



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 52

APPLICANT MJ

RESPONDENT OM Ltd

The Tribunal orders:

OM Ltd is to pay the sum of \$6,162.46 to MJ on or before Tuesday 14 March 2023.

Reasons:

1. On 23 October 2021, MJ purchased a robotic vacuum cleaner from OM Ltd for \$2,399.20 plus \$209.99 for an extended warranty. She claims that the vacuum started failing to pick up debris in June 2022, and that when she tried using it again in mid-September, it had developed navigation problems, such as crashing into obstacles, missing parts of the assigned vacuum area, and failing to find its base.
2. On 12 October 2022, MJ took the vacuum to OM Ltd for assessment. The vacuum was not repaired within the promised timeframe, and eventually OM Ltd offered a store credit for \$2,399.20, which MJ rejected.
3. MJ now claims \$6,162.46, comprising a full refund of the purchase price and extended warranty cost, \$3,047.50 for damage to the skirtings caused by the vacuum, and \$505.77 for damage to her front door.
4. The issues to be determined are:
 - a) Was the vacuum acceptably durable?
 - b) Did the vacuum cause the damage to the skirtings and door?
 - c) What sum, if any, is payable? Was MJ misled into purchasing the extended warranty?

Was the vacuum acceptably durable and fit for purpose?

5. Section 6 of the Consumer Guarantees Act 1993 (CGA) provides that where goods are supplied to a consumer, there is a guarantee that the goods will be of acceptable quality. Section 7 defines acceptable quality to include being as durable, fit for common purposes, acceptable in appearance, and free from minor defects, as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects, would regard as acceptable. Factors taken into consideration include the nature of the goods, the price, any statements on the packaging, any representations by the supplier or manufacturer, and other relevant circumstances. Under section 7(4) of the CGA, goods will not fail to comply with the guarantee of acceptable quality if the real cause of the failure is that the goods have been used in an unreasonable manner or to an unreasonable extent.

6. OM Ltd submitted that the vacuum's problems seemed to have been caused by plastic debris its technicians found caught up in the fan. However, MJ pointed out that the vacuum had been represented as being a clever machine that would only pick up debris that it could handle. In that light, I am unable to find that the vacuum was used in an unreasonable manner. Rather, I find that the product was not as durable and fit for purpose as a reasonable consumer would have expected in all the circumstances.
- 7. Did the vacuum cause the damage to the skirtings and door?**
8. OM Ltd submitted that the vacuum does not have enough force to do severe damage, that the short video from MJ did not show it hitting the wall, and that some of the dents in photographs were too high to be caused by the vacuum.
9. However, I find it more likely than not that the damage was caused by the vacuum. MJ provided evidence that the property had been renovated and painted in July 2021, so the damage was unlikely to be ordinary wear and tear. Photographs showed the damage to be low down, around the level of the vacuum, and it seemed consistent with damage that might be expected from the problem described. The video showed the vacuum having trouble navigating back into its base, and it is unsurprising that MJ did not video it hitting walls, as she said she did not want it to cause further damage. The damage occurred in her absence, as she explained she used to set the vacuum going while she was out.
- 10. What sum, if any, is payable? Was MJ misled into purchasing the extended warranty?**
11. OM Ltd did not dispute that it had failed to remedy the failure within a reasonable time. MJ was therefore entitled to reject the goods under s 18(2)(b) of the CGA, and to receive a full refund under s 23 of "any money paid, or other consideration provided by MJ in respect of the rejected goods". I find that the cost of the extended warranty qualifies as money paid in respect of the vacuum, so the refund must include this cost.
12. Alternatively, the cost of the extended warranty should be refunded due to breach of the Fair Trading Act 1986 (FTA) s 9, which provides, "No person shall, in trade, engage in conduct that is misleading or deceptive or likely to mislead or deceive." MJ gave evidence that she was advised by the customer service representative with whom she first discussed the vacuum that she should buy an extended warranty because otherwise she would only be covered for twelve months under the CGA. This is quite incorrect, as durability under the CGA is assessed based on the reasonably expected life of the goods rather than on the manufacturer's warranty. A robot vacuum costing over \$2,000 would reasonably be expected to last longer than twelve months, and probably longer than the three-year term of the extended warranty.
13. MJ is also entitled under s 18(4) of the CGA to recover the cost of repairing the damage to her skirtings and door by way of damages for reasonably foreseeable consequential losses. She provided quotations in support of these costs. I therefore find that the total sum payable by OM Ltd is \$6,162.46.

Referee: E Paton-Simpson
Date: 21 February 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 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>.