



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 42

APPLICANT **MS**

RESPONDENT **UM**

The Tribunal orders:

UM is to pay the sum of \$493.22 to MS by no later than 8 March 2024.

Reasons:

1. MS and UM are neighbours with a shared driveway. MS's property is lower than UM's and is in a dip.
2. MS's property flooded on three occasions during storms in 2023. MS claims the flooding was due to drains being blocked by vegetation, mud and scoria washed down from UM's property. Any property damage was covered by MS's insurer, however MS claims in the Disputes Tribunal to recover the cost of a drainlayer to unblock the drains following two of the storms, and compensation for her time cleaning up. It is for the Tribunal to determine if UM is liable for the losses claimed.

Is UM liable for costs and losses incurred by MS to clean up after the storms?

3. A person may be liable for losses incurred by a neighbour if that person has caused or allowed something harmful to escape their property which causes damage to their neighbours property and interferes with the neighbours enjoyment of their land. It is not a defence that precautions were taken, merely that harm was foreseeable and damage caused. The neighbour must however accept the natural flow of water from a higher landowner.
4. MS claims drains were blocked by foliage coming down from UM's property and, in the June storm, by scoria that had been put on UM's property to enable works to be done. In support, MS has provided photos and a report completed by [Drain company].
5. It is undisputed that [City] suffered severe weather events in 2023. The events led to widespread flooding with drains unable to cope with the volume of water, and the ground being saturated. The question for the Tribunal therefore is whether the flooding experienced by MS was a result of scoria and debri escaping from UM's property, or "an act of god" following the extreme weather events.
6. In respect of the January flood, no evidence has been provided to suggest the drains were blocked by debri from UM's property or that it was the result of UM's unnatural use of his land.

The drainlayer has not commented on the January flood and the photos, although showing the effects of flooding, do not provide clarification of the cause. I therefore find UM not liable for costs arising from the January flood.

7. In respect of the June flood, the drainlayer states they observed a large amount of hardened concrete slurry, which they believed came from UM's property and the works being undertaken there.
8. UM accepted the pile of scoria on his property may have contributed to the problem as it had not been contained.
9. The fact MS's property was subject to flooding on three occasions in 2023 suggests the drains may not be capable of coping with the volume of water such weather events produce, particularly when the ground is saturated. The evidence however indicates scoria and debris from UM's property was likely to be a factor in the June flood.
10. However it is also possible other factors contributed. UM pointed out the dip in which MS's house sat, thereby getting runoff from other directions, and a shared driveway with gardens containing scoria. Those factors, as well as the extreme weather event and saturated ground leaving drains unable to cope, may also have been factors in the June flood. I therefore find it would be unreasonable to find UM wholly liable for the losses claimed.
11. MS claims the cost of clearing the drain in June, being \$235.75, plus two days lost income of \$514.94. As evidence indicates scoria and other debris on UM's property was not being contained and was likely to be a factor in the June flood, I find UM liable for some losses. I find the claim for the cost of the drainlayer to be reasonable. However I find it would be unreasonable for UM to compensate MS for the loss of two days pay due to the other factors that may have been involved in the June flood. UM offered to pay half. I find that offer to be reasonable in the circumstances. I therefore make the order accordingly that UM pay the cost of the drainlayer and half the amount claimed for lost income, being a total of \$493.22.

Referee: DTR. Edwards
Date: 14 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>.