



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 650

APPLICANT **HG**

RESPONDENT **N Ltd**

Order of the Tribunal

1. N Ltd is to pay \$14,428.50 to HG by 20 December 2023.
2. The amount ordered includes the deduction of \$2,080.00 the applicant owes for N Ltd delivery charges and \$300.00 for storage of a TV and Chair.

Reasons

1. The issues to be determined in this case are:
 - A. Is N Ltd liable for damage to HG's goods?
 - B. If so, what is the value of the loss?

A. Is N Ltd liable for damage to HG's goods?

2. The claim is for compensation for damage to the applicant's household goods while stored in a container at the respondent's premises.
3. HG contracted N Ltd to transport her household goods to a new residence. However, there was a delay in her being able to move in and it resulted in N Ltd storing the goods for over a year, from 16 March 2022 to 23 May 2023. The goods were stored by N Ltd in a container which was outside their building. HG paid N Ltd a storage fee.
4. In May 2022, the storage facility was severely damaged by a tornado. Some containers were also damaged. SO, a director of N Ltd checked the container that the company had chosen to store HG's goods in. She said that there was no visible damage to that container. After the storm SO contacted HG to inform her that she had opened the door of the container and said words to the effect that "everything looks fine". However, when HG was ready to have her goods delivered from storage, N Ltd opened the container on or about 22 May 2023, some of her goods had become severely damaged from moisture entering the container. It was then discovered that there was a crack in the corner of the container which had allowed water to enter the container. Over time the goods in the container had been subject to the moisture and became damaged.

5. The applicant believes that the leaking container that caused the damage to her household goods was a failure of the respondent to provide safe storage. She has claimed losses of \$27,732.59 being the cost of repairing some goods that were irreplaceable and replacing others.
6. N Ltd's position in response is that:
 - i. This was not a situation where bailment applied and therefore N Ltd did not have responsibility for any losses and
 - ii. HG was told to get insurance for the move and for the storage of her goods and her failure to do so has resulted in her loss and
 - iii. After the storm it was the applicant's responsibility to check the goods in the container and make sure it wasn't leaking.

Bailment and possession

7. I have considered the contract that existed between the parties for the storage of goods. Prior to storage the respondent had possession of the applicant's goods through a contract of carriage. N Ltd continued that possession of the goods when placing the goods in one of its storage containers. Bailment applies in this case. N Ltd had possession of the applicant's property and the company assumed the legal responsibility for its safekeeping.
8. In addition, there is a guarantee under the Consumer Guarantees Act 1993 that services will be fit for the purpose. N Ltd provided a service to the applicant to store her goods. When the container became unfit for the purpose the storage service was also unfit for the purpose.
9. In both a situation of bailment and under the Consumer Guarantees Act 1993, N Ltd is liable for the loss associated with the failure to protect the applicant's goods.

Insurance

10. If the applicant's goods were damaged on the day that the tornado struck, it is most likely that N Ltd would not be liable for the applicant's loss. In that case the applicant would bear the loss if not insured. N Ltd's suggestion to HG to insure her goods while in storage may have been good advice in that case. Insurance may also have benefitted the applicant because insurance often pays for the replacement value of goods whereas the courts order the indemnity value of goods. The suggestion that HG insure her goods may have been advisable but did not remove N Ltd's responsibility for the safekeeping of HG's goods.
11. The issue of insurance might be viewed as largely irrelevant because whether the applicant was insured or not, the claim against the respondent could still proceed in the Tribunal for the full amount of the applicant's losses. Under Part 3 of the Disputes Tribunals Act 1988 an insurance company may be joined as a party to recover insured losses.

Was it the applicant's responsibility to check the goods after the tornado?

12. The respondent's position is that HG was told about damage to other containers from the tornado and should have checked her goods. HG disputed that SO told her that there had been damage to other containers. HG's memory is that all SO told her was that she had opened the door of the container containing HG's goods and said words to the effect that "everything looks fine". At that time, it is most likely that HG would have reached the same conclusion if she had opened the door of the container to check her goods. The problem was not that HG didn't inspect her goods. The problem was that a container had split. The damage to goods

occurred because after the tornado happened, N Ltd reached an incorrect conclusion about the weathertightness of the container used for storage of HG's goods. N Ltd assessed that the container was sound, but it had split. It was never HG's responsibility to check N Ltd's storage equipment.

Summary regarding N Ltd's liability

13. I am satisfied that N Ltd is liable for the loss of HG's goods resulting from the failure of its equipment to protect her goods while in its possession.

B. What is the value of the loss?

14. HG has presented a detailed list of goods that were destroyed or needed repair. N Ltd does not dispute the condition of goods at the time when the damage to the container was unloaded and the damage to the container was discovered.

15. HG has provided receipts for many items and quotes for replacement and repair of her goods. I have considered all of these.

16. The major items for repair were the French Antique Dining table and chairs and reupholstering an 8 seater lounge suite and 2 armchairs. The cost for that work has been quoted at \$6,152.00 and \$6,730.00 respectively. Replacement items include brand new mattresses, base, headboard and side table. The purchase price for these items was \$7,646.00. There are other items including; an office table; tiered shelf with drawer; 43" Panasonic TV; Soundbar and Surround sound speakers; bed and bathroom linen; and reframing old photos. The applicant has listed the items for repair being \$18,576.00 in total and replacement items being \$9,155.99. The loss is considerable.

17. I am also aware that the directors of N Ltd have suffered immense loss personally and to their business resulting from the tornado. The stress has been considerable. However, the order for damages cannot take that into account.

18. The amount of loss able to be ordered by the Tribunal is not the replacement cost of goods but their value at the time of the loss. The loss is the second hand value, not the replacement cost that insurance may offer. I have taken account of depreciation and betterment in reaching my decision about the value of goods and repairs.

19. I have allowed \$4,000.00 (\$8,000.00 total) for repairs for each of the French antique dining and lounge suites. The reduction is to take account of betterment. I have ordered the full amount for [upholstery cleaning company] \$271.50 and \$692.00 and \$1,345.00 reframing of pictures. The total for the remedial work is \$10,308.50. I have allowed \$4,750.00 for the replacement mattresses, base, headboard and side table; \$700.00 of the \$1,247.10 claimed for linen; \$200.00 of the \$729 for the printer; \$500.00 for the soundbar and speakers and \$350.00 loss regarding the office table and shelf. The total for items that could not be repaired amounts to \$6,500.00. I have not made an order regarding the TV because there is insufficient information about its condition.

20. The total assessed as HG's loss is \$16,808.50.

Amount owed by the Applicant to the Respondent

21. It is not disputed that there is an outstanding invoice for N Ltd's delivery charges and for storage of the TV. The amount ordered includes the deduction of \$2,080.00 for N Ltd's delivery charges and \$300.00 for storage of a TV and Chair.

Summary

22. N Ltd is liable for the loss of HG's goods resulting from the failure of its equipment to protect her goods while in its possession. The amount of the loss is \$16,808.50. The amount N Ltd is to pay is \$16,808.50 less \$2380.00 = \$14,428.50.

23. In reaching this decision I have had regard to the law and the merits and justice of the case.

Referee: BM Smallbone

Date: Monday 27 November 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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.