



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 608

APPLICANT **LH**

APPLICANT **TH**

RESPONDENT **D Inc**

The Tribunal orders:

D Inc are to pay LH and TH \$500.00 on or before 28 November 2023.

Reasons

1. LH and TH hired the [venue] at [address], for their wedding on Saturday 14 January 2023. They entered into a hire agreement (the contract) with the D Inc, who lease [the venue] from the [Council]. The agreement provided for a \$500.00 bond to be paid by LH and TH which would be refunded after the event, subject to the conditions of hire. D Inc have refused to refund the bond.
2. LH and TH claim a refund of the bond. They also claim compensation from D Inc for damage suffered due to the sprinklers on the grass area outside the [venue] not being turned off, and coming on during their wedding ceremony. As a result their wedding cake and LH's wedding dress were damaged. They claim payment of \$1,950.00 from D Inc made up as follows:

Return of bond	\$500.00
Ruined wedding cake	\$650.00
Cost of dry cleaning and repairing wedding dress	\$300.00
Stress and humiliation experienced on their wedding day	<u>\$500.00</u>
Total	\$1,950.00

3. At the hearing TH amended the claim to \$1,450.00, dropping the claim for stress and humiliation. D Inc deny the claim.
4. The issues I need to decide are:
 - a) Have D Inc breached their contract with LH and TH by:
 - a. Not turning off the sprinklers?

b. Not refunding the \$500.00 bond?

b) If so, what are LH and TH entitled to be paid?

5. Have D Inc breached their contract with LH and TH by:

a. Not turning off the sprinklers?

b. Not refunding the \$500.00 bond?

6. Parties to a contract must perform their respective obligations. If they do not, they will be in breach and need to account for any loss caused to the other party to the contract.

Did D Inc have a responsibility to turn off the sprinklers, or make arrangements for them to be turned off?

7. TH says D Inc breached their contract by leaving the sprinkler system able to come on during the wedding ceremony resulting in many of their guests getting wet, and clothing, footwear and equipment being damaged, including the wedding dress and wedding cake.

8. NK, Co-Chair of the D Inc Committee, says that D Inc is responsible only for the hire of the [venue] building, not for the reserve land the building sits on which is the responsibility of the [Council]. He refers to clause 1.4 of the contract which states:

“The Hirer acknowledges that the venue is situated on a public reserve and the grounds are available to the general public at all times.”

9. He also refers to messages to TH from ND, the booking agent for the [venue], which advised that if they wanted to use the reserve grounds surrounding the [venue] they needed to contact [Council] to request permission for the marquee, catering and toilets to be set up there. She stated in the messages that it is public land and D Inc does not have any control over this area. She provided the contact number for the person at the [Council] for this purpose.

10. I am satisfied on the evidence that D Inc did not have any authority or control over the sprinkler system on the reserve, that they did not undertake to make arrangements with the [Council] for the sprinklers to be turned off, and that TH was referred to a person in the [Council] to make any arrangements they required in relation to the reserve.

11. I dismiss the part of the claim relating to damage to the cake and wedding dress.

Have D Inc breached their contract with LH and TH by not refunding the \$500.00 bond?

12. NK says the bond is withheld on various grounds, including:

- The venue was used outside the agreed hours and D Inc need to be compensated for those extra hours that LH and TH had their belongings at the venue.
- D Inc need to be compensated for the extra time their booking agent, ND, had to spend at the venue outside the times already agreed.
- LH and TH had failed to comply with the following conditions of hire:
 - They left the building insecure on 2 occasions over the hire period (a breach of clause 5.4 of the contract);
 - Doors had been left open later in the evening of the wedding and a neighbour had complained about noise (a breach of clause 4.2 of the contract).

