



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

**District Court**

**[2023] NZDT 367**

**APPLICANT      KL**

**RESPONDENT    SH**

**The Tribunal orders:**

SH is to pay KL the sum of \$150.00 on or before 5 July 2023.

**Reasons:**

1. KL purchased a car from SH. At the time of purchase the car had some money owing on it, and a security interest registered to [bank].
2. The parties agreed that SH would use the proceeds of the sale to pay off the money owing so that the security interest could be discharged.
3. KL filed a claim on the basis that while he had paid the agreed price and had received the car, there was still money owing on the vehicle and the security interest had not been discharged.
4. Prior to the first hearing of this matter on 9 March 2023 SH provided KL with some evidence that the outstanding amount had been paid. However, there was still a security interest registered against the vehicle, so the hearing was adjourned to allow evidence of that discharge.
5. The security interest was discharged, but KL wished to continue with the claim on the basis that he was entitled to compensation from SH for the breach.
6. A further hearing was held on 10 May 2023. SH's niece answered the telephone and advised that although SH had received the notice of hearing by email, he had not remembered the hearing was today and was not available to come to the telephone because he was busy at work.
7. Through his niece SH requested an adjournment. The adjournment was granted on the basis that no further adjournments would be granted and that if SH did not answer his telephone, or was not available to come to the telephone at the time of the next hearing, the hearing would proceed without him.
8. At the hearing today KL attended by telephone. Several attempts were made to contact SH, all of which rang through to voicemail. The hearing went ahead without SH.

9. The issue I have to consider is:

- a. Can KL claim any compensation for the security interest not being lifted immediately after sale?

**Can KL claim any compensation for the security interest not being lifted immediately after sale?**

10. The parties had a contract, which included a term that proceeds of the sale would be used to pay off the money owing and the security interest would be discharged shortly after sale. SH breached that term by taking several months to discharge the security interest.
11. The remedy for a breach of contract is for the breaching party to put the other party back in the position they would have been had the contract been performed. When a party is claiming consequential losses those losses must be caused by the breach, be reasonable, and be reasonably foreseeable as liable to result from the breach.
12. KL claims a total of \$1,000.00 for stress and inconvenience and his time spent in rectifying the dispute. He also said that he wished to make it clear to SH that he should not behave in this way to ensure he does not do so again.
13. While I acknowledge that KL has had to spend some time attempting to resolve this dispute, s 43 of the Disputes Tribunal Act 1988 states that costs associated with the proceedings, such as time spent off work to attend hearings, cannot be recovered except in limited circumstances. None of those circumstances are present in this case, and so those costs cannot be awarded.
14. It is also not possible for the Tribunal to award a sum of money designed to ensure SH carries out his contractual terms in future, or to punish him from failing to do so in this case. Such damages are known as punitive damages and are not able to be awarded by the Tribunal.
15. In any event, I would not do so in this case. Although there was a delay, SH did eventually arrange for the security interest to be discharged from the car and while KL has suffered some stress and inconvenience from the delay, he is now back in the position he would have been had the contract been performed.
16. Generally speaking, claims for stress and inconvenience are unsuccessful. That is because contracts often give rise to stress and inconvenience, especially if there has been a breach. If it was possible to compensate for that, there would be considerable uncertainty and subjectivity regarding every claim for a breach of contract. In my view, there is nothing extraordinary in this situation that would mean deviating from the ordinary rule that claims for stress and inconvenience are usually unsuccessful.
17. However, I do find that KL is entitled to a figure of \$150.00. He said that when he discovered the car's security interest had not been lifted, he needed to store the car until it could be taken to the car yard he works for and sold. KL said he paid a friend \$150.00 to store the car in his friend's garage. As this is a sum that KL would not have spent if SH had carried out the terms of the contract as agreed, he entitled to claim that sum from SH.

**Referee:** Souness - DTR

**Date:** 14 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>.