



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 705

APPLICANT KG

RESPONDENT D Ltd

The Tribunal orders:

1. D Ltd is to pay KG \$1,237.00 on or before 5.00pm on 19 January 2024.

Reasons

1. KG engaged the services of D Ltd to move her furniture from storage to her new place of residence. When the furniture was delivered, she later found that her China cabinet was damaged, with the internal mirror broken and a scratch on the door and the feet of the cabinet was damaged, in one part wood had come off. She claims that D Ltd were responsible for the damage when moving her furniture and claims the cost of repairs for \$1,237.00.
2. The issues to determine are as follows:
 - a) Is D Ltd is liable for the damage to the cabinet?
 - b) If so, is KG entitled to all or any of the \$1,237.00 that is claimed?

Is D Ltd liable for the damage to the furniture?

3. Under the Contract and Commercial Law Act 2017, it provides for all domestic carriage of goods within New Zealand, whether goods are carried by road, rail, sea or air. The Act provides for four different categories of contracts for carriage, and the extent of an individual carrier's responsibility for damage to goods depends upon which kind of contract governs the particular case.
4. Where a contract does not purport to be of a particular kind, it is deemed for the purposes of the Act to be a contract for carriage "at limited carrier's risk". Therefore, it is a contract at limited carrier's risk, under which a carrier shall be liable for the loss of or damage to any goods.
5. D Ltd denies that it damaged the furniture during transportation. According to D Ltd, when the furniture was moved and delivered, there was no visible damage.
6. KG asserts that the cabinet was fully intact and undamaged at the time of the move. However, upon delivery, she was upset to discover that the mirror inside the cabinet was cracked and the feet of the cabinet were damaged.

7. I find on the evidence before me, on the balance of probabilities that the furniture was damaged during the move by the respondent. Therefore, D Ltd is liable for the loss of the goods.

If so, is KG entitled to all or any of the \$1,237.00 that is claimed?

8. A party is entitled to seek damages. The object is to place the aggrieved party in the position that would have been occupied had the contract been performed as originally agreed.
9. I am satisfied that the costs to repair the cabinet are reasonable. I find that D Ltd is pay KG \$1,237.00.

Referee: D Alofivae

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>.