



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 220

APPLICANT LC

RESPONDENT NS

The Tribunal orders:

The claim is dismissed.

Reasons:

1. Any applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required evidential standard. That standard is the balance of probabilities which means what is more likely than not.
2. LC says:
 - a. NS agreed to store some building materials of LC at his house.
 - b. They were second materials that were discarded/not required by their original owner.
 - c. She did not say that she paid anything for them.
 - d. After a period of time NS asked her to remove them
 - e. She wished them to remain at NS's home until she found another place to store them.
 - f. A further period of time passed before she contacted him again in writing in July 2022 seeking their return.
 - g. They have not been made available to return to her.
 - h. She seeks an award of the cost of replacing the building materials.
 - i. She has calculated this by providing an estimate of the value of replacing them with brand new materials rather than second hand discarded materials.
3. NS says:
 - a. He did agree to store some building materials of hers in his home (shed).
 - b. They were of very poor quality, part sheets of ply with fitting holes and splits in them and lose unpacked pink bats remnants.
 - c. They had no value in his opinion.
 - d. When their friendship ended, he asked for them to be removed as soon as possible and that his home "was not a storage facility".
 - e. She failed to arrange for them to be remove in a timely manner.
 - f. He texted her that if they were not removed, they would be dumped [LC says she did not receive this text].
 - g. After no reply he dumped them.
 - h. Some months later he received the July written request.
 - i. The building materials had already been dumped.

Bailment and what was a reasonable period of time

4. NS had a duty to take reasonable care of the building materials for a reasonable period of time.

5. This agreement to store is an example of a voluntary bailment of goods. One of the implied terms of such an agreement is that they should be returned/be available for collection and removed within a reasonable period of time.
6. It is LC's evidentiary burden to establish the necessary elements of NS's bailment obligations and that he has breached those. The parties' evidence of what was asked by whom and when is in conflict with insufficient evidence to establish the facts surrounding the removal requests.
7. Because of this I am unable to make an evidential finding that NS's dumping actions were unreasonable in these circumstances. The claim fails on this first hurdle.

Amount of damages sought

8. The usual measure of damages/compensation is to award an amount of money to put the innocent party back into the position they would have been if the obligations had not been broken. Here that is the monetary value of the building materials at the time they were dumped.
9. Even if I had found those obligations were broken LC has not satisfied me, to the required standard, what the monetary value of these discarded already used materials were. The original owner did not want them, they were used and damaged having been removed from existing structures. The photo of the trailer they arrived in did not clearly show two wrapped bundles of new bats and NS says when unpacking it he did not recall such bundles being present.
10. I accept they had value to her as she intended to use them after she had found another place to store them. However, this alone is an insufficient basis to calculate any loss, as is a comparison to what they would have cost new and complete.
11. The claim would have failed on this basis also.

Referee: A Hayes

Date: 18/4/23



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>.