



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 241

APPLICANT ND
RESPONDENT EI
SECOND RESPONDENT DM
THIRD RESPONDENT T Ltd
FOURTH RESPONDENT CI

The Tribunal orders:

1. DM and T Ltd are joined to the claim as respondents.
2. EI and DM and T Ltd are to pay ND \$500.00 on or before Friday 5 May 2023.
3. The claim against CI is dismissed.

Reasons:

1. In July 2021, ND purchased a property owned by trustees of a family trust. The Trustees of that Trust are EI and DM and T Ltd. The agreement for sale and purchase (“the Agreement”) was settled on 28 January 2022 and was arranged through CI, Salesperson, of [Real Estate] in [Town].
2. While the claim was initially brought against EI as the prior owner of the property, I am satisfied the property was owned by the Trustees and the Agreement is in the name of the Trustees. It is therefore proper that DM and T Ltd be added as respondents. EI appeared on behalf of the Trustees, and I accept his assurance he is authorised to act on behalf of the Trustees.
3. ND says the oven and heated towel rail at the property were not in reasonable working order at the date of settlement. ND claims \$1,225.00 from the Trustees for breach of warranty. That sum comprises, \$950.00 towards the cost of a new oven and removal and installation costs; \$230.00 for the replacement and installation of a new towel rail; and a refund of the \$45.00 Disputes Tribunal filing fee.
4. ND acknowledges that while she named CI as a respondent, she does not now believe he is responsible to pay the compensation she is seeking.
5. The Trustees deny the claim, saying they have made a range of concessions in ND’ favour since the agreement was entered into, the value of which far outweighs the amount she claims.
6. The issues I must decide are:
 - a. What terms were agreed?
 - b. Has there been a breach of clause 7.3(1) of the agreement regarding: i. the oven; and ii. the heated towel rail?

- c. Is ND entitled to \$1,225.00 as claimed, or to any other sum?

What terms were agreed?

7. Under contract law, a contract is formed when both parties intend to contract on agreed terms and intend for those terms to be legally binding. The terms of a contract are formed at the beginning, not at the end, and what was agreed is looked at objectively, i.e., by looking at what was said and done.
8. I find agreed terms are set out in the Agreement dated 15 July 2021, however I also note:
- a. while the Tribunal has not been provided with a full copy of the Agreement, the parties accept agreed terms are set out in that document;
 - b. after the Agreement was signed, the parties acknowledge that variations to the Agreement were agreed between the parties, regarding the date for satisfaction of conditions; an adjustment to the purchase price for electrical work; and about possession arrangements;
 - c. of particular relevance to this dispute are the vendor warranties given in clause 7.3(1) of the Agreement, discussed in more detail below.

Has there been a breach of clause 7.3(1) of the agreement regarding: a. the oven; and b. the heated towel rail?

9. The Agreement contains many specific terms, including the vendor warranties set out in clause 7.3(1). The key elements of that clause say that *“the vendor warrants and undertakes that at settlement ... the chattels included in the sale ... are delivered to the purchaser in reasonable working order”*.
10. I find the oven was not in reasonable working order at the time of settlement. I do not make the same finding regarding the heated towel rail, for the reasons stated in paragraph 14.
11. EI, on behalf of the Trust, says:
- a. these items were in reasonable working condition at the time of settlement; and
 - b. the condition of these items was clearly visible for inspection when the property was initially viewed by ND, meaning ND was able to form her own view about the condition and longevity of use of these items.

While I acknowledge the view regarding inspection is true to some degree here, the warranty in clause 7.3(1) is clear and explicit. While it does refer to consideration of the state of repair of items at the date of the agreement, this does not remove the primary obligation that items are warranted to be in reasonable working order at settlement. If the Trust did not wish to provide a warranty about all/some chattels, it had the opportunity, either of its own volition or by working with its real estate agency or solicitors, to modify or remove this warranty.

12. I do not however accept ND's argument that the Trust was obliged to have the oven (and/or other items) inspected by a registered electrician before settlement. If clause 7.3(1) had intended to impose that requirement, I am satisfied it would have been clearly stated.
13. *Oven* - For the avoidance of doubt, the oven in dispute is a stand-alone electric model, and incorporates an electric stovetop. Based on the evidence provided by each of the parties, I am satisfied it is more likely than not that not all the stovetop elements worked, and that the oven thermostat and seals did not function sufficiently well to allow the oven to work to a reasonable standard. I am therefore satisfied the oven was not in reasonable working order.
14. *Towel Rail* – Having heard the evidence however, I view the heated towel rail in a different light. ND obtained an electrical inspection report on the property, which is dated 30 July 2021. As a result of items noted in that report, and ongoing discussions between the parties for a period of

time, I am advised ND was able to negotiate a \$2,500.00 reduction in the purchase price, after the agreement was declared unconditional. When I look at all the circumstances I am satisfied:

- a. the electrical inspection report noted the towel rail had a broken bracket;
- b. it is therefore more likely than not this defect was included amongst items discussed prior to the price negotiation between the parties;
- c. this price negotiation was based on ND seeking compensation for noted defects and/or shortcomings revealed by the report, which included the noted towel rail;
- d. having already negotiated compensation, ND has therefore not persuaded me she has a right to re-visit the issue of the towel rail and seek further compensation.

Is ND entitled to \$1,225.00 as claimed, or to any other sum?

15. If a party suffers loss resulting from a breach of contract, contract law requires, as far as is possible, that the party be put back in the position they would have been had the contract not been breached.

16. I find ND is entitled to compensation of \$500.00.

17. The compensation claim made by ND is made up of three components, dealt with in the following three paragraphs.

18. \$950.00 is claimed as a contribution to the removal, replacement, and installation of a new oven:

- a. I award the sum of \$500.00;
- b. ND says \$600.00 is a fair amount towards a new oven, and she seeks \$200.00 for removal of the old oven, and \$150.00 towards installation costs;
- c. I am satisfied the oven is uneconomic to repair, however while ND did provide evidence about second-hand alternatives, the variation in quality of the examples made effective comparison difficult;
- d. on these facts I am satisfied even a cursory inspection of the oven by ND would reveal the oven had a very limited remaining life span. The award of \$500.00 recognises the breach of clause 7.3(1), with a \$450.00 contribution to a replacement oven, and \$50.00 towards removal and installation costs. I have reduced removal and installation costs on the evidence, as I accept EI's view that the oven is so old it can simply be unplugged and removed. While I acknowledge the likely truth of ND' claim that she faces additional costs to meet regulatory standards for wiring a replacement oven, this is a cost ND would face in any case. I say that because, having obtained an electrical inspection report before declaring the contract unconditional, it would have been clear and apparent to ND that electrical wiring had not been updated throughout the house.

19. \$230.00 is claimed for a replacement towel rail. For the reasons set out in paragraph 14, I am not persuaded there is a right to further compensation.

20. \$45.00 is claimed as a refund for the Disputes Tribunal filing fee paid by ND. The Disputes Tribunal Act 1988 does not provide me with the power to refund this fee, and therefore I am unable to award the refund requested.

Conclusion:

21. For all these reasons: a. EI and DM and T Ltd are obliged to pay ND \$500.00 in accordance with the terms of this order; and b. the claim against CI is dismissed.

Referee: Malthus
Date: 11 April 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>.