



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 36

APPLICANT LF

APPLICANT AS

RESPONDENT NJ

The Tribunal orders:

NJ is to pay \$771.43 to AS and LF on or before 28 February 2023.

REASONS

Brief Details of Claim

1. NJ owns a house at [Address]. AS and her son, LF, entered into a "House-Sharing Agreement" to commence on 1 May 2022.
2. AS said that, because of her experience at two previous house-share arrangements where she was given short notice because she was not a tenant with the protections of the Residential Tenancies Act, and had found it difficult to obtain accommodation elsewhere, she was keen to ensure she had some better protection from being given short notice. After discussion with NJ about her need for better protection, AS and NJ agreed on wording for the House Sharing Agreement.
3. The Agreement contained Clause 5 "*This agreement can be terminated by 21 days' notice given by AS or LF in writing or 21 day's notice given by NJ in writing to either AS or LF if there are issues that NJ believes and has stated in writing to be anti-social or unacceptable flatmate behaviour. Parties agree to a weekly verbal check in on matters that need resolving/attending. In the event of selling the property, NJ will give AS and LF 90 days' notice.*"
4. On 19 October 2022, NJ gave AS two notices, one giving 21 days notice and the other giving 28 days notice on the basis that AS videoed the discussion between NJ and LF and then forwarded it to two different organisations without her knowledge or consent, infringing NJ's privacy. In the notice, NJ also said that the bedroom was required for a family member returning home.
5. AS and LF lodged a claim with the Disputes Tribunal on the basis that NJ had not complied with the Agreement. She had given notice without meeting to resolve differences. In addition, they did not consider they had breached the terms of the Agreement.
6. AS and LF initially claimed \$300, increased to \$4,323.00 during the course of the Tribunal proceedings.

Issues

7. The issues for the Tribunal to determine are:
- (a) Whether LF breached the terms of the House-Sharing Agreement;
 - (b) Whether AS breached the terms of the House-Sharing Agreement;
 - (c) Whether NJ was entitled to give notice to LF and AS;
 - (d) Whether AS and LF are entitled to damages in compensation and if so, how much.

Did LF breach the terms of the Agreement?

8. I find that LF did not breach the terms of the Agreement for the following reasons:
- (a) The incident complained of by NJ occurred in the driveway/carpark of the neighbouring property. LF had pulled into that property (admittedly without the invitation of the neighbour). An acquaintance, who LF had met for the first time that day, pulled into the same property in another vehicle. LF's intention was to drive on to [Town 1] and the acquaintance was to follow LF to [Town 2]. As the acquaintance was leaving the neighbour's property, he spun the wheels of his vehicle.
 - (b) LF was not the person who carried out what can only be described as a minor disturbance. LF was not in the vehicle with the acquaintance, so had no direct control over the acquaintance's actions.
 - (c) LF could not reasonably have known that the acquaintance, either deliberately or not, would cause a minor disturbance.
 - (d) After arriving home and being confronted by NJ, LF spoke to the neighbour and made peace.
 - (e) The only action by LF that could possibly be considered a transgression is that he drove into the neighbouring driveway/carpark without an invitation. However, this is a minor matter and cannot reasonably be seen to be anti-social behaviour or unacceptable flatmate behaviour.
 - (f) I find that LF did not act in an anti-social manner and did all he reasonably could to make peace with the neighbour for the behaviour of his acquaintance.

Did AS breach the terms of the Agreement?

9. I find that AS did not breach the terms of the Agreement for the following reasons:
- (a) I have viewed the video taken by AS of the confrontation she had with LF. I am satisfied that AS was involved in the discussion. She made comments to LF in particular, reminding LF to remain calm.
 - (b) AS was within NJ's view, and it ought to have been obvious to NJ that AS was using her camera to record the interactions. There was no covert filming that NJ was unaware of.
 - (c) AS forwarded the video to the Human Rights Commission and an organisation established for citizens to complain about instances of racial abuse. These are organisations to which citizens have a right to approach with a complaint. Forwarding the video to these organisations does not seem to me to be anti-social behaviour, nor unacceptable flatmate behaviour.
 - (d) It is not for the Tribunal to decide whether there has been a breach by AS of the Privacy Act. NJ may take that matter up elsewhere if she wishes.

