



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

**[2023] NZDT 546**

**APPLICANT      NC**

**RESPONDENT    VU Ltd**

**The Tribunal orders:**

VU Ltd is to pay directly to NC the sum of \$2,000 on or before Thursday, 2 November 2023.

**Summary of Reasons:**

[1]      The hearing was convened by teleconference. Both parties appeared at the hearing.

**Background**

[2]      NC seeks a return of a \$2,000 deposit paid to the VU Ltd in September 2022.

[3]      The parties agree the essential facts. In mid-2022 the NC answered [online] advertisement for lease of a commercial property in [Town]. The NC intended to use the premises as a wedding venue.

[4]      The parties entered into negotiations over lease terms. Various lease offers were made to NC, but no lease contract was signed. The evidence shows negotiation over the lease terms continued until mid-2023 when NC withdrew her offer to lease. These negotiations included the extent of renovations to be completed by the property owner at his cost, the time by which these renovations would be completed, and the amount of bond to be paid. By early September 2022 NC agreed to pay a \$2,000 bond on the basis that the owner would complete renovations by December 2022. Once these renovations were completed NC agreed to sign a lease contract.

[5]      NC paid VU Ltd a \$2,000 deposit. The terms under which this deposit was paid are not evidenced in writing. It appears the deposit was paid to hold the property until the terms of the lease could be agreed. VU Ltd admits there was no discussion as to what would happen should the lease terms not be finalised, and a lease contract signed. There was no express term that the deposit was non-refundable or to cover negotiation or renovation costs. I note the draft lease offers provided by the parties include a term that the deposit is payable on signing and both parties agree an agreement to lease was never signed.

[6]      On the basis of this deposit, NC was provided the keys and began extensive property clearance at her own cost while awaiting finalisation of the lease terms and the agreed renovations to be completed by the property owner.

[7]      The parties also agree that by December 2022 the renovations expected by NC had not been completed. Negotiation over the lease terms continue. By April 2023 NC indicated that she would not be signing a lease unless the renovations were completed. VU Ltd offered to refund the deposit evidenced in writing in emails around the same date.

[8] VU Ltd claims this offer was not accepted and the owner continued with his renovation of the property having committed in excess of \$15,000 to this project.

[9] NC claims after consideration of VU Ltd's offer to refund the deposit she decided to walk away from her business venture and advised VU Ltd she would not be signing a lease. She requested a return of her deposit but did not make any claim for reimbursement of costs incurred in tidying the property or removing rubbish.

## **Issues**

- i) Did the parties reach a concluded bargain.
- ii) What are the terms of the deposit paid.

## **Issue 1**

[10] The evidence shows the parties never reached a concluded agreement. The written and oral evidence before me shows the parties never moved past negotiating the terms of a lease. While agreement was reached in principle that the owner would renovate the property before a lease was signed, the extent of this renovation was never agreed.

[11] As there was no concluded bargain, neither party can be said to have breached their agreement. At best the parties can be said to have entered into a conditional agreement to lease, but the condition as to the extent of that renovation remained vague and therefore unenforceable. Given this I am persuaded either party was entitled to terminate their negotiations before a concluded agreement was reached without penalty.

[12] I accept payment of the deposit imposes obligations of good faith on both sides to attempt to reach a concluded bargain. The evidence shows they did attempt to reach agreement, they were simply unable to agree on the extent of the renovations and the time they would be completed by.

## **Issue 2**

[13] I note neither party is seeking damages for termination of their negotiations other than VU Ltd's belief it is entitled to retain the deposit paid as some compensation for the time and expense of the renovations completed by mid-2023.

[14] Whether a deposit is refundable or not depends on the specific terms and conditions of the agreement or contract in which the deposit is made. In agreements to lease, the refundability of the deposit depends on the terms of the lease agreement. Generally, if specified conditions are not met or a lessee backs out of the deal within specified contingencies, the deposit may be refundable. If the lessee breaches the agreement, the lessor may keep the deposit.

[15] As stated above, the parties agree there were no specific terms agreed when the deposit was paid. NC was not told the deposit was non-refundable nor was there any express agreement as to the terms on which the deposit was paid or in what circumstances it would be repaid. It appears both parties considered the deposit as a way of holding the property until lease terms could be agreed and the renovations completed.

[16] As lease terms were never agreed, I am not persuaded VU Ltd is entitled to retain the deposit simply as compensation for its negotiation or renovation costs. Had VU Ltd wished the deposit to be forfeited if specific terms were not met or a lease contract signed, then this term would have to have been agreed before the deposit was accepted, particularly given the uncertainty of a satisfactory lease ever being agreed.

[17] On that basis I am persuaded NC is entitled to a full refund of the deposit paid.

**Referee: Hannan DTR**  
**Date: 12 October 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>.