



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 449

APPLICANT IL

RESPONDENT BG

The Tribunal orders:

1. The Applicant, IL's claim is dismissed.

Reasons:

2. IL moved into a three-bedroom apartment on [Address] on 27th February 2023. She had a house sharing agreement with her flatmates which included the Respondent, and another couple that lived in the master bedroom for which they paid \$440 per week. IL's share as per the agreement was to pay \$285 per week for her room and \$25 per week for expenses.
3. BG was the leaseholder on the flat and had also furnished the flat with her furniture.
4. Two weeks later, IL found out that BG was only paying \$165 for his room. She felt this was unfair as her room was smaller and did not have a wardrobe.
5. As a result the flatmates had some discussions around a fair split and IL said it was agreed at the time that BG will pay \$250 and IL \$195 for their respective rooms from 3 April onwards.
6. The following day BG messaged in a group chat that she felt she was put on the spot and wanted more time to think about this rent split.
7. This followed some more discussions between the flatmates but eventually BG gave a four week notice to all her flatmates to vacate while she was overseas. IL vacated on 21 May 2023.
8. IL claims she was overcharged by BG for the entire duration of her stay. She claims a fair rent should have been \$195 per week and accordingly seeks a refund of \$90 per week for her twelve week stay there.
9. IL also claims when the other couple in the apartment vacated they were refunded \$108 from the expense account but she did not receive anything.
10. In total, IL's claim amounts to \$1188 which includes \$108 for surplus expenses and \$90 per week overpaid rent for 12 weeks.

Was the house sharing agreement a binding contract?

11. A legally enforceable contract exists when the essential elements of a contract are present, that is: an offer has been made on sufficiently certain terms by one party to another party; the other party has accepted those terms; there is consideration (an exchange of values); and the parties intend to create a legal relationship. A contract can be formal or informal and can be created in writing or orally, or partly in writing and partly oral. It is more difficult to prove the existence of an oral contract but, once proved, it is legally enforceable between the parties in the same way as a written contract. Once a contract is formed, the parties are bound by the terms they have agreed to, and those terms are enforceable by one party against the other.
12. IL filed the house sharing agreement with the Tribunal which was signed by her on the 22 February 2023. This agreement outlines, amongst other things, that IL was to pay a rent of \$285 per week for the room plus \$30 per week expenses into BG's bank account by Monday evening.
13. I find that this agreement was a binding agreement between IL and BG. Once IL signed this agreement, she was bound to pay the weekly rent and expenses as stipulated in the agreement.
14. IL confirmed that at the time of renting the room, she did not ask to see BG's rental agreement with the landlord for the entire flat or what BG's share of the total rent was. Accordingly, I do not find there was any misrepresentation from BG that induced IL into the agreement. The onus was on IL to ask these questions prior to entering into the agreement so she had clarity about the situation.
15. It is also not uncommon for primary leaseholders of a rental to charge their flatmates slightly higher rental amounts as they assume the risk of any non-payment to the landlord. I also note in this arrangement, all the furniture in the apartment belonged to BG.
16. Accordingly, I find that IL was legally obliged to pay BG \$285 per week as rent for her room as per the house sharing agreement.

Did the house sharing agreement change allowing IL to pay \$195 from 3 April onwards?

17. A legally binding contract can be amended by the parties if they consent to an amendment. Ideally, the amendment must be written into the contract and signed by the parties for it be clear.
18. In this case, IL argues that there was an implied amendment to the contract near the end of March 2023 when BG agreed to reduce IL's rent to \$195 per week.
19. She, therefore, claims that she should be at least refunded the extra payments between 3 April and 21 May when she vacated her room.
20. I am not satisfied that the contract was amended as claimed by IL. This is because IL's email before the Tribunal dated 30 March 2023 indicates that she made a unilateral decision to reduce her rent to \$195. Her email starts as follows:

As mentioned on WhatsApp (On 26/3/23), I will begin paying \$195 in rent from 34 April. I would like to share why I'm making this decision.

21. The email goes on to say that BG messaged in the group chat saying she felt like she was put on the spot earlier and needed time to think about any changes.
22. So while I agree IL was pushing for her rent to be decreased as she believed it was going to lead to a more fair outcome for all, there is no evidence to suggest that BG had agreed to this in a way that led to the contract being amended from 3 April, whether implied or otherwise.
23. Accordingly, I am not satisfied on the balance of probabilities that there was any amendment to the house sharing agreement between IL and BG. IL was legally bound to pay the full rental of \$285 for the entire duration of her stay at the house.

Is IL entitled to a refund of expenses?

24. IL claimed she is entitled for a refund of \$108 from the expense account as that was refunded to the other couple that occupied the master bedroom in the apartment when they vacated a week prior to IL.
25. IL said it is a usual practice that any surplus money in the expense account of a flat at the time of termination of a tenancy or a flat sharing agreement is equally shared by all flatmates.
26. The relationship between IL and BG was a contractual one under the house sharing agreement. So, transactions between them needs to be as per the agreement which does not provide for any refund in the way IL claims. While I accept the practice of equally splitting the expense surplus may be a common practice between flatmates, I do not have the legal power to give affect to such a discretionary practice in absence of contractual basis.
27. Any such refund was therefore solely at the discretion of BG and as she has not made any refunds to IL, I am not able to do so as the contract did not provide for such.
28. Accordingly, the claim is dismissed.

Referee: S Malaviya

Date: 18 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>.