



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

**District Court**

**[2023] NZDT 244**

**APPLICANT      KL**

**RESPONDENT    LT**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. KL says that between 2019 and 2022 he paid LT \$12,676.00 as an interest free loan. He says there was a verbal agreement that LT would pay him the money back when her children were working and supporting themselves. KL seeks an order that LT is liable to pay him back the money he says he lent her. LT says that there was no verbal agreement with KL and the money he paid her was a gift, or compensation for hospitality she showed him over the years.
2. The issues to be determined are:
  - a. Was there an agreement that LT would pay KL back the money he gave her?
  - b. If so, what amount is Keshi liable to pay KL?

**Was there an agreement that LT would pay KL back the money he gave her?**

3. I am unable to make a finding that there was a contract between the parties.
4. The law that applies is the law of contract. For a contract to come into existence the elements of a simple contract must exist. The relevant elements are offer, acceptance, consideration (an exchange of values), and an intention to create a legal relationship.
5. A contract can be formed in writing or verbally. It is always easier to make a finding about what parties have agreed when they have put their agreement in writing.
6. KL says that in the period from 2016 to 2022 he advanced money to LT as an interest free loan, and that LT verbally agreed that she would pay the money back when her children were working.
7. KL says that the agreement was entirely verbal. He says that LT gave him her bank account, and he made a large number of mostly small payments (around \$20.00 in many cases) to LT over the years. KL has provided his bank account records as proof of the payments to LT which he says total \$12,676.00.

8. LT says that the payments were gifts, and that they never discussed repayment. She says that KL spent a lot of time at her house over the years, and that she thought the payments were gifts in return for her hospitality.
9. It is always for the party making a claim to prove their claim. This means that KL is required to establish on the balance of probabilities that the payments to LT were a loan and not a gift. Sometimes where the only evidence available is of a he said/she said nature, there is not enough evidence to support a finding. That is the case here.
10. The only evidence that KL relied on in support of his argument that there was a verbal contract was the fact that LT gave him her bank account in order to receive the payments.
11. I do not consider that the fact that LT gave KL her account number is sufficient evidence to enable me to make a finding that it is more likely than not that the payments KL made to LT were a loan and not a gift.
12. The evidence in this case is not sufficient to be able to make a finding that the payments were a loan and not a gift. This means that KL has not been able to prove his claim and so it must be dismissed.

**Referee: L Trevelyan**

**Date: 26 June 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>.