



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 293**

**APPLICANT      MK**

**RESPONDENT    S Ltd**

**The Tribunal orders:**

1. S Ltd is to pay MK \$4,397.12 on or before Friday 25 August 2023.
2. MK is to safely pack up and arrange for the return all the curtains purchased from S Ltd to them, with shipping of the boxes with the curtains to be paid for by S Ltd.

**Reasons:**

3. MK, the applicant, and NJ, representing the respondent, both attended the hearing by teleconference.
4. In late January 2023, MK purchased curtains from the respondent for her new build house. The curtains were delivered on 10 March 2023. Due to ongoing conditions after Cyclone Gabrielle hit on 14 February 2023, MK did not open the box containing the curtains until she could get into her new house to hang them, on 10 April 2023. When she hung the curtains, she discovered uneven seams, holes in the curtains and some poor-quality fabric in the sheer curtains. She asked for a refund from the respondent, S Ltd but was told she should have raised the issue within 48 hours of receiving the curtains. Because she had not done so within this time, S Ltd would not give her a refund.

*Were the curtains of acceptable quality or fit for purpose?*

5. MK said she chose to order curtains from S Ltd because their website promised that they had experienced people making them and that they also promised to deliver a high-quality product. She is a sewer and wanted to pay for nice, well-made curtains for her new build home. She ordered curtains for the TV room, master bedroom main and sheer curtains and guest room main and sheer curtains, for a total cost of \$4,397.12.
6. Cyclone Gabrielle hit on 14 February 2023. MK said [Town] was heavily impacted by this, with landslides and much silt and they could not access their new build house, nor could any contractors access the site to finish it. When the curtains were delivered in 2 cardboard boxes on 10 March 2023, she said there was duct tape around the sides of the boxes, that she checked for any water damage or any other damage or dent, which she did not find, and so she decided to store the 2 curtain boxes in her bedroom until they could get into their newly built house. She

said there were multiple things being stored where she lived at that time, given the Cyclone situation, and so she thought the curtains would be safer not being unpacked by her at that time.

7. MK said she finally opened the curtain boxes around 10 April 2023, when got into her new house to hang them. At that time, she discovered holes in both sheer curtains and uneven seams throughout the curtains. She provided photographs of these, with holes showing in 2 sheerer curtains and one which showed a wide seam in a main curtain which showed the backing through the gap in the seam. MK said that the defects with the seams were such that in one curtain there would be many thin seams in the pleats yet in the same curtain there would also be thick, wider seams. There was not consistency in the size of the seams, she said, which made the curtain hang unevenly. She provided a photograph of a curtain as she described, hanging. It appeared from this photograph that some gaps between pleats were wider than between other pleats on the same curtain.
8. MK said the curtains were not of acceptable quality at all. She is a sewer and claimed she understands how seams should be sewn and how they should sit and said these seams were badly sewn, and the fabric for the sheer curtains was very poor-quality. She was particularly upset that S Ltd had held themselves out on their website as providing high quality products, and that she had paid a significant amount for the curtains, which led her to expect a very high-quality product. She said she would not have purchased the curtains, had she known the faults she would find. She pointed out further that there was no mention on S Ltd's website that some of the seams could be variable, in which case she would not have purchased them.
9. MK thought that the curtains did block out the light and provide cover, so in a functional way were fit for purpose. Her issue was that she did not believe the curtains were of acceptable quality. MK said these curtains are still hanging up in her new house, as she does not have enough money to buy new curtains for the house, unless she has a refund for what she paid for these curtains.
10. NJ said that he did not think the wider seams were a problem, that the workshops from which he got the curtains handmade the curtains. In his view, the wider seams were within the acceptable range of quality. Similarly, he thought the photograph MK provided of a hanging curtain with different size seams to be within the normal range of quality he would accept. He claimed the fabric for the sheer curtains was 'expensive'.
11. In relation to the holes in the curtains, NJ did not want to comment on the possible cause of these holes, as there could have been multiple reasons for these, in his view, for example damage from MK' household in some way. He said that, had MK provided feedback about these issues within the 48-hour time allowed by the company for customers to bring problems to their attention, then he would have taken the curtains back and had them repaired for free. This was not an option for his company outside the 48-hour time, he said, as the curtain workshop they dealt with would not then repair them for free.
12. Section 7 Consumer Guarantees Act 1993 ("CGA") provides that 'of acceptable quality' includes being acceptable in appearance and finish and free from any minor defects. Section 7 provides that regard can be had, in determining whether a reasonable consumer would regard goods as acceptable, the nature of the goods, the price and any representation made about the goods by the supplier.
13. The evidence was that the curtains had inconsistent seams within the same curtain, which made them hang unevenly, and that some curtains had holes in them, when they appeared to have been delivered safely in the packaged boxes, according to MK. MK said she opened the curtains boxes for the first time, hung the curtains, noticed the defects and contacted S Ltd about the defects all on the same day, which in my view limits the potential for any damage to the curtains from a source in MK's home. MK paid \$4,397.12 for 3 main curtains and 2 sheer curtains, which is a significant investment in my view. Further, S Ltd represented on its website that their curtains

are “top-quality custom curtains”, “ensures the highest production quality” and “commissions master curtain-makers with no fewer than 10 years’ experience”. Based on this evidence, I find it is more likely than not that the curtains are not of acceptable quality, especially given what MK paid for them and the representations of high-quality products. I do not make any findings as to whether the curtains are fit for purpose, as there was insufficient evidence provided about this issue.

