



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 362

APPLICANT KD

RESPONDENT NG Ltd

The Tribunal orders:

NG Ltd is to pay KD the sum of \$3,417.97 on or before 1 August 2023.

Reasons:

1. In August 2021 KD went to NG Ltd to get some vinyl planking for his floor. NG Ltd's representative, Mr L, did a site visit and measured the area, and pointed out some work that needed to be done in the hallway. KD chose a product from the samples provided, and paid the deposit of 70% as requested on August 24th 2021. That evening New Zealand went into alert level 4, and [City] remained there for 5 weeks. On 21 September [City] entered alert level 3 and stayed there until December 2021, when the traffic light system was introduced. KD was able to get the required building work done in the hallway under alert level 3. By January 2022 KD had not heard from NG Ltd. In February he contacted NG Ltd and asked if they were working in the red traffic light setting. He was told that they were, so requested that Mr L contact him. Mr L did not do so until March, by which time KD had decided to go to another supplier.
2. KD claims the sum of \$3,417.97 for a refund of the amount paid to NG Ltd.
3. The first hearing could not go ahead due to the impact of flooding in [City]. NG Ltd did not attend the second hearing or provide any defence to the claim. The absence of a party does not prevent the hearing from going ahead.

The issues to be determined is whether KD entitled to cancel the contract and receive a refund?

4. The Consumer Guarantees Act 1993 (CGA) implies guarantees into consumer contracts for the protection of consumers. Section 5A provides a guarantee that, if no time or period has been agreed, the consumer will receive the goods within a reasonable time. Similarly, there is a guarantee that services will be completed within a reasonable time (s 30 CGA). Where the failure to comply with these guarantees is substantial the consumer may cancel the contract and receive a refund.
5. The contract between the parties was both for the supply of flooring and its installation. Parts of the delay were caused by restrictions imposed by the Covid alert levels. I accept that at alert level 4 delay was inevitable and NG Ltd could not be responsible for that. It is unclear whether

NG Ltd was able to work at alert level 3. KD was able to have other tradespeople work at his property, but no evidence regarding whether NG Ltd was able to work then was presented. Therefore, it is not proven that NG Ltd was responsible for the delay between 21 September and 3 December. However, the evidence presented is that NG Ltd was able to work and was laying flooring in the red traffic light system. At that point NG Ltd did not contact KD for a further 3 months, even after he contacted them. I find that three months is an unreasonable length of time to delay the delivery and installation of the flooring, without any communication or explanation. Therefore, I find that there has been a failure to meet the guarantees relating to reasonable time.

6. I consider the delay to be substantial as a reasonable person who had ordered and paid 70% for flooring prior to a lockdown, would expect some communication and a booking for delivery and installation to be made within less than three months of work resuming. For these reasons KD is entitled to cancel the contract and receive a refund of the amount paid.

Conclusion

7. For these reasons NG Ltd is to pay KD the sum of \$3,417.97 by the date stated in the order.

Referee: K Rendall
Date: 18 July 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>.