



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

[2024] NZDT 59

**APPLICANT** IO

**RESPONDENT** D Ltd

**The Tribunal orders:**

1. The claim is dismissed.
2. D Ltd will register the car in IO's name at its own cost.
3. IO is to collect his car on or before 5pm on 13 March 2024. If he does not collect the car D Ltd can dispose of it in any manner it sees fit but IO is not entitled to a refund.

**Reasons**

1. IO bought a used hybrid car for \$10559.00 from D Ltd. Within a few hours a warning light came on the dashboard. He asked D Ltd to remedy the fault and raised the concern that D Ltd had misrepresented the car's condition.
2. D Ltd responded stating that while used cars are prone to sudden, unpredictable defects it asked him to return the car to be inspected and repaired. While returning the car IO said it emitted smoke and had a strong burning smell. D Ltd advised it had fixed and refurbished the battery but could not identify any other issues.
3. IO was unhappy with this response, refused to collect the car asking for a refund and compensation. D Ltd declined this request.
4. In his originating claim IO wanted to cancel the contract and get a refund of \$10,559.00 as well as unspecified amounts of compensation for inconvenience, mental harassment and financial losses, and legal costs. In the hearing he withdrew his claim for compensation for inconvenience, mental harassment and financial losses and legal costs.
5. The issues to be determined are:
  - a. Is D Ltd in breach of the Consumer Guarantees Act 1993; and
  - b. If so, can IO cancel the contract and get a refund of \$10,559.00; and

**Is D Ltd in breach of the Consumer Guarantees Act 1993?**

6. The Consumer Guarantees Act 1993 provides a guarantee that goods will be of acceptable quality. This is defined as being durable and free from minor defects but taking into account the car's age and price.

7. D Ltd accepts there was a fault with the car.

**If so, can IO cancel the contract and get a refund of \$10,559.00?**

8. Where products are faulty, D Ltd has the first opportunity to repair, replace or refund the goods. If D Ltd refuses to remedy the problem IO can reject the goods and claim a refund. However, if D Ltd is prepared to remedy the problem and IO does not give it a proper opportunity to remedy the issues IO will have waived his rights to a remedy under the Consumer Guarantees Act 1993.
9. D Ltd has repaired the car at its own cost. It also had the car independently checked by the manufacturer at its own cost. The manufacturer identified the starter motor was weak, D Ltd replaced the starter motor at its own cost. The car and battery have been independently assessed as being in good condition. D Ltd has fulfilled its obligations under the Consumer Guarantees Act 1993.
10. IO does not want the car because he is worried there may be other issues with the car. D Ltd told me if it is responsible for any faults with the car it will honour its obligations under the Consumer Guarantees Act 1993.
11. In the hearing I was made aware the car is not registered. IO believes this is a deliberate action from D Ltd. D Ltd denies this and said it will register the car in IO's name at its own cost.
12. I acknowledge this experience was frightening for IO and he has found it very stressful. However, D Ltd has fulfilled its obligations under the Consumer Guarantees Act 1993. IO cannot cancel the contract and get a refund. The claim is dismissed.
13. IO is to collect his car from D Ltd on or before 5pm on 13 March 2024. If he does not collect the car D Ltd can dispose of it in any manner it sees fit but IO is not entitled to a refund.

**Referee: K O'Shea**  
**Date: 13 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>.