



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

[2024] NZDT 8

**APPLICANT**      HI

**RESPONDENT**    B Ltd

**The Tribunal orders:**

B Ltd is to pay to HI the sum of \$400.00 on or before 22 March 2024.

**Reasons:**

1. In November 2023, HI was travelling to [City] with his family, which included young children.
2. HI had made a booking through a third party online booking platform for a one night stay at the [Apartments] in [City] operated by B Ltd.
3. Upon arrival at the property, HI and his family checked into the three bedroomed apartment allocated to them. HI was not satisfied with the cleanliness of the room and went to speak to a staff member.
4. HI says that following on his discussion with that staff member, he and his family left the property and found alternative accommodation for the night.
5. HI is seeking a refund of the \$400.00 that was charged to his credit card for the booking and the Disputes Tribunal filing fee of \$45.00.
6. The issues the Tribunal has to consider are:
  - a. Did B Ltd breach the Consumer Guarantees Act 1993 (“CGA”) by not providing its service of accommodation with reasonable care and skill?
  - b. Did B Ltd breach the Fair Trading Act 1986 (“FTA”) by making a misleading representation about the accommodation?
  - c. If the CGA was breached, was it a breach of a substantial character or did B Ltd fail to remedy the problem within a reasonable time?
  - d. Is HI entitled to a refund of \$400.00 or any other amount?
  - e. Is HI entitled to the Disputes Tribunal filing fee of \$45.00?

**Did B Ltd breach the CGA by not providing its service of accommodation with reasonable care and skill?**

7. Section 28 of the CGA means that where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill. The standard is that of a competent person exercising the trade in question. It is a standard of reasonableness rather than perfection.
8. IU representing B Ltd accepted that there were some cleanliness issues with the room, and he has since spoken to the staff about that. However, he says that the issues HI had could have been addressed if B Ltd had been given an opportunity to do so. He said the room could have been cleaned and within an hour HI and his family could have gone into the room. IU said that HI had told his staff that the layout of the room was the issue. He said HI was asked to wait 10 minutes to speak to the manager, but HI did not wait and instead left the property. He said he had checked the CCTV footage from the property and HI and his family had left after 11 minutes.
9. I am satisfied that B Ltd was in breach of the CGA by not providing the service of accommodation with reasonable care and skill.
10. HI provided a number of photos to the Tribunal showing the condition of the room when he arrived. The photos show marks, which HI said were sticky, on the table, the remotes for the TV and air conditioner in an unclean state, grease on the side of the oven door, a dead insect on a shelf, dust on surfaces, grease on table mats and what appears to be mould around power points and windows where there may have been previous water damage. There were various other photos showing scuff marks, carpet stains and what appeared to be water damage on the walls.
11. The photos show that the cleanliness of the room fell below the standard a reasonable consumer would expect from an accommodation provider.
12. B Ltd has breached the CGA.

**Did B Ltd breach the FTA by making a misleading representation about the accommodation?**

13. Section 9 of the FTA states that no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
14. Section 13 of the FTA states that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services make a false or misleading representation that services are of a particular kind, standard, quality, or quantity.
15. HI's claim in this regard was similar to the one I have dealt with above. He said that the photos of the [Apartments] that appear on [booking website] and its own website give the impression that the units are clean. That is not what he found when he arrived at the apartments.
16. As I have already found that there was a breach of the CGA in this regard, I do not need to go on to consider whether there was also a breach of the FTA. Photos on promotional websites would be expected to show the rooms in a very clean state. IU did not dispute that HI's room was not as clean as the ones depicted in the photos on the particular day he arrived.

**If the CGA was breached, was it a breach of a substantial character or did B Ltd fail to remedy the problem within a reasonable time?**