Was NJ entitled to give notice to LF and AS?

10. I find that NJ was not entitled to give notice to LF and AS on the basis of a breach by either of them of Clause 5 of the agreement – anti-social or unacceptable flatmate behaviour.
11. I find that NJ was entitled to give notice to LF and AS for the following reasons:
- (a) Although the Agreement does not set out the circumstances in which NJ could give notice to AS and LF, or the period of notice to be given to end the Agreement, it is not reasonable that NJ could not bring an end to the Agreement.
 - (b) AS had expressed a desire to have security of tenure. However, it is not reasonable to expect that AS and LF's occupancy in NJ's home could continue indefinitely, or that it could only be ended if AS or LF breached the terms of the Agreement, or if they gave notice to NJ.
 - (c) In the absence in the Agreement of an express term as to the circumstances NJ could end the Agreement and the notice period required, it is reasonable to imply such a term.
 - (d) I find that there is an implied term in the contract that NJ have a right to end the Agreement, and an implied term that reasonable notice be given.
 - (e) NJ gave 28 days notice and I am satisfied that that is a reasonable period. In flatting agreements I have seen in the Tribunal, a usual time is 2 weeks notice.

- (f) It is clear that NJ's relationship with AS and LF had broken down. NJ did over-react to the behaviour of LF's acquaintance on the neighbour's property (more of this below). However, there appears to have been an accumulation of small niggles with AS in particular that came to a head, albeit in an unfortunate way. In addition, she had her son coming home for the university holidays, and a brother in law needing accommodation support. The confrontation with LF may have been the trigger for the giving of notice to AS and LF, but there were other circumstances involved.

Are AS and LF entitled to damages in compensation and if so, how much?

12. It is reasonable to imply a term into the contract that AS and LF have a right to quiet enjoyment of their exclusive and shared areas of the premises.
13. I find that NJ breached LF and AS's right to quiet enjoyment by the confrontation with LF at which AS was present. I have seen the video of the confrontation and I find that NJ shouted at LF, made unreasonable demands of him, spoke in an abusive manner and swore at LF. This continued for some time, during which LF commendably remained calm. No reasonable person, having faced such a confrontation, could enjoy the premises in a relaxed way from that point on without fearing another tirade.
14. I find that LF and AS are entitled to compensation for the loss of quiet enjoyment of the premises for the last 4 weeks of their occupancy. I have set compensation at 50% of the rent for the 4 week period, which is a total of \$600.00.
15. I find that LF and AS are not entitled to the costs for expenses incurred with moving out and finding alternative accommodation. That is because I have found NJ was entitled to give notice and the period of notice given was reasonable.
16. AS and LF also claimed the Tribunal filing fee and costs associated with the proceedings. However, the Tribunal has limited ability to make an award of costs and none can be awarded in the circumstances of this case.
17. AS and LF paid a bond of \$300. It is agreed by AS (who paid the rent on behalf of herself and LF) that rent was paid up to 12 November 2022, that AS and LF moved out on 15 November 2022, and that therefore AS and LF owe rent for the 3 days between 13-15 November 2022, which is to be paid from the Bond. Three days rent is \$128.57, which leaves \$171.43 remaining from the Bond.
18. NJ has said AS and LF did not clean their rooms properly and there was damage, particularly in AS's room which had many pin holes from attaching pictures and fairy lights. NJ provided photographs. There is evidence of some dust on the top of skirting boards in both rooms, but this is minor and I am not satisfied this is a failure to clean to a reasonable standard. In respect of damage, there is insufficient evidence as to the condition of the property at the start of LF and AS's occupancy to be able to compare the difference. In addition, it appears that AS had permission to put pictures up. I am not satisfied that NJ has any reasonable claim on the remaining part of the Bond and therefore I find AS and LF are entitled to a refund of \$171.43 from the Bond.

Outcome

19. AS and LF are entitled to payment of \$771.43, being \$600 compensation on account of a breach of their right to quiet enjoyment, and \$171.43 Bond refund.

Referee: J.F. Tunnicliffe

Date: 10 February 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>.