



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1365

APPLICANT KN

RESPONDENT BT

**APPLICANT'S BN Limited
INSURER
(if applicable)**

The Tribunal orders:

The claim is dismissed.

Reasons

1. KN and BT own neighbouring properties with an L-shaped shared boundary and a 26m length runs along BT's driveway (which runs to the house at the rear of KN's property), and a 12m length sits directly between the two houses.
2. In August 2019, a 12m portion of the boundary fence fell onto BT's driveway in a storm. The neighbours agreed in principle that the entire length of fence needed replacing and spent some months negotiating when and how that would be done. No agreement was reached, until KN agreed to pay for a new fence if BT had a tree stump removed on her side of the boundary adjacent to the fence, because she was frustrated by the time that was passing.
3. There was some back and forth but the tree stump was eventually removed by BT by 16 January 2020, by which time KN's builder had given up on the fencing job. KN removed the portion of fence between the houses to which BT objected, and this resulted in BT paying for a new fence for that 12m stretch of boundary in June 2020.
4. At that time, the neighbours again agreed the driveway fence needed doing and agreed to each obtain quotations with a view to coming an agreement and sharing that cost. On 31 July 2020 KN sent four quotations to BT and on 10 August emailed her to advise that her builder would be starting that Friday (14 August). She brought that forward a day and on Thursday 13 August emailed BT to say that he would be starting work that day. BT emailed back and said no agreement had been reached and that she did not consent to KN's fencing work, stating that if work commenced she did not agree to contribute to the cost of the fence.
5. KN continued with building the fence and the boundary is now fully fenced, both neighbours having paid for and built part of it.

6. KN claims \$2836.25, being a half share of the driveway fence, half being \$2156.25 plus costs of removal and temporary repair of the old fence totalling \$680.00.
7. The issues to determine are:
 - Did the parties reach an agreement as to the type and cost of the new fence?
 - Is BT liable to contribute to the cost of the driveway fence as claimed by KN?

Did the parties reach an agreement as to the type and cost of the new fence?

8. I find that any previous agreements were abandoned (that KN build and pay for the whole fence if BT removed a tree stump) when KN suggested BT build and pay for a new back fence herself and BT did so. The parties attempted to reach a further agreement regarding the driveway fence but no agreement was ever reached.

Is BT liable to contribute to the cost of the driveway fence as claimed by KN?

9. Once no agreement was reached regarding the driveway fence, KN needed to issue a formal fencing notice to BT. This is required by section 10 of the Fencing Act 1978, and the Act details what is required to be specified in such a notice.
10. KN's email to BT of 31 July 2020 contained 4 quotations as attachments and no other text and cannot be regarded as a Fencing Notice. It was sent in the context of their earlier agreement to swap quotations and discuss further with a view to reaching an agreement.
11. KN's emails of 10 August and 13 August 2020 advising BT that her builder was starting work that week on a fence was within the 21 day timeframe allowed for objections via a cross-notice in the Fencing Act, so even if her 31 July 2020 email could be regarded as a formal fencing notice, she did not wait the required time to proceed. KN says she regarded their earlier communication in June 2020 as notice of her intention to build a fence, but that communication was too informal to signal a change from the attempts to reach agreement that had been occurring since August 2019, to the more formal Fencing Notice process allowed for under the Act. BT's emails in June 2020 clearly signalled that she expected an agreement on costs to be reached before any work could be arranged as well as her intention to get her own quotations.
12. Section 10(4) of the Fencing Act 1978 states that an adjoining occupier shall not be liable to contribute to the cost of work on a fence that is done before notice relating to the work has been served. As KN did not issue any communication that meets the requirements of a Fencing Notice under the Act, BT is not liable to pay and contribution towards the fence KN had built in August 2020, although I note she fully funded the shorter portion of fence between the two houses, even though KN had originally agreed to pay for the entire fence.

Referee:

Date: 9 December 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.