



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 666

APPLICANT **KT**

APPLICANT **TL**

RESPONDENT **F Ltd**

The Tribunal orders:

1. F Ltd is to pay TL and KT the sum of \$23,474.50 on or before 6 November 2023.
2. TL and KT are entitled to a refund of the \$6,525.50 held in relation to this building contract, in the lawyers' escrow account, on or before 6 November 2023.

Reasons:

1. In August 2020 TL and KT signed a contract with F Ltd to build a house at [address]. The agreed completion date was 30 April 2021, however the building work was not completed by this time. In October 2022 TL and KT cancelled the contract. They paid various subcontractors directly to complete the work.
2. TL and KT claim the sum of \$30,000.00 towards losses suffered as a result of the work not being completed by F Ltd.
3. F Ltd did not attend the hearing or provide any defence to the claim. The absence of a party does not prevent the hearing from going ahead.
4. The issues to be determined are as follows:
 - a. Were TL and KT entitled to cancel the contract?
 - b. If so, what remedy are TL and KT entitled to?
 - c. Are TL and KT entitled to the amount held in an escrow account for the passive fire work?

Were TL and KT entitled to cancel the contract?

5. Section 36 (1)(a) of the Contract and Commercial Law Act 2017 (CCLA) states that "A party to a contract may cancel it if, by words or conduct, another party (B) repudiates the contract by making it clear that B does not intend to ...(b) complete the performance of B's obligations under the contract". The party cancelling the contract may claim damages for any losses caused by the other party's failure to perform their obligations.
6. At the hearing TL explained that the project had initially had a completion date of 30 April 2021, but there were numerous delays. He provided evidence that the completion date was pushed out as far as October 2022, and that date was not met. A significant amount of evidence,

including correspondence between the parties and their lawyers was submitted. There were disputes and mediations between the parties during the building process, which may have contributed to the delays. However, I am satisfied from the evidence presented that by creating further delays, failing to communicate clearly and promptly, charging for more work than it had completed, and refusing to work without further payment, F Ltd made it clear that it did not intend to complete its obligations under the contract. Therefore, TL and KT were entitled to cancel the contract.

What remedy are TL and KT entitled to?

7. TL and KT are entitled to damages for F Ltd's breaches and repudiation of contract. They presented a list of items that were left unfinished and the costs of completing them and getting the necessary compliance paperwork. This includes plumbing, drainage, concrete and driveway finishing, balustrades, electrical work, flooring, painting, landscaping, and other items.
8. Their evidence is that while was approximately 5% of the contract price left unpaid, only about 70% of the work had been carried out. TL stated that paying the subcontractors directly, as well as having paid F Ltd for the same work, increased their expenses by significantly more than the Tribunal's jurisdiction limit of \$30,000.00. In support of this he presented written records and invoices from the subcontractors. I accept the evidence presented and note that the invoices for the first three items' invoices to more than the limit of \$30,000.00.

Are TL and KT entitled to the amount held in an escrow account for the passive fire work?

9. TL also referred to the sum of \$6,525.50 that is currently held by the lawyers in an escrow account. This money relates to passive fire work and was held pending resolution of a dispute over whether that was a variation or part of the original contract. TL presented evidence from a surveyor that indicates this was part of the original contract. For these reasons, I am satisfied that TL and KT are entitled to the return of the \$6,525.50 in full, from the escrow account. As the Tribunal's jurisdictional limit is \$30,000.00, this money is included in that amount, leaving a balance of \$23,474.50 to be paid by F Ltd.

Conclusion

10. For these reasons F Ltd is to pay TL and KT the sum of \$23,474.50 by the date stated in the order. In addition, TL and KT are entitled to the \$6,525.50 held in the lawyers escrow account for [address].

Referee: K Rendall

Date: 17 October 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>.