



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

[2023] NZDT 623

**APPLICANT**      **HM**  
**RESPONDENT**    **XD**  
**SECOND**          **KT**  
**RESPONDENT**

**The Tribunal orders:**

1. XD and KT must return E to HM by 4pm on 4 December 2023 at a time and place that is reasonably agreed by all parties.
2. If E is not returned to HM in accordance with paragraph 1 above, XD and KT must pay HM \$2,000.00 by 4pm on 11 December 2023.

**Reasons:**

1. HM owned a dog called E and a cat called B. In May 2023, when HM became ill and was admitted to hospital, it was NC who took her to the doctor. After being admitted to hospital, HM asked NC, to deliver E to another friend NM, and B to be taken to the local vet cattery. This was so they could be cared for during HM's hospital stay. Both E and B ended up in the care of XD and KT. In August 2023 HM requested the return of E.
2. As E remains with the respondents, HM has asked the Tribunal to order that E be uplifted by [Council] officers, and an order that the New Zealand Companion Animals Register (NZACR) be amended to reflect that HM is the owner of E. The applicant also sought \$2,000.00 from the respondents and clarified at the Tribunal that this was because she was required to enter a sum into the form, but that E was priceless. HM also clarified that she has relinquished the ownership of B to XD and KT. Therefore, this hearing was solely about E.
3. XD has filed a counterclaim in an amount of \$1,999.00 and requested that the Tribunal either confirm that E is owned by XD or that the Tribunal confer ownership of E to XD.
4. The issues to be determined by the Tribunal were:
  - a. Who is now the owner of E? Did HM agree to transfer ownership of E to XD?
  - b. Is the Tribunal able to make the orders requested by the parties?

**Who is now the owner of E? Did HM agree to transfer ownership of E to XD?**

5. In terms of deciding ownership, the law treats animals as chattels although most pet owners would not reasonably think of them as such.

6. The evidence shows that prior to her admission to hospital, HM was the owner of E. Therefore, in order for the Tribunal to find that XD and KT are now the owners of E, it must be shown that HM intended to give up her rights to E and transfer ownership to them. If it was the case that HM is still the legal owner of E, if XD and KT were to retain possession of E, that would be inconsistent with HM's rights as owner.
7. On the evidence provided to the Tribunal, I do not find that HM intended to give up her rights to E and transfer ownership to XD. I say this because:
  - a. The written correspondence is consistent with HM's version of events that she only ever wanted her animals to be rehomed while she was not able to care for them, but never intended for ownership of E to be transferred.
  - b. I do not find that HM's response to XD that stated "I guess we play along with [Council]" was an intention that the ownership of E be transferred to the respondents.
  - c. HM informed the NZACR that she consented to the transfer of guardianship of E but that she did not see herself being in her current circumstances long term. This is consistent with HM's version of events that she simply wanted to ensure that E had a home while HM was unable to care for her.
  - d. The respondents provided evidence from NC that HM had said to NC more than once that she wanted her animals to be rehomed, but I accept that this was at a time that HM was extremely unwell and only ever intended that someone provide a caring home for them until she was able to do so again.
  - e. The [Council] records show that ownership of E remains with HM.
8. This matter was distressing in that XD and KT have provided E with a safe, kind and caring home for the period HM was unable to look after her and have offered to continue to do so for B. They have bonded with E who appears from the evidence to have also bonded with them. They have not done this out of any desire to do anything but care for animals that they have understandably become very fond of. They are also concerned that E is well looked after in the future and that E and B will be separated if E is returned to HM.
9. These considerations weighed heavily on me. However, this matter must be decided in terms of who legally owns E and therefore who has a right to have her in their care.

**Is the Tribunal able to make the orders requested by the parties?**

10. As I have found that ownership of E is with HM, that answers the claims made by XD in her counterclaim.
11. HM had requested that the Tribunal order that:
  - a. The safe return of E, and a warrant for the [Council] dog officers to uplift her from the respondents and return her to HM; and
  - b. The New Zealand Companion Animal Register restore HM as the sole owner of E.
12. I do not have jurisdiction pursuant to the Disputes Tribunal Act 1988 to make either of the requested orders.
13. I can make an order that the property in question, E, be returned to HM and if this fails to happen, that an amount of money be paid. This is to enable any order that I make to be enforceable.
14. In this case, HM said that all she was looking for was the return of E, and not a sum of money. However, if I were to only make an order for the return of property, this in itself would not be enforceable and leave HM without a remedy if E was not returned. Therefore, I make an order

that if E is not returned to HM, that the respondents pay HM the sum claimed by HM, that is \$2,000.00.

**Referee: K. Armstrong**  
**Date: 13 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 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>.