17. Section 32 of the CGA deals with options for consumers where a service does not comply with a guarantee. Where the breach is not of a substantial character, the consumer must ask the supplier to remedy the problem and only if it does not do so or does not do so in a reasonable time, the consumer can have the problem remedied elsewhere and recover the reasonable costs of that work from the supplier or cancel the contract for the supply of the service.
18. Where the failure cannot be remedied or is of a substantial character, the consumer can, if there is a contract between the supplier and the consumer for the supply of the service, cancel that contract or obtain from the supplier damages in compensation for any reduction in value of the product of a service below the charge paid or payable by the consumer for the service.
19. I am not satisfied that the breach here was one of a substantial character. HI claimed that the room required a complete renovation to made it acceptable.
20. I have to take into account the cost of the room when considering what a reasonable consumer would consider acceptable. This three-bedroomed apartment cost \$400.00. IU said that would be towards the cheaper end of accommodation available in [City]. During the hearing, the Tribunal viewed some properties available to book in [City] and IU's assessment in that regard is likely to be correct. By way of comparison, when HI left the property, he obtained alternative accommodation for his family for \$700.00, although I note that was for two apartments rather than one large three bedroomed apartment.
21. I find that additional cleaning could have remedied the issues with the apartment. Issues such as small stains on the carpet and scuff marks on the wall did not appear to be significant from the photos produced to me. The more concerning issue was the mould evident in some areas which would require regular cleaning.
22. I do not accept that the photo showing a small black dot on the sheets, which HI said was an insect, was sufficient evidence to show there were bedbugs as claimed by HI.
23. The evidence as to what happened when HI approached a staff member was in dispute. HI says that he was told no other rooms were available and the property did not offer refunds. He accepted that he was told he could wait for a manager but denied that he was told a manager would be available in 10 minutes. He said he was not told how long he may have to wait for a manager.
24. IU produced a written statement from a staff member who said she was told that HI's wife was not happy with the layout of the room, and they wanted a refund. She accepts she said, "*I told them that we are sold out and we cannot do a refund.*" She says she asked HI to wait ten minutes to see the manager.
25. I prefer the evidence of HI as he was the only party to that conversation who gave direct evidence to the Tribunal. It was not disputed that HI was told that the property was sold out and that it could not do a refund. In light of that information, I find it was reasonable for HI to see no reason to wait for the manager as he had already been told there was little that could have been done. He was anxious to secure alternative accommodation for his family before it got too late.
26. B Ltd failed to remedy the problem within a reasonable time. While I accept HI could have waited a little bit longer than he did to speak with a manager, in light of what he had already been told by the staff member, it was reasonable to him to proceed on the basis that B Ltd was not going to remedy the situation for him. I accept HI's evidence that he was not told how long he may have had to wait for a manager to attend. There was no suggestion by the staff member that the room could be cleaned again so that was not given as an option to HI.

**Is HI entitled to a refund of \$400.00 or any other amount?**

27. HI was entitled to cancel the contract for the supply of accommodation. While he may not have done so on the [booking] website, I am satisfied that his actions of alerting the staff member to the issues, requesting a refund and departing the property made it clear he was cancelling the contract.
28. Section 38 of the CGA means that where a consumer cancels a contract for the supply of services under the CGA, the consumer shall be entitled to recover from the supplier a refund of any money paid or other consideration provided in respect of the services unless a court or the Disputes Tribunal orders that the supplier may retain the whole or part of the money paid or other consideration provided by the consumer.
29. Taking all matters into account I am satisfied that HI is entitled to a refund of the \$400.00 paid to B Ltd. The room was not cleaned to a reasonable standard and HI received little in the way of assistance from the staff member after he raised the issue.

**Is HI entitled to the Disputes Tribunal filing fee of \$45.00?**

30. Section 43 of the Disputes Tribunal Act 1988 (“DTA”) means that costs cannot be awarded against a party to a Tribunal hearing except in certain circumstances. I am not satisfied that any of the exceptions as set out in s43 of the DTA apply. I cannot, therefore, make any award in respect of those costs.
31. The Tribunal was advised at the hearing that HI had raised a dispute in relation to the \$400.00 payment through his credit card company. IU said that money had already been taken back from B Ltd by the credit card company. HI said he had not been advised of that and had not received any refund as yet.
32. HI can advise his credit card company of the outcome of this hearing. HI is to advise B Ltd once he receives any refund from his credit card company.
33. B Ltd is to pay to HI the sum of \$400.00. That amount can be paid through the refund HI has requested through his credit card company. If for any reason that refund is not paid by the due date for payment, B Ltd remains liable to pay the amount to HI. However, HI will have to re-pay \$400.00 to B Ltd if he subsequently receives a refund through his credit card company as well. HI is not entitled to two payments of \$400.00 and that was discussed with the parties at the hearing. HI confirmed he will keep in touch with B Ltd in that regard.
34. B Ltd is to pay to HI the sum of \$400.00 on or before 22 March 2024.

**Referee: P Byrne**  
**Date: 29 February 2024**



## 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>.