The venue was used outside the hours that were agreed

13. The standard contract allowed LH and TH to have the use of the [venue] from 5.00pm – 9.00pm on Friday 13 January and on 14 January until midnight. ND agreed to them accessing the venue on the Friday from 1.30pm, and to having from 9.00am – 10.00am on Sunday 15 January available to complete the removal of all their items, if they could remove everything downstairs so the cleaner could clean the Main Hall unimpeded.
14. I find the extra time on the Friday afternoon and the Sunday morning was expressly agreed by ND, as the booking agent, and therefore were not outside the hours that were agreed.
15. ND says TH asked to deliver two wine barrels to the venue on Wednesday the 11th or Thursday the 12th. She agreed to Thursday morning. She says instead of two wine barrels TH arrived with a trailer load of furniture and decorations and alcohol to fill two bar fridges. He and two other men spent 45 minutes unloading this into the Main Hall and fridges. She says instead of a 5 minute drop off it was almost an hour. When asked if they could come again later that day with another load she reminded them their booking started mid-afternoon the next day.
16. TH says ND could have told them that it was not permitted to drop off the goods on Thursday, or told them they could not unload that quantity of goods at that time. He says she did not raise any issue at the time and showed them where the fridges were and let them store drinks and ice.
17. I am satisfied ND, as the booking agent, had expressly agreed to TH dropping off some goods on the Thursday. If it was clear on the arrival of a trailer full of goods rather than two wine barrels expected that it was going to take longer than she had allowed for and that was not acceptable, I consider it was for her, as the booking agent, to state they could not unload that quantity of goods at that time. I find she agreed to the extra time taken on the Thursday.
18. In relation to the Sunday morning, ND says the cleaner advised the hiring party left the building at about 11.00am and that they had not removed all their items so he had to work around them. She says this slowed up the cleaner by 30 minutes.
19. TH says they removed all items from the venue by 10.00am and helped the cleaner, and that some items were outside, but they did not impact on anyone and they removed them.
20. I have regard to D Inc hiring only the [venue] building itself, so any items left outside were not D Inc's responsibility, and if the hiring party returned to collect those items after 10.00am that would not be contrary to the requirement under the contract to be out of the venue by 10.00am.
21. Having regard to the statements of ND, I consider the requirement for the hiring party to move their items downstairs was for the purpose of ensuring the cleaner was not impeded in his cleaning of the Main Hall. ND says the cleaner advised not all the hiring party's items had been removed so he had to work around them, and this slowed him up by 30 minutes. TH says they removed all items from the venue by 10.00am and they helped the cleaner.
22. In the absence of direct evidence from the cleaner I am not persuaded that it is more likely than not that the hirer "leaving the building at about 11.00" was the hirer leaving the [venue] building, rather than collecting their belongings from outside. Further, having regard to TH's evidence that they had removed all their items from the building by 10.00am and they helped the cleaner, I am not persuaded that it is more likely than not that the cleaner "had to work around them" and that this slowed him up by 30 minutes.
23. LH and TH had organised a dance floor to be laid over the carpet. It could not be collected until the Monday. That meant another day of use of the venue by LH and TH, and arrangements needed to be made to allow the hire company, II, access to collect it.
24. ND says TH advised her on the Thursday when the trailer load of goods was being delivered, that the dance floor could not be collected until Monday. She says there was no agreement for the ongoing storage of the dance floor.

25. TH says ND had suggested to them they hire a dance floor and had put them in touch with II. He says it was booked in July and he told ND of the booking and that the collection day was the Monday after the wedding.

26. I am satisfied on the evidence it is more likely than not that LH and TH's continued use of the venue until the Monday, in relation to the dance floor still being there until the Monday, was agreed.

27. I find LH and TH did not use the venue outside the hours that were agreed.

D Inc need to be compensated for the extra time their booking agent, ND, had to spend at the venue outside the times already agreed

28. NK and ND have referred to TH's demands on ND's time during the course of her dealings with him. They refer particularly to ND having been called upon on the Thursday before the wedding to facilitate TH's delivery of items for the wedding, and having to travel to the [venue] and make arrangements for II get into the building and collect the dance floor, at great inconvenience to herself. They say D Inc needs to be compensated for these extra demands on ND's time.

29. I consider that the hiring of the [venue] is a business that D Inc runs, and ND, as the booking agent, is D Inc's agent in dealing with its customers. There is nothing in the contract allowing for the booking agent's time or services to be charged for. I consider there is a reasonable expectation of a hirer that she is available to assist them with queries or issues, and be authorised to agree, or not agree as the case may be, to various requests made by hirers. I consider that if there were to be a charge for a particular request the hirer should be advised of that in advance, and similarly, if a request is outside ND's role, she should advise the hirer so that they can make other arrangements.

30. I find there is no contractual basis for D Inc to be compensated for any of the time ND has spent in relation to LH and TH's hire of the [venue].

They left the building insecure on 2 occasions

31. Clause 5.4 of the contract states:

"ON LEAVING: the Hirer is responsible for closing and locking all exterior doors and windows, turning off all electrical appliances, lights, air-conditioning and setting the security alarm whenever the premises are vacant during hire and at the conclusion of the hire."

32. On Tuesday 17 January after the wedding D Inc received information that "Twice since Friday a member of the D Inc Residence Association has walked past the old [building] and seen the outside doors to the storerooms open. She locked them up".

33. NK says the only people who had keys was TH, so D Inc knew it was him who had left the doors open. TH says he always personally ensured the doors were locked.

34. I have regard to the lack of specificity as to the day and time the doors were found unlocked and do not find it more likely than not that either TH or one of his helpers had left the doors open.

Doors had been left open later in the evening of the wedding and a neighbour had complained about noise.

35. Clause 4.2 of the contract relevantly states:

".... The Hirer and their attendees will not cause any disturbance to neighbours and the Hirer will be liable for any such disturbance All doors both sides of the venue must be closed at dusk....."

36. A near neighbour of the venue, NX, gave evidence that on the night of the wedding she went to bed about 11.00pm then, noticing loud music coming from the [venue], she walked along to the back entrance of the [venue]. She says the door was open and someone was coming out. She went inside and asked for the door to be shut, which it was, and she considered the issue resolved.

37. TH says leading up to the time NX asked them to shut the door, most of the guests were leaving, with some leaving by that back door, and he says the noise NX heard at that time would likely have been as the door was being opened as guests left the building. NK questions that guests would leave through that door, however, NX's evidence was that, as she approached that door, people were leaving through it.

38. I am not satisfied it is more likely than not that the back door had been left open, as opposed to it being opened as people left the building.

If so, what are LH and TH entitled to be paid?

39. I find that D Inc did not have justification under their contract to withhold the bond, and LH and TH are entitled to a refund of the \$500.00 bond they paid.

Referee: B Curtis
Date: 31 October 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>.