



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 481

**APPLICANT
AND RESPONDENT IN
THE COUNTERCLAIM** **KV**

RESPONDENT **FT**

**APPLICANT
IN THE
COUNTERCLAIM** **LU**

**APPLICANT
IN THE
COUNTERCLAIM'S
INSURER** **X Ltd**

The Tribunal orders:

1. FT is to pay KV \$2000.00 on or before 5pm on 23 September 2023.
2. The counterclaim is dismissed.

Reasons

3. KV was parked on the side of a narrow street. As he opened his door he saw FT driving down the street. He says he did not have time to get in the car but pressed himself against his car with the door as close to his body as possible. He says FT collided with the car door pushing it forward.
4. KV is not insured.
5. FT was driving her father, LU's car. She says KV opened his car door as she was passing and she could not avoid the collision.
6. KV claims \$2000.00 toward the cost of repairing his car.
7. LU and X Ltd claim \$8244.87 toward the cost of repairing LU's car. There are no uninsured losses.
8. The issues to be determined are to:
 - a. Did FT cause the damage to KV's car; and/or
 - b. Did KV cause the damage to LU's car and/or
 - c. Are the costs of repair reasonable?

Did FT cause the damage to KV's car?

9. If it is reasonably foreseeable that your actions will damage another person's property, you may be responsible for the costs of that damage.
10. Rule 7.2 (1) of the Land Transport (Road User) Rule 2004 states that a person must not cause a hazard by opening or closing a car door.
11. FT does not dispute she caused the damage to KV's car. She says she is not liable because opened his car door as she was passing and she could not avoid the collision.
12. KV said he had opened the door to get in, saw FT coming down the hill of the narrow street and did not have time to get in the car and fully close the door or get out of the way before she collided with his car door.
13. Having viewed the photographs of the damage to both cars I prefer KV's version of events. The point of impact is to the corner of the door. If the door had been more open as FT stated, the impact point would be on the inside of the door.
14. KV did not suddenly open his car door onto LU's car. He was there to be seen. A careful driver on a narrow street with parked traffic on both sides would take special care to ensure they could drive without colliding with any vehicles. Based on the evidence before me I find FT did not take sufficient care and caused the damage to KV's car.

Did KV cause the damage to LU's car?

15. As set out above in para (13) and (14), FT caused the damage to KV's car. KV did not contribute to, and is not responsible for the damage to LU's car. The counterclaim is dismissed.

Are the costs of repair reasonable?

16. FT damaged KV's car. KV can have his car restored to the condition it was in prior to the collision.
17. KV provided me with proof that his repair costs were \$2000.00. X Ltd accepted that these costs were reasonable. In the absence of any evidence to the contrary I find that the costs of the repair are reasonable. FT owes KV \$2000.00.

Referee: K O'Shea

Date: 23 August 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>.