*Was the failure of substantial character as per the CGA?*

14. MK said she would not have purchased the curtains, had she known about the uneven seams or the holes. She said she did not ask for the curtains to be repaired or replaced once she discovered the defects, as she was not confident she would get a high-quality product back a second time. MK believed the failure of being of acceptable quality was a substantial one.
15. NJ acknowledged they would not accept products with holes in them, as this would damage their reputation, but his issue was that the curtains were not returned within the 48-hour time permitted for his company to rectify the problem for free with their workshop, or with logistics partners, should it be a delivery damage issue.
16. I find the lack of acceptable quality of the curtains was a failure of a substantial character, as the goods would not have been purchased by a consumer fully acquainted with the nature and extent of the defects and quality issues of the curtains, in my view.

*Did MK reject the goods within a reasonable time?*

17. MK stated she believed that she contacted S Ltd to notify them of the defects and request a refund within a reasonable time. She said that 4 weeks was a reasonable time, and that she was not able to go through the curtains before that, given the Cyclone conditions in her environment. She said she notified the company on the same day she opened the curtains boxes of the defects.
18. NJ said this was the main issue for S Ltd, that MK did not notify them of the defects within a 48-hour time of receiving the curtains, which he considered to be a reasonable time. This meant that S Ltd could not access free repairs or replacement from their workshop, nor would the company be able to claim back any delivery damage from their logistics partners. The terms and conditions on their website provided that “if your order was damaged at the time of delivery, please contact the company immediately within 48 hours with images and a description of the damage. We will contact you to arrange for free repairs or replacement of the damaged product.”
19. MK said she read the 48-hour time on S Ltd’s website to mean that she would have 48-hours from the time of delivery to make claim if there was any damage to the product from the delivery process. As she checked the boxes upon delivery and did not see any dent, damage, defect or water damage to the boxes, she assumed there would be no delivery damage to claim for. She pointed out that, elsewhere on S Ltd’s website it said “in the unlikely event that you are unhappy with your order, we will make our best effort to help resolve any issues”, which she understood to mean S Ltd would help resolve customer issues unrelated to delivery damage, such as the quality of the product, at any time after delivery.
20. Section 20 CGA provides that the right to reject goods under the CGA shall not apply if the right is not exercised within a reasonable time over a period after supply of the goods when it would be reasonable to expect any defect to become apparent.
21. Given the significant environmental impact of Cyclone Gabrielle on the [Town] region, which included landslides, heavy silt, issues with accessing properties and having to keep items safe during all this, I find it was not unreasonable for MK to assess the delivery condition of both curtain

boxes upon delivery on 10 March 2023, put the boxes into safe storage given the outside environmental conditions, and open the boxes as soon as she was able to get into her new house on 10 April 2023. The issue of what is considered a 'reasonable time' must be assessed on an individual basis, in my view. The Cyclone conditions were, in my view, an exceptional time for those impacted and one must look at what was more likely than not a reasonable time for a consumer living in those conditions at that time.

22. MK acted swiftly, in my view, on discovering the defects in the curtains and notifying S Ltd of them and requesting a refund.
23. I note that times imposed by companies for customers to notify them of any defects are not necessarily determinative of what is considered a 'reasonable time' under the CGA. Companies will have their own sub-contractor obligations in mind when imposing times for notification of damage or defects, as in this situation, but customers are not bound by the company's obligations with their own sub-contractors.

*What, if any, remedy is appropriate?*

24. MK wanted a refund of her purchase price for all curtains in the amount of \$4,397.12
25. NJ said S Ltd does not provide refunds, especially as these are custom made orders which cannot be on sold upon return. The best he said his company could do would be to offer to make new curtains at cost, which he estimated in this case would be around \$2,200.00
26. I have found the curtains were not of acceptable quality and that the failure was of a substantial character. As such, MK is entitled to reject the goods. I have found she did that within a reasonable time, given her conditions at the time. Therefore, MK is entitled to request a refund pursuant to the CGA.
27. S Ltd is to pay MK \$4,397.12 on or before Friday 25 August 2023.
28. MK is to safely pack up and arrange for the return all the curtains purchased from S Ltd to them, with shipping of the boxes with the curtains to be paid for by S Ltd.

**Referee: C Price**  
**Date: 01 August 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>.