



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 723

APPLICANT LT

RESPONDENT I Ltd

The Tribunal orders:

1. I Ltd is to pay LT the sum of \$575.00 in full, on or before 5pm Friday 2 February 2024.

Reasons:

2. LT gave evidence that in August 2023, I Ltd trading as OD, had been contracted by LT to lay concrete on his property at [Address]. While carrying out the work, LT alleges that OD's truck damaged their newly installed gate and deck, and although OD agreed to pay for the damage, they have yet to make any payments.
3. LT brought a claim to the Tribunal seeking compensation of \$1,900.00 to fix the damage to the gate and deck, and for time off work to attend the hearing and reimbursement of the filing fee.
4. I Ltd did not attend the in person hearing and did not provide any reason for their non-attendance. The absence of a party does not prevent the hearing from going ahead.

What if any is LT entitled to be paid?

5. The relevant law is the Tort of Negligence. If a party carelessly harms or damages another party's property, the other party may be entitled to compensation. The remedy available is to restore the party to the position they were in had the harm or damage not occurred.
6. After considering all the evidence before me, I find that on the balance of probabilities, it is more likely than not, that OD was negligent and caused the damage to LT's gate and deck and are liable to pay to fix these. LT provided evidence that he did have a contract with OD to lay concrete at his property for \$10,000.00, communication evidence which indicates that they would pay for the damage to the gate (text which I read during the hearing), photo evidence of the damage to the gate and deck, and a verbal quote from HM, confirming the gate needed fixing, and the cost to fix this.
7. The sum claimed was established in part. LT provided a phone number to call K from HM, to confirm that they could fix the gate for approximately \$400.00 to \$900.00. I called K during the hearing, who confirmed verbally that it would normally cost around \$900.00 to fix the gate, as the concrete would need to be removed and replaced, and they would need to source a new post to put in, in addition to fixing the gate. He also confirmed that he offered LT a friendly quote of approximately \$400.00 to fix the gate. I accept LT's evidence that as the amount is only an

approximate amount, it may cost more than \$400.00 to fix the gate. I therefore award the sum of \$500.00 to fix the gate.

8. LT presented photo evidence that the deck was damaged and that he had fixed this himself. The hole in the deck was approximately 1 metre in length, and LT said he paid approximately \$150.00 in total for filler, paint, builder's bog repair filler, and used left over timber to frame the inside of hole in the deck. Although I accept on balance that OD likely did cause damage to the deck, and the photos prove on balance that LT did fix the deck damage, I cannot award the full sum claimed as LT did not provide enough evidence to prove the sum claimed for materials to fix it. I therefore award 50% of the sum claimed (\$75) for the damage to the deck.
9. I Ltd did not submit any evidence to the Tribunal to the contrary.
10. I have had regard to LT's claim for reimbursement of the Tribunal filing fee and for loss of income due to his attendance at the hearing. I cannot award these because costs that are related to the hearing itself cannot be claimed, except in exceptional circumstances that do not apply to this case.
11. For these reasons, I find that I Ltd are liable to pay the sum of \$575.00 (\$500.00 + \$75.00).

Referee: DTR Unasa

Date: 20 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>.