



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

**[2023] NZDT 698**

**APPLICANT      MU**

**RESPONDENT    OL**

**The Tribunal orders:**

The claim by MU against OL is proved. OL is to pay MU the sum of \$4,847.25 on or by 5:00 pm on 20 January 2024.

**Reasons**

1. On 15 July 2023, in the [Suburb] shops carpark OL backed his car into the side of MU's car causing damage.
2. Both MU and OL were sent a "notice of hearing" advising them of the date and time of the hearing.
3. OL was sent an email which included the video of the collision. The email was sent on 6 December 2023 and referred to the hearing scheduled at 11:30 am on 14 December 2023 for a teleconference.
4. OL did not answer the first three calls but eventually did. Someway through the hearing OL hung up after requesting the hearing take place at another time because he was busy. Before he hung up, OL confirmed that he disputes liability. OL was advised that the hearing would continue and that it is his opportunity to respond to the claim. The hearing continued in his absence.
5. The issues to be resolved are:
  - (a) Is OL responsible for the collision?
  - (b) If so, what is the remedy?

**Is OL responsible for the collision?**

6. OL said that he did not see MU when he backed into him.
7. OL said that he was not responsible because MU was driving too fast.
8. OL said that he has lived there for years and is very familiar with the carpark.
9. He said that MU is required to slow down.
10. OL said that the video demonstrates that MU was driving too fast and therefore he was responsible for the failure by OL to see him approaching.

11. I am satisfied that MU has proved that “it is more likely than not” that OL was responsible for the collision. I make my findings for the following reasons:
12. The Land Transport Road User Rules 2004 defines a roadway as a place where the public have access. I am satisfied that the shops carpark is a road way.
13. All road users have a duty to drive on a road way with care in a manner that does not cause damage to other road users.
14. I have viewed the video several times and viewed the photo of the impact on the side of MU’s car.
15. I have also considered a witness statement provided by BK who with his family was travelling in his car behind MU and witnessed the entire collision. BK confirmed that he witnessed the [vehicle A] (OL’s car) reverse out into the side of the [vehicle B] (MU’s car).
16. I am satisfied that while OL appears to have noticed the first car that went past the rear of his car, he did not see MU who was also traveling past the rear of his car.
17. I am satisfied that MU was not speeding, and that the cause of the collision was a failure on OL’s part to ensure that the way was clear before attempting to continue his ‘backing’ manoeuvre.

**If so, what is the remedy?**

18. The normal measure of damages for a claim in negligence is to restore the wronged party to the position they were in before the negligent damage occurred.
19. MU provided a copy off an estimate from [vehicle repair company] which includes labour and second hand parts to repair his damaged car.
20. I am satisfied that the estimate is justified and reasonable and is for less than the replacement value of the car.
21. For these reasons I am satisfied that MU has proved his claim against OL and that OL should pay for the repairs in the sum of \$4,847.25.

**Referee: K Johnson**  
**Date: 14 December 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>.