



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 385

**APPLICANT**      **KI**

**RESPONDENT**    **MA**

**The Tribunal orders:**

1. KI's claim against MA is dismissed.
2. MA's counterclaim against KI is dismissed.

**Reasons:**

1. The respondent had a room to rent in her flat which she advertised on Trade Me. The applicant applied for the room and the respondent said that the applicant could move in pending certain conditions being met, including payment of the bond. Initially the applicant was not able to pay the bond on the agreed date, so the respondent agreed to give him more time. Before the applicant paid the bond, the respondent then changed her mind and withdrew the offer to rent the room to the applicant.
2. The applicant has claimed losses of \$1,100.00 which is equal to three weeks rent less \$40.00.
3. The respondent filed a counterclaim against the applicant for \$950.00 which is equal to two and a half weeks rent.
4. The issues to be determined by the Tribunal were:
  - a. Was there a valid and binding agreement between the parties?
  - b. If so, did either party breach the contract?
  - c. What payments, if any, are payable between the parties?
5. Any applicant (or respondent in the case of a counterclaim) to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal. I would like to reassure the parties that all evidence presented to the Tribunal has been considered, but this order only refers to essential evidence material to the issues and is not intended to be a full record of the hearing or evidence presented.

**Was there a valid and binding agreement between the parties?**

6. The relevant law is the law of contract. The law of contract recognises and enforces verbal contracts, where the essential elements of a contract are present. These elements are a clear offer, unequivocal acceptance, adequate consideration, an intention for all parties to enter into legal relations and certain terms.
7. On the evidence provided to the Tribunal I find that there was not a valid and enforceable contract between the parties. I say this because:
  - a. The parties had initially agreed terms, however these terms were not clear and certain and were still being changed up until the time the respondent withdrew the offer. No written agreement had been entered into which would have clarified the terms. Therefore, the applicant could not have accepted an offer from the respondent as the offer itself was uncertain.
  - b. The applicant was to pay a bond as consideration and provided evidence that this was to be paid on the moving date. However, as the applicant did not pay the bond, no consideration for the contract was paid before the respondent withdrew the offer.
  - c. The parties had not reached a state where both parties had intended to form legal relations on clear and certain terms.

**If so, did either party breach the contract?**

8. As I do not find that there was a contract between the parties, there is no need for me to consider this issue.

**What payments, if any, are payable between the parties?**

9. As I do not find that there was a contract between the parties, there is no need for me to consider this issue.
10. Accordingly, both the claim and the counterclaim are dismissed.

**Referee:** K. Armstrong  
**Date:** 23 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>.