



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 692

APPLICANT NC

RESPONDENT HU

The Tribunal orders:

HU is to pay NC \$1,000.00 on or before 31 January 2024.

Reasons

Introduction

1. At the end of July 2023, NC moved into a flat with HU. HU was the head tenant. In or around 26 August 2023, NC moved out of the flat.
2. NC seeks the return of his bond of \$1,000.00.
3. The issues to be resolved are:
 - a. What was the agreement with regards to giving notice? And was this breached?
 - b. If not, is NC entitled to claim \$1,000.00?

What was the agreement with regards to giving notice? And was this breached?

4. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms. The terms of a contract are formed at the beginning, not at the end. A contract can be in writing, oral or a mixture of both. Variations to agreements can be made in the same manner. Subsequent actions, of the parties, can show that parties confirm their intention to be bound and continue in their agreement.
5. There is no written agreement between the parties. The parties entered into an agreement based on an advertisement for a flatmate. In that advertisement there is no reference about how much notice is required to be given if someone moves out. It advises that Bond is four weeks in advance and rent is one week maximum in advance.
6. HU says he told NC when he viewed the flat that it is four weeks' notice, because that is what he has to give the property manager under the agreement and therefore he applies it to his flatmates.
7. NC denies that conversation and says that he gave two weeks' notice and that was all he needed to give.

8. There is no evidence that confirms whether it should be two weeks or four weeks. What I do note is that in the text conversation between NC and HU, NC advises that he will be moving out after two weeks. HU does not raise the four weeks at that point in time but confirms the move out date.
9. On 20 August, HU sends a text to NC and trespasses him from the address. Effectively, HU is cancelling any agreement that may have been in place with immediate effect. He then advises that he will be charging a further two weeks rent and a cleaning cost and that this will be deducted from the bond.
10. I find that there was no agreement on the amount of notice that was to be given and, in any event, that was usurped when HU trespassed NC from the address. Therefore, because there was no agreement, I find it has not been breached.

If not, is NC entitled to claim \$1,000.00?

11. I find NC is entitled to a full refund of his bond. There was no agreement on how much notice was to be given, and at least two weeks was given, notified and paid to that point in time. Furthermore, NC was trespassed, preventing any access to the property, not only within his two-week period but also HU's four-week period.
12. HU seeks \$100.00 costs for cleaning. He says he charges \$50.00 an hour and that is how long it took him to clean after NC left. HU provided photographs of marks in a common area and what might be the bathroom, also a common area. He says it was NC's turn to clean the bathroom when he moved out and didn't. He further raised that there was dust on the wardrobe shelf that NC cleaned.
13. I do not accept any of the cleaning claims sought by HU. NC provided photos of his room when he moved out. The photos show a clean and tidy room. He was in the room for less than four weeks and HU has not provided any substantial evidence of the cost of cleaning or that the marks in the common area or dirty bathroom was caused by NC.
14. Accordingly, I order that HU is to pay NC his full bond of \$1,000.00.

Referee: Nigel Wolland
Date: 21 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>.