



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 102

APPLICANT MI

RESPONDENT T Ltd

The Tribunal orders:

T Ltd is to pay \$1664.35 to MI on or before 11 April 2023; and

MI is to make the washing machine available for collection by T Ltd (at a mutually agreed time) on or before 28 April 2023 (but preferably as soon as possible after receipt of this order), ownership of the washing machine being re-vested in T Ltd as of the date of this order.

Reasons

1. MI purchased a [redacted] washing machine from T Ltd's online store in December 2022. MI had measured the internal space it was to fit into in his new home which had a depth of 670mm. He purchased the particular model of T Ltd machine because it was described on the website as having a depth dimension of 650mm.
2. However, when the washing machine was delivered on 23 December 2022 MI immediately determined that the machine protruded far beyond the space, and, in fact, measured closer to 720mm in depth than the described 650mm.
3. MI sought to return the machine to T Ltd who declined his request, treating it as a 'change of mind'. The claim is therefore for the purchase price of the machine of \$1394.35 plus \$270.00 consequential losses of storage and/or laundromat time and expenses.
4. T Ltd did not provide a representative name and contact number so that they could participate in today's teleconference hearing so this order is made in their absence (the notice of hearing was served to their registered office address and their PO Box number on 27 January 2023).
5. The issues to be determined are:
 - Did the goods supplied by T Ltd comply with the description made about them as per section 9 of the Consumer Guarantees Act 1993 ('CGA')?
 - If not, what remedy is available to MI?
6. Section 9 of the CGA states that where goods are supplied by description to a consumer, there is a guarantee that the goods correspond with the description. MI has provided photographic evidence that proves the 650mm depth description on T Ltd's website associated with this washing machine is incorrect. This is clearly not a 'change of mind' situation but one where the goods have been inaccurately described, resulting in a failure of CGA guarantee.

7. As the failure of guarantee is one that cannot be remedied, MI is entitled to reject the goods and obtain a refund of the \$1394.35 purchase price paid. As per section 18(c) of the CGA, he is also entitled to recover losses that were reasonably foreseeable as liable to result from the failure.
8. Laundromat costs until this matter was resolved are reasonably foreseeable (I note MI did not have the funds to buy a replacement machine without a refund for this one), and while I do not accept the claim as calculated for storage costs (storage in the living room of the new home being a massive inconvenience and stress but not an actual loss), I find that the actual expense of taking clothes to a laundromat, associated travel costs and time spent waiting for clothes to be laundered outside the home, for 11 weeks to date, is fairly compensated by the \$270.00 balance of the amount claimed above the purchase price.
9. As per section 22(2) of the CGA, as the goods are of a size and bulk that would make them difficult for MI to return without significant cost, I order that the washing machine be collected at T Ltd's expense as soon as possible. If T Ltd fails to arrange collection of the goods in the timeframe stipulated in the order, MI may apply to the Tribunal for enforcement of a work order and should supply a quotation for the amount it would cost him to freight the goods back to T Ltd.

Referee Perfect

Date: 10 March 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>.