



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 690

APPLICANT K Ltd

RESPONDENT EN

The Tribunal orders:

EN is to pay K Ltd the amount of \$2,055.00 on or before 29 January 2024.

Reason

1. The respondent suffered damage to their dwelling which was the subject of an insurance claim. The insurer obtained a quote from the applicant, and agreed to cash settle the respondents claim for the amount of the applicants quote less the excess. The applicant carried out the work and issued an invoice as per the quote, though less that part for painting. The final invoice was \$6,710.00. The dispute is about the invoice because the respondent maintains the quote was more than the actual hours worked. The applicant is claiming \$2,055.00 being the amount of the invoice not paid.
2. EN says she did not approve the quote sent to her and the insurer, and her obligation to K Ltd was to pay the reasonable cost of the work done. She says it was dishonest of K Ltd to issue a quote that exceeded the actual cost. The insurer cash settled EN about \$8,200 though she could not recall the exact amount. This was after 3 excesses of \$400 were deducted, 2 of which were not related to the quote.
3. I have carefully considered EN's evidence but find on balance the claim is successful. I say this because even if EN did not accept the quote, she must have been aware her insurer did and she did not give evidence that at any time before the work was done, she informed K Ltd that payment would be on actual time and cost, not on the quote. This is consistent with EN's email to T of 12 June 2023 in which she said *we have the go ahead to fix the wall etc from the insurance company*.
4. Quotes provide certainty for all parties and if a quote exceeds the actual time and cost that is no different to a customer benefiting when the quote does not cover the actual time and cost, the parties have agreed a figure and they must stick to it.
5. As said, EN cannot unilaterally elect to apply a different measure of costs without informing K Ltd.
6. For this reason, I find the claim is proven.

Referee: P McKinstry
Date: 19 December 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>.