



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 485

APPLICANT KM & OM

RESPONDENT S Ltd

The Tribunal orders:

S Ltd is to pay KM & OM \$50.00 on or before Wednesday, 18 October 2023.

Summary of Reasons:

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

Background

[2] The applicants seek a partial refund following their booking of holiday accommodation [Town] in June 2023. The applicants seek a refund of \$588.00 claiming the booked rental was misrepresented to them. In particular the applicants claim that when they contacted an unnamed employee at [third party website] by telephone they were told that the property was a studio and had a TV and oven. On arriving they discovered the property was a stand-alone cabin, had no TV, only a hob and was very cold. They declined to stay at the property leaving almost immediately and sought a full refund but offering to pay for one night's accommodation only.

[3] The respondent denies the property was misrepresented and refers to its clear terms and conditions, that is that cancellations which occur within 15 days of arrival will incur the total accommodation cost.

Issues

- i) How was the booking made.
- ii) Did the respondent misrepresent the property.
- iii) What refund if any is due.

Issue 1

[4] There is disagreement on whether the applicants booked the accommodation directly through the [third party website] website or whether the booking was made directly on the respondent's own website, [respondent website]. The applicants claim the booking was made via the [third party website] website; the respondent through its own site.

[5] The written evidence suggests the applicants made the booking through the respondent's website, but it is not possible to be entirely sure of this given the written evidence provided. I do not consider it necessary to delay this matter to obtain further evidence on this point as the [third party website] terms and conditions mirror the respondent's on this point. In the absence of any breach, the applicants would not be entitled to a refund of their accommodation costs from [third party website] either given the late notice of cancellation.

Issue 2

[6] The central issue is whether the accommodation is as advertised. After some discussion, the applicants admit neither website refers to there being a TV or oven, and limited cooking facilities are offered. I am not persuaded the use of the word cabin or studio is significant or misleading; either word could be used to describe accommodation of this type and the photographs provided clearly show a small bedroom with ensuite leaving prospective guests with a clear view of the size and type of accommodation offered.

[7] The only matter left in contention then is the applicants' understanding of what was promised in their telephone conversation with the unnamed employee and whether the cabin was unreasonable cold.

[8] I am not persuaded the cabin was uninhabitable due to its temperature. The applicants admit a heater was provided and having stayed in the cabin only a matter of minutes it is not possible to determine if simply turning the heater up to a higher temperature would have addressed this issue.

[9] As for the telephone conversation, the applicants' evidence is clear that they were advised to rely on the website description and book through the website. Whereas they may have felt assured by this conversation that there was a TV and kitchen provided, that is not sufficient to persuade me they were guaranteed this when the websites, both the [third party website] one and the respondent's own, clearly show what is available. The photographs clearly show the size of the kitchen and no TV.

[10] Notwithstanding the applicants' view of their telephone conversation with the employee, I am not persuaded the accommodation was misrepresented. There simply is insufficient evidence to persuade me that their version of a conversation with an unnamed employee amends the offer made on the website, particularly given the applicants' admission the employee referred them back to the website to both confirm the offer and to make the booking.

Issue 3.

[11] Given this I am not persuaded the applicants are entitled to a refund having cancelled the accommodation contract considerably less than 15 days before the booking date. The applicants agreed to these terms when booking the accommodation and in the absence of any breach as found above, are bound by them.

[12] However, I am persuaded the applicants are entitled to a refund of the cleaning fee paid in advance given the respondent's admission that no cleaning costs were incurred, and the terms and conditions referred to only preclude a refund of accommodation costs not any additional charges.

Referee: Hannan DTR

Date: 27 September 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 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>.