



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 702

APPLICANT LL

RESPONDENT DA

The Tribunal orders:

This matter is struck out.

Reasons:

1. LL has claimed in the Disputes Tribunal for assistance with a drainage problem. LL claims water flows from the neighbour's property onto his property, resulting in flooding of his garden and an accumulation of mud and debris. LL believes the flow, which has increased in the past year, may be due to a lack of maintenance on DA's property. The claim in the Tribunal is for a solution to the problem, not for compensation for any damage.
2. DA owns the neighbouring property, which is rented out. DA states her property is also subject to flooding however she believes the water is flowing from another neighbouring property, which is on higher ground. DA states she has made relevant enquiries to the Council, [water company] and a drainlayer, and all have confirmed the problem is due to the natural flow of rain water, exacerbated by recent extreme weather events.
3. The jurisdiction of the Disputes Tribunal is limited by sections 10 and 11 of the Disputes Tribunal Act 1988 to matters arising out of contract, damage and loss of property, and enactments listed in Part 1 of Schedule 1 of the Act. The Tribunal may also only make orders in accordance with the provisions of section 19.
4. Although the Tribunal could consider claims for compensation for damage to property caused by another, the Tribunal cannot order a person to undertake drainage works or maintenance on their own land. The Tribunal does not therefore have the jurisdiction to make an order compelling DA to undertake drainage works to alleviate the flooding issues on LL's property.
5. As the Tribunal does not have jurisdiction to make the order required by LL, the claim has been struck out. LL may seek his own advice about the best course of action.

Referee: DTR Edwards
Date: 13 December 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>.