



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 665

APPLICANT J Ltd

RESPONDENT HH

 KH

The Tribunal orders:

HH and KH, jointly and severally are to pay J Ltd the sum of \$494.00 on or before 19 October 2023.

Reasons:

1. KH and her son HH engaged J Ltd to carry out a spring clean of a property in [Town]. J Ltd provided a quote of \$1650.00 including GST for inside the house and \$550.00 for inside and outside windows and joinery where accessible. This was accepted and J Ltd carried out the work. The family was not satisfied with the clean and complained about some aspects of the work, including the tiles, which they had expected would be machined. They completed the cleaning themselves and have only paid \$700.00 towards the invoice.
2. J Ltd claims the sum of \$1500.00 for the balance of its invoice.
3. The issues to be determined are as follows:
 - a. Was the cleaning fit for purpose and carried out with reasonable care and skill?
 - b. If not, what remedy are HH and KH entitled to under the CGA?

Was the cleaning fit for purpose and carried out with reasonable care and skill?

4. The Consumer Guarantees Act 1993 (CGA) implies guarantees into consumer contracts for the protection of consumers. Section 28 provides a guarantee that services will be carried out with reasonable care and skill. Section 29 of the CGA provides a guarantee that services will be “reasonably fit for any particular purpose; and of such a nature and quality that it can reasonably be expected to achieve any particular result, - that the consumer makes known to the supplier, before or at the time of making the contract”.
5. The purpose of the cleaning service was a one-off spring clean. This is reflected in the quote which states “Special/spring clean”.

6. HH and his mother were not satisfied with the standard of the cleaning provided. They said it seemed rushed and that things had been overlooked. At the hearing they presented a number of concerns, including: the floors had not been machined, there were still marks on walls, light switches, door handles, and other surfaces, smears and cobwebs on windows, cupboards were not cleaned, the oven and shower box were not cleaned. In support of this they presented photographs taken after the work was completed.
7. J Ltd's representative, NC, argued that the family's expectations were unreasonable. He explained that grinding and polishing or a cut and polish service for the tiled floor is not part of a cleaning service. He said that it requires specialist equipment and expertise and would cost in the vicinity of \$4,500.00. While KH is adamant that she asked for this service in her phone call with the company, it is not recorded in the quote, which just states "vacuum/clean floor". As it is not recorded in the quote and there is no other written or independent record of it being included in the contract, I find that it is not proven that the tiles were to be ground and polished as part of the job. There are some other aspects complained about that NC points out are not in the contract, such as the inside of bathroom cabinets and wardrobes. I accept that the items in the quote are the best evidence of what was agreed between the parties, so represent the terms of the contract. The inside of bathroom cabinets and wardrobes were not included.
8. The photographs presented demonstrate that a number of areas of the work contracted for were done poorly. They show many areas with visible dirt and marks remaining. I am satisfied from this evidence that the work was not done with reasonable care and skill, and was not fit for the purpose of a spring clean. Therefore, there has been a failure to meet these guarantees.

What remedy are HH and KH entitled to under the CGA?

9. Under the CGA if a service supplied to a consumer fails to comply with a guarantee the consumer is entitled to a remedy. Where the failure is of a substantial character or cannot be remedied the consumer may "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" s32 CGA). A failure is considered substantial if the services would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure.
10. There are multiple areas throughout the house that were not cleaned thoroughly. While many areas that required re-cleaning may have been easily remedied, the number of areas that were not clean was extensive. For this reason, I find a reasonable consumer would not have acquired such a cleaning service, and the failure was of a substantial character.
11. As the failure was of a substantial character HH and KH were not required to give J Ltd the opportunity to remedy the work and are entitled to a damages for the reduction in value of the service they received. J Ltd has invoiced \$2,200.00, but the family has done a lot of remedial work themselves. They say that this has included a full day for the windows, scrubbing the tiled floor with janola over 4 days, plus other cleaning. It is impossible to put an exact figure on this, and questionable if the time spent over 4 days spent on a floor is in excess of the "vacuum/clean" that was contracted for.
12. J Ltd stated at the hearing that the company spent 35 hours on the job, including travel time to and from the site. I find from the evidence presented that the family probably spent at least another two days or 16 hours on remedial cleaning afterwards. Using J Ltd's rates this remedial work would be valued at \$1006.00. For these reasons I find that there is a reduction in value of the service of \$1006.00. Therefore, J Ltd is entitled to the sum of \$1,194.00 for its work. KH has already paid \$700.00 so the balance to be paid is \$494.00.

Conclusion

13. For these reasons KH and HH are to pay J Ltd the sum of \$494.00 by the date stated in the order.

Referee: K Rendall
Date: 28 September 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>.