



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 745

APPLICANT **LL**

APPLICANT **NL**

RESPONDENT **KI**

The Tribunal orders:

KI is to pay LL and NL \$1,200.00 on or before 2 January 2024.

Reasons

1. LL and NL engaged KI to install a new shower. They paid him \$1,400.00 which included \$200.00 for the shower mixer. However, the first time the shower was used it leaked. KI sent his plumber around to reseal the shower, however after the remedial work was completed it still leaked. Two more attempts to reseal the shower were made, however it continued to leak.
2. KI arranged for [shower installation company] to inspect the shower. They advised that the liner needed to be replaced. KI disagreed with the findings.
3. LL and NL engaged [shower installation company] to replace the liner at a cost of \$1,698.03. This involved replacing the jib behind the shower. This work was successful, and the new shower does not leak.
4. I note that KI did not attend the second teleconference hearing today. Several calls were made to his phone however they went to answerphone.
5. LL and NL seek a refund of the \$1,200.00 paid for the install of the shower.
6. The issues to be decided are:
 - a) Did KI provide shower installation services with reasonable care and skill?
 - b) If not, was the failure a failure of substantial character that would entitle LL and NL to get a refund of the \$1,200.00 paid?

Did KI provide shower installation services with reasonable care and skill?

7. The relevant law is the general principles relating to the law of contract and the Consumer Guarantees Act 1993 'CGA'. The CGA provides implied guarantees for consumers that services purchased from suppliers must be provided with reasonable care and skill and must be fit for the purpose intended. If the service and any product resulting from the service is not provided with

reasonable care and skill and is a failure of substantial character, the consumer is entitled to cancel the contract and get a full refund (sections 28, 29, 32 CGA).

8. I find that KI did not provide shower installation services with reasonable care and skill. I make this finding for the following reasons:
 - a) I find the evidence of TZ from [shower installation company] to be credible and reliable. TZ has 20 years' experience in shower installation and gained expertise by doing a range of [courses]. He observed that when the shower was turned on, the water leaked onto the floor outside the shower. The water was leaking in the corner at the bottom behind the liner. He observed that the liner was loose on all of the walls, and it was not stuck to the upstand of the tray. In the opinion of TZ, the wrong silicon had been used and it would not stick to the acrylic liner. He could see that the silicon pulled off the liner easily. The silicon wouldn't stick to the jib either. In addition, TZ observed that there was a rubber flange missing under the tray and the wrong parts were used for the waste and the wrong silicon was used to seal it.
 - b) The photos support the evidence of TZ. In particular, they show where the silicone hasn't stuck to the tray and liner and the glue hasn't stuck to the jib stopping on the wall.
 - c) I have considered KI's argument that LL and NL did not wait 48 hours before using the shower and this stopped the silicon from drying properly and prevented it from sticking properly. However, LL and NL state that XX (the plumber working for KI) told them to wait 24 hours before having a shower and to be careful they waited 36 hours. It appears that XX gave incorrect advice to LL and NL about how long to wait before having a shower. In any event, TZ said that there was no evidence that the silicon failed to cure because it got wet. There was no evidence of volcanoes on the surface of the silicon which is what he would expect to see if the silicon had got wet. He observed that the silicon was smooth on both sides.

Was the failure a failure of substantial character that would entitle LL and NL to get a refund of the \$1,200.00 paid?

9. I find that the failure was a failure of substantial character that would entitle LL and NL to cancel the contract and get a refund of the \$1,200.00 paid.¹ In accordance with my findings above, the shower leaked from the start and therefore it was substantially unfit for the purpose. This resulted in the jib behind the liner becoming mouldy after a very short period of time, which would have resulted in considerable damage to the wall if it was not fixed promptly. The only way to remedy the problem was to replace the whole liner and the jib behind it.
10. In conclusion, the claim for \$1,200.00 is proved.

Referee: Sara Grayson

Date: 12 December 2023

¹ Section 32 & 36 Consumer Guarantees Act 1993



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>.