



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 11

APPLICANT LN

RESPONDENT IQ Ltd

The Tribunal orders:

1. IQ Ltd is to pay \$549.98 to LN on or before 4pm 15 March 2024.

Reasons:

2. On 14 November 2022 LN contracted IQ Ltd to provide property management services over her rental house ('house'). In March 2023 new tenants moved in and then gave notice to vacate on 21 June 2023. IQ Ltd found new tenants who LN found to be unsuitable and the contract for property services came to an end.
3. LN has brought a claim for compensation from IQ Ltd for loss of 28 days of rent and \$445.00 as the cost to repair damage she said was caused by the last tenants.
4. IQ Ltd had attempted to file a counterclaim online and unfortunately payment was not made.
5. The issues to be determined are:
 - (a) Was IQ Ltd an agent acting on behalf of LN?
 - (b) Did IQ Ltd act in breach of the contract?
 - (c) What damages, if any is LN entitled to?

Was IQ Ltd an agent acting on behalf of LN?

6. Clause 2 of the agreement states that IQ Ltd acts as agent on all matters which enables it to make decisions regarding the tenancy on behalf of LN.

Did LN breach of the contract?

Organised for four adults and two children to tenant the property

7. The Tenancy Registration Form was filled in by the proposed new tenants. The number of proposed tenants is clearly marked as '4 adults and 2 children'. With more analysis, it becomes obvious that the writer of the form has misinterpreted the questions and filled it out in error as he

has repeated his name and his wife's name, hence there should have been only 2 adults and 2 children recorded.

8. When the information reached LN, she quite naturally reached the conclusion that there was to be 4 adults and 2 children (which is what the form states) and advised IQ Ltd that it was not to go ahead with the proposed tenancy. The property has two bedrooms and not suitable for 6 people.
9. However, I accept IQ Ltd's evidence that an error had been made which IQ Ltd had brought to LN's attention. On the evidence before me, I am unable to find that IQ Ltd breached the contract by knowingly signing up 4 adults and 2 children as new tenants.

Rent was increased without LN's consent and put tenants onto a periodic tenancy

10. I find IQ Ltd had the right to make decisions as to the rent to be charged and no breach occurred when it proposed to raise the rent.
11. LN said she was concerned when she became aware that the IQ Ltd were signing up tenants to a periodic tenancy. Again, I find no IQ Ltd did not breach the contract in doing so.

Failed to ensure the tenants gave 28 days notice

12. I am satisfied that while IQ Ltd did allow the departing tenants to leave without serving out their required 28 days notice, the new tenants were to move in on the following day and therefore, there would not have been any loss of rent. I do not find this a breach of contract and LN would not have suffered any loss of income had she not cancelled the proposed new tenants and/or the contract for services with IQ Ltd (see point 14 and 15 to follow).
13. I acknowledge that with the change of property management company, LN went on to face several weeks without the property being tenanted and suffered a loss on rent. However, there is never any guarantee that suitable tenants will be found quickly when a property becomes vacant.

Cancelled the contract for property management services

14. The parties had different recollections as to what occurred on and around the 14 July 2023 at the time the departing tenants vacated. LN was clearly frustrated with the situation as the business relationship became untenable.
15. However, I find it more likely than not, that she has terminated IQ Ltd's property management service contract on the 12th or 13th of July 2023 and immediately engaged another property manager company which took up its duties with the arrival of a staff member at the property on the 14 July 2023.

Refused handyman access to the property

16. There is insufficient evidence that [Handyman] was refused access to the property to make the assessments as to any damage left by the departing tenants. As the tenants were moving out on the Friday, IQ Ltd organised for [Handyman] to attend on the Saturday.

The bond was paid out without consideration of the damage to the wall

17. The cause of the bubbling paint damage to the wall remains unknown. There is insufficient independent evidence that the departing tenants caused it by cooking or heating a jug of water in the vicinity and no evidence the damage was caused from water leaking from above.
18. I find that IQ Ltd's actions were consistent with the information before them at the time and there were no grounds for them to retain a portion of the bond to cover costs associated with the damage.

Unpaid rent

19. IQ Ltd have retained \$605.71 as eight days of rent paid by the last tenant. With the reduction of their fees, the amount they are holding is \$549.98.
20. IQ Ltd argued they are entitled to deduct their advertising and letting fee from this amount. However, I do not agree as they had previously informed LN they would waive their right to the two amounts.

Conclusion

21. I find LN is entitled to \$549.98 and an order is made accordingly.

Referee: P Goddard

Date: 25 February 2024



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>.