



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 574

APPLICANT LA

RESPONDENT KZ

The Tribunal orders, on the claim and counter-claim:

KZ is to pay \$900.00 to LA on or before 12 December 2023.

Reasons

1. LA moved into a flatting situation in which KZ was the head tenant. They signed a 1-year fixed contract and LA paid \$1350.00 bond and \$450.00 per week rent.
2. LA moved in on 13 May 2023 but within the first two weeks advised KZ that he wished to move out. There was some negotiation over timing and LA says he moved out on 3 June 2023 because KZ had told him he had a new tenant who would be moving in the next day. KZ says LA chose that date, and in fact the new tenant moved in a week later.
3. LA claims for a refund of his bond of \$1350.00. KZ counter-claims for \$608.00, being the cost of a new mattress (LA's room came with a mattress but KZ says he had to sell it when LA refused to store it in his room) and believes he should keep the full amount of bond because LA did not stay for a year as agreed.
4. The issues to be determined are:
 - Did LA breach the agreement?
 - What losses did KZ suffer as a result?
 - Is all or part of the bond refundable to LA?

Did LA breach the agreement?

5. There is no particular disagreement that there was a breach when LA gave notice of moving out only weeks after he signed a one-year fixed agreement for flat-sharing.

What losses did KZ suffer as a result?

6. LA was legally liable under the agreement to pay rent at the agreed rate for at least a year. However once it was clear he was moving out, KZ had a duty to mitigate any losses suffered by finding a new flatmate as quickly as possible which he did.
7. KZ provided evidence showing that he had had an opportunity to take another tenant who could have moved in 3 weeks earlier than LA on 23 April, but decided to wait with the room empty for 3 weeks because LA was going to stay for a year whereas the other potential tenant would only stay for 6 months. KZ wants to be compensated for those lost weeks of rent as well.
8. However the lost rent in those weeks did not occur as a result of LA's breach of contract so are not losses that resulted from LA's early termination. I understand KZ's wish to wind back the clock and not suffer that loss, given what later happened, but the only losses LA is liable to pay are losses that directly resulted from him ending the agreement early.
9. I do not accept KZ's contention that the cost of a new mattress is a loss resulting from the breach either. It was KZ's choice what he did with the surplus mattress that LA did not want to store in his room, and even if his only option was to sell it as he says, he would have had to buy a new mattress for future tenants whenever LA moved out – that cost came a little earlier than was otherwise expected but it is not LA's cost to cover.
10. The actual loss suffered as a result of LA's breach is the loss of rent between when he moved out and the new tenant moved in. LA says there was no gap but his written messages do not record this, only his move-out date and not the reasons for it. KZ has not provided any evidence to prove when the new tenant moved in, but he says it was a week after LA moved out.
11. I resolve this difference by allowing KZ to retain the equivalent of one week's rent (\$450.00), either to compensate for actual rent lost and/or to cover costs of re-advertising as well as the hassle and inconvenience of losing a flatmate so soon after the agreement commenced.

Is all or part of the bond refundable to LA?

12. For the reasons given above, I find that KZ is liable to pay \$900.00 to LA and the balance of the claim and the counter-claim are dismissed.

Referee Perfect

Date: 14 November 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>.