



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 680

APPLICANT **KY and LZ**

RESPONDENT **SE**

The Tribunal orders:

SE is to pay \$3000.00 to KY and LZ on or before 26 January 2024.

Reasons

1. KY and LZ purchased a [vehicle] from SE via [online platform] on 15 February 2023, paying him \$3000.00 for the car.
2. Within a few weeks of SE delivering the car to them, [Car Rental Company] repossessed the car, showing KY and LZ proof of ownership and providing them with documents detailing SE's hire of the car from them.
3. SE did not attend the face-to-face hearing today and I am satisfied that he has by now received notice of the claim and hearing and/or had adequate opportunity to attend and present his response to the claim (there having been two previous telephone hearings that did not proceed because he said he had received no details of the claim).
4. I find that SE is liable to refund the \$3000.00 the applicants paid to him for the vehicle – section 135 of the Sale of Goods provisions contained within the Contract and Commercial Law Act 2017 provide an implied condition in a contract of sale such as this, that a seller has the right to sell the goods and also an implied warranty that the buyer will have and enjoy quiet possession of the goods.
5. It appears that the car was not SE's to sell. While he told the applicants in message correspondence after the car was repossessed that he'd purchased the car from the rental car company, he has provided no evidence to support that contention and the rental car hire documents paint a different picture. I therefore order SE to repay \$3000.00 to the applicants. The Disputes Tribunal filing fee is not able to be awarded as explained to KY at the hearing.

Referee Perfect

Date: 15 December 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>.