him to incur legal fees. HD seeks an order that NN is liable to pay him \$9,567.41.
2. The issue to be resolved is whether NN is liable for the damage claimed by HD?

Is NN liable for the damage or costs claimed by HD?

3. I am unable to make a finding that NN is liable for any of the damage or costs claimed by HD. For this reason the claim is dismissed.
4. HD and NN are both tenants of [housing provider]. Until recently they were neighbours. HD lived in a property that was in front of NN's property and they both shared a driveway. The relationship between HD and NN clearly became very strained. Eventually NN moved to a different [housing provider] property.
5. HD says that while they were neighbours NN threw stones at his house and broke some windows, scratched his car and spray painted an insult on a fence that he had put up between their properties. HD seeks an order that NN is liable to pay the cost of fixing all of this damage.
6. HD also says that NN made an application for a restraining order against him and he had to incur significant legal costs to defend that. He seeks an order that NN is liable to pay his legal costs.
7. Finally HD seeks an order that NN pay the filing fee for this claim.

The claims that NN caused damage to HD's property

8. The law that applies is the law of tort, under which a person can be liable for damage caused as a result of wrongful interference with the property of another person. It is worth noting that in order to establish a trespass in tort it is necessary to prove that it is more likely than not that the damage complained of was actually caused by the respondent personally.

9. At the hearing NN said that she did not personally cause any of the damage that HD complained of.
10. I accept that while NN lived next door to HD, his windows were broken, his car was scratched and an insult was painted on NN's side of his fence. However, having considered the evidence provided by HD in support of his claims, I am unable to make a finding that it was more likely than not NN who caused the damage complained of.
11. HD has provided a video which he says shows a person throwing stones at his house. This video is quite dark, and I am unable to make out a particular person. HD says it is possible to hear stones hitting his house, but I was unable to pick that out from the video. I do not consider that the video is sufficient to establish that NN threw stones at HD's house.
12. HD says he has multiple witnesses who will confirm that stones were thrown at his property from NN's property. At the hearing though he accepted that it may not have been NN who threw the stones, but could have been someone else on her property. NN denied that it was her.
13. While I accept that stones were thrown there is just not enough evidence to establish who threw them, and so this part of the claim cannot be successful.
14. In relation to the scratch on his car, HD says he has video of NN getting out of a taxi and walking past his car, which was parked on the road. The next day HD found a scratch on his car. he says he lives in a quiet cul de sac and so it must have been NN who scratched his car.
15. NN says she did not scratch the car.
16. I am unable to make a finding that it is more likely than not that NN scratched the car. This is because the car was parked on the street and the damage was not discovered until the morning after NN walked past it. This means that anyone could have caused the scratch – either intentionally or mistakenly. There is just not enough evidence to establish it was most likely to be NN.
17. I am also unable to make a finding that NN wrote the insult on HD's fence. HD says that the insult was discovered on NN's side of the fence within a few hours of NN moving out of the property, and so it must have been NN who did it.
18. NN says she did not damage the fence.
19. There is just not enough evidence available to enable a finding that NN is most likely to have been personally responsible for the damage. It could have been done by another person at her property, or it could have been done in the hours after NN left the property.
20. There is no direct evidence of NN actually causing any of the damage complained of. In the circumstances I consider that HD is unable to prove who caused the damage, and so his claim cannot succeed.

The claim for legal costs

21. HD also seeks an order that NN is liable to pay his legal costs incurred after she applied for a restraining order against him. It seems from the correspondence that HD also applied for orders in those proceedings. Both applications were eventually withdrawn.
22. I have been unable to identify any legal basis on which this Tribunal could make a finding that NN is liable for HD's legal costs. It was HD's choice to instruct a lawyer and file his own application in response to NN's application to a restraining order.
23. In any event I consider it most likely that the parties agreed not to pursue any claim for their legal costs when the restraining order proceeding was discontinued. In those circumstances HD's claim cannot succeed.

24. NN has provided copies of emails between her lawyer and HD's lawyer in relation to the discontinuance of the restraining order proceedings. In the correspondence from February 2023 the lawyers agree that each party will discontinue their application and neither party will make an application for costs.
25. On 24 February OU (NN's lawyer) said "*...I have spoken to my clients this morning and they have confirmed that they are willing to discontinue their application and to not make any application for costs on the basis that your clients also agree not to make any claim for costs...*"
26. On 28 February 2023 GW (HD's lawyer) replies "*...My clients have instructed they will discontinue their proceedings and not apply for costs...*".
27. The parties agreed that no application for costs would be made in relation to the restraining order proceedings and so HD is now unable to pursue such a claim here.
28. HD has not been successful in this claim and so it must be dismissed. I note that even if he had been successful HD's claim for the filing fee for this claim could not have been awarded because the Disputes Tribunals Act only provides for such an award in very limited circumstances which do not apply in this case.
29. At the hearing HD suggested that he may pursue a claim for the damage against NN's partner or other associates. I have to say that it seems likely that the same issues as to proof may arise in future proceedings. Unless there is direct evidence that a particular person caused the damage complained of, the evidence is likely to be of a he said/she said nature as in this case, which will not support a finding. It would be undesirable for the parties to have any further contact now that they are no longer neighbours and I would recommend that both parties to consider this an end to their dealings.

Referee: L Trevelyan
Date: 3 August 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>.