



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

**District Court**

**[2023] NZDT 502**

**APPLICANT      NG and UG**

**RESPONDENT    B Ltd**

**The Tribunal orders:**

B Ltd is to pay the sum of \$1,676.59 to NG and UG on or before 14 September 2023.

**Reasons:**

1. On 30 December 2020, NG and UG entered into an agreement for B Ltd to manage their rental property. The agreement provided for termination by either party on three months' notice in writing after the expiry of a 12-month minimum term. The main charge was a \$25.00 per week fixed fee, but B Ltd was permitted, at its sole discretion, to "change or increase" the charges by one month's notice in writing.
2. In March 2022, B Ltd proposed a new agreement with a 12-month term and a 6% management fee. The outcome of the negotiations is in dispute, but B Ltd continued as property manager. On 17 August 2022, NG and UG gave two weeks' notice to B Ltd that they wished to terminate the management arrangement.
3. NG and UG now claim \$1,676.59 that B Ltd deducted from the rent, comprising a three-month break fee, extra 1% management fee, and \$40.25 property inspection fee. B Ltd counterclaims \$6,033.82 for a 5% fee for a full twelve months.
4. The issues to be determined are:
  - a) What were the terms of the contract between the parties?
  - b) Did B Ltd breach the contract by failing to make inspection reports or to notify the trustees of a cabin on the property?
  - c) What sum, if any, is payable between the parties?

**What were the terms of the contract between the parties?**

5. NG and UG took the view that since they never signed the new agreement, there was no contract in place other than agreement on a 5% management fee. They therefore believed they could cancel the arrangement at any time. B Ltd took the view that NG and UG impliedly agreed to the new contract even though they did not sign it, because that was the basis on which the proposed management fee was reduced from 6% to 5%.
6. Although B Ltd implemented the 5% fee in the expectation that the new contract would be signed, I consider that this was a situation in which a degree of formality was expected, and the new contract would not become binding until it was signed by both parties. Meanwhile, the

original contract, which rolled over at the expiry of the 12-month term, remained in place, but with the change to a 5% management fee, which was much higher than the previous fixed fee. This means that there was no new minimum term, but the three-month notice period still applied.

**Did B Ltd breach the contract by failing to make inspection reports or to notify the trustees of a cabin on the property?**

7. B Ltd admitted that it did not do all of the inspections that were required every three months under the contract. It blamed Covid restrictions, but did not keep NG and UG informed of these issues, and failed to report that the tenants had erected a cabin on the property. I find that this amounted to a serious breach of the contract, since inspections are an important part of the service offered by a property manager. NG and UG were therefore entitled to cancel the property management agreement without notice.

**What sum, if any, is payable between the parties?**

8. Since NG and UG were entitled to cancel the property management agreement due to a serious breach, they were not liable to pay the three-month break fee. There was no basis for B Ltd to charge an extra 1% fee, so that is also refundable. NG and UG did not receive a report on the property inspection for which they were charged, despite requesting it, so they should not have to pay for that either. The claim therefore succeeds and B Ltd must refund \$1,676.59 to NG and UG.

**Referee: E Paton-Simpson**

**Date: 30 August 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>.