



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 41

APPLICANT MD
RESPONDENT KC
SECOND RESPONDENT BS

The Tribunal orders:

KC is to pay MD the sum of \$189.70 on or before 22 March 2024.

Reasons

1. The parties were flatmates, with KC acting as the head tenant, supported by BS.
2. On 5 October 2023, MD was given notice to leave the flat within two weeks. The letter required MD to have his room professionally cleaned because of drug use in his room.
3. MD vacated the property but did not have his room cleaned.
1. MD now claims for return of his bond of \$721, being \$633 for his bond and \$88 paid on account of the bond of a previous flatmate who was moving out. KC and BS counterclaim for the costs of cleaning MD's room and for the security cameras they purchased to address threats they say MD made against others in the flat.
2. The issues to resolve this claim are:
 - a. Was there an obligation on MD to have his room professionally cleaned?
 - b. Is MD liable for the cost of purchase of security cameras?
 - c. What amount is due to MD from the bond (if any)?/ What amount (if any) does MD owe to KC and BS?

Was there an obligation on MD to have his room professionally cleaned?

3. No written agreements were provided in evidence to the Tribunal. MD says there was no agreement when he moved in that he must have his room professionally cleaned when he moved out. He says this cleaning was not required of others who moved out.

4. KC says that the tenancy agreement was on standard terms. He agreed that there was no general obligation to have rooms professionally cleaned. He said they are required to have the carpets professionally cleaned at the end of the tenancy.
5. However, KC says that when he took the tenancy, the landlord specifically asked about drug use and it was clear the landlord did not want this to occur in his property. KC believes that the landlord would require professional cleaning to decontaminate the property if he knew drug use occurred in the house.
6. KC says that MD was warned on an earlier occasion that drug use in the house was not acceptable. KC says that the claim for cleaning arises only because MD continued to use drugs inside the house after this warning.
7. Contracts can come in many forms. Sometimes they are written, other times there is only a discussion or there may be a combination of written and oral terms. In addition, the law of contract allows for implied terms. Implied terms are those so obviously required that it is not needed to be discussed, or if it is necessary to make the contract work, or if the law would require the implied term for other reasons.
8. In the circumstances where the landlord has made it clear that drug use is not permitted in his property, I consider it a reasonably implied term that a person who uses drugs in the property would be required to have a professional clean carried out to ensure there was no residue or similar remaining.
9. MD said that he did not use drugs in the house but he accepts he did store drug-related items in his room at one stage and acknowledged drug use in the house on one occasion. This recollection is not consistent with some screenshots of conversations between flatmates where MD appears to acknowledge use of a variety of drugs in the house nor with the recollections of KC and BS. It is also at odds with the letter of warning issued to MD and the termination letter provided to him. Considering the evidence as a whole, I am satisfied on the balance of probabilities that MD did use drugs in his room.
10. I therefore also conclude that there was an implied agreement between the parties that if MD used drugs inside the property, he was required to carry out a professional clean to remove any residue which might be left from that drug use.

Is MD liable for the cost of purchase of security cameras?

11. KC has claimed for the cost of security cameras which he purchased after giving notice to MD that he was to leave the flat. KC says that this was because of threats MD made to people in the flat and to their property.
12. MD acknowledged he had made some comments to one person but otherwise denies this.
13. There was no evidence of any prior harm nor was it suggested MD acted to cause harm subsequently.
14. I am not satisfied that KC and BS have established an obligation on MD to pay for the security cameras. Whether MD made threats or not, the decision to purchase the cameras was theirs alone, and so the cost is theirs also. The cameras remain at the flat and provide an ongoing security benefit to them.

What amount is due to MD from the bond (if any)?/ What amount (if any does MD owe to KC and BS?

15. It was agreed that MD paid a total bond of \$721.00.

16. I have found that MD was required to have his room professionally cleaned.

- a. KC provided a quote for cleaning for \$531.30. Although this seems a significant cost, it was clear he had spoken to the cleaning company and explained the purpose of the clean, the quote provides for specialist cleaning to remove drug residue and it also allows for cleaning of the HRV type system.
- b. MD provided some online quotes but these appear to be more ordinary cleaning rather than specialist cleaning services.

17. I find that MD is required to pay for cleaning services in the amount of \$531.30.

18. I have not found that MD is required to pay for the security cameras.

19. Addressing both the claim and counterclaim, I find that MD is entitled to be paid \$189.70 by KC, being the bond amount of \$721.00 less the cleaning cost of \$531.30.

20. I dismiss the claim by KC and BS in relation to the security cameras.

Referee: S Simmonds
Date: 23 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>.