



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 201

APPLICANT MD and IL

RESPONDENT F Ltd

The Tribunal orders:

F Ltd is to pay \$1700.00 to MD and IL on or before 30 May 2023.

Reasons

1. MD and IL engaged F Ltd to supply and install a new kitchen/laundry in their home at a contract price of around \$17,000.00. They moved out of their home into rented accommodation while the renovation was being undertaken.
2. When they returned on completion of the work, they discovered that the space left in the laundry for their appliances was smaller than the measurements allowed for on the plans. They had managed to purchase larger-than-standard appliances at a good discount and that had been allowed for in the plan measurements. However what was supplied was for standard-sized appliances.
3. Initially, in April 2022, MD and IL asked F Ltd to rectify the problem by changing what had been installed. There was a lot of back-and-forth communication which resulted in F Ltd agreeing to re-order the bench-top to the correct depth – however F Ltd advised at the same time that this would take around 8 weeks to supply. Some time had already passed, and there was a dispute about who would pay for the extra work that needed to be done by other trades, given that tiling and other work had already been done around the installed benchtop.
4. The parties therefore discussed a refund in compensation instead but could not agree on an appropriate amount. MD and IL both work full-time and have a young family and could not sustain being without a functioning laundry for long, and they could not use the new appliances they had bought if they wished to return them, so used a laundromat while these negotiations were happening. They therefore arranged with their appliance supplier to swap the discount larger-appliances they had purchased for standard-size appliances at no additional cost except a second delivery fee.
5. F Ltd argues that because the applicants now have standard-sized appliances there is now no problem with the laundry they supplied. However that rather misses the point that the laundry was not supplied according to the contract because it did not match the measurements on the plans. While the applicants did give F Ltd the chance to re-do the laundry to their required measurements, F Ltd disputed paying for the full costs that would have been involved in a remedy at that point.

6. Given all the above, and recognising that MD and IL have been left permanently with standard-size appliances rather than the larger-sized appliances they had wanted and had already purchased, I consider that a percentage of the contract price is the appropriate amount of damages for F Ltd's breach of contract, and I consider the 10% amount claimed by the applicants reasonable – that is \$1700.00. The cost of rectifying the problem including all associated trades, which F Ltd would have been liable to pay, may well have been more but neither party provided any cost evidence about this. While the applicants' claim includes a further \$300.00 for the hassle-factor, I consider that is already included in the setting of a percentage amount for damages, so the final amount F Ltd is liable to pay is \$1700.00.

Referee Perfect

Date: 2 May 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>.