



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 317

APPLICANT KD

RESPONDENT LT

The Tribunal orders:

LT is to pay KD \$70.00 within 28 days.

Reasons

[1] KD bought a fridge-freezer from LT by way of [online auction]. KD says that the fridge-freezer was defective, and claims \$350.00 from LT for the repair costs.

[2] KD provided a copy of LT's [online auction] advertisement. The fridge-freezer was described as "used" and "good working". KD won the auction, and paid the purchase price of \$70.00.

[3] KD was unable to install the fridge-freezer immediately. About a week after she took possession of it, she plugged it in and found it did not work. She then contacted a technician who, after some three weeks had passed, came and inspected the unit. The technician said that the fan was broken. KD had a new fan installed at a cost of \$258.75. It was then discovered that the thermostat had to be replaced, which cost a further \$89.70. KD said that the technician had told her that the unit was between 15 and 20 years old.

[4] KD said that she had not contacted LT as soon as she found that the fridge-freezer did not work because she had expected any defect would be minor and she would have paid for that herself. However, after she had found that the problems were serious, she had had the repair work done, and she had contacted LT after that. He had offered her a refund of \$70.00, but had declined to pay for the repair costs.

[5] LT said that he was not a trader. He had purchased the fridge-freezer secondhand some two years before he sold it to KD. He did not dispute that it was not as described, and he repeated his offer to refund the purchase price. However, he considered he was not liable to pay for the replacement fan and thermostat. That was because, he said, KD should have contacted him as soon as she had discovered that the unit did not work, rather than proceeding to have repairs done without first contacting him. He said that some weeks had passed between the date he sold the unit and when he had first learned of KD's concerns, and he had offered a refund as soon as he had been informed of the problems with the unit.

The issue

[6] I must decide whether the fridge-freezer was accurately described by LT as "good working" and, if it was not, what reasonable compensation LT must pay.

The law

[7] As LT is not a trader, no consumer protection legislation applies to the sale. However, s 35 of the Contract and Commercial Law Act 2017 applies in this case. That section states:

Damages for misrepresentation

(1) If a party to a contract (**A**) has been induced to enter into the contract by a misrepresentation, whether innocent or fraudulent, made to A by or on behalf of another party to that contract (**B**),—
(a) A is entitled to damages from B in the same manner and to the same extent as if the representation were a term of the contract that has been breached.

I must assess what damages should be payable from the point of view of foreseeability and reasonableness.

Decision

[8] I consider KD has established that LT misrepresented the state of the fridge-freezer in his advertisement. It was not working at all, and could not be made to work without expenditure of \$348.45. I do not think that a reasonable person would have bought the item if he or she had known these facts. Thus, I think that KD has proved that she was induced to make the purchase by LT's misrepresentation.

[9] However, I do not think that KD is entitled to the repair costs that she claims. In my view, she acted reasonably in contacting a technician in order to obtain a diagnosis of the problem but, having learned what was wrong with the unit and the cost entailed in fixing it, she should first have contacted LT. It would have been, in my view, a reasonable step to mitigate her losses by requesting a refund of the purchase price from LT, rather than spending the sums that she did on repairs. The only evidence that I have of the market value of the item is the sum that KD paid, which was \$70.00. I do not think that, objectively speaking, damages of \$348.45 should be recoverable as foreseeable expenditure on a 15 – 20 year old fridge-freezer that had a market value of \$70.00. It was, of course, KD's decision to repair it, and to proceed with having new parts installed. However, I do not think that LT should be liable to pay the costs entailed in those circumstances.

[10] Thus, I consider that a reasonable sum to be paid by LT is the price of the fridge-freezer at the date of the sale, which was \$70.00.

Referee: C Hawes

Date: 9 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>.