



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 80

APPLICANT

**RESPONDENT &
COUNTER-
CLAIMANT**

**APPLICANT'S
INSURER**

The Tribunal orders:

1. The Respondent shall pay [The Applicant's insurer] \$1,277.00 by 28 July 2022.
2. [The Applicant's insurer] shall refund the Applicant's \$400.00 excess.
3. The Applicant shall pay the Respondent \$95.00 by 29 July 2022, pursuant to the counterclaim.

Reasons:

4. On 30 July 2021, the Respondent contacted the Applicant in response to an ad the Applicant had placed on an [online noticeboard] seeking a house cleaner.
5. The Applicant received a very convoluted email about pricing, which culminated in the statement that the price "will be more than \$90.00 but less than \$100.00".
6. On 17 September 2021, the Applicant contacted the Respondent to book a date for the cleaning. The Applicant stated that she was interested in a biweekly service but wanted a trial clean first. The cleaning was booked for 22 September 2021.
7. On the day, 2 cleaning staff arrived and proceeded with the cleaning, which was expected to take 2-3 hours. Part way through the cleaning, one of the cleaning staff came to [The Applicant] and reported that she had accidentally scratched the copper sink in the bathroom whilst cleaning it. The Applicant states that the staff member was quite upset, and the Applicant had to calm her. The staff member immediately called the Respondent to report the incident and was queried as to the type of cleaning pad she had used. The Applicant states that she told the staff member not to worry and that she would deal with the Respondent directly over the issue. The cleaner calmed down and returned to her work.
8. The rest of the cleaning was completed, and the Applicant reports that she was otherwise satisfied with their work. The following day the Applicant received an invoice of \$315.00 for the cleaning, but no reply to her attempt to contact the Respondent about the damage.
9. When The Applicant emailed back protesting the amount of the invoice and raising the issue of the earlier reported damage. The Respondent replied explaining that first cleans take longer.
10. The Applicant wrote back the same day and stated she was given a price in writing and not advised that she would be charged by the hour. The Respondent replied that he was very busy but would look into it and get back to her. That night the Respondent replied with a long email about how much more work is involved in a first clean, hours and hours can be required descaling bathrooms, issues with unmaintained homes, ACC and sick pay for staff, public liability insurance costs, travel costs and time, traffic delays etc. All of these factors were known

when the Respondent gave the Applicant the price. The Respondent did not request or require a home inspection before providing a price to the Applicant.

11. The Respondent then proceeded to send the Applicant a series of invoices with the amount due increasing significantly with each one.
12. The Respondent failed to come to inspect the damage to the sink. The Respondent has acknowledged that the cleaner called him from the Applicant's home during the job and was upset. However, the Respondent now claims that the cleaner was upset because she observed scratches in the sink, not because she caused them, and that she couldn't see the bottom of the sink due to the heavy layers of soap and toothpaste residue in the sink and that the cleaner had only used a glass cleaning cloth, which could not cause scratches.
13. The Respondent's responses have become increasingly threatening, irrational and vitriolic. The Respondent filed a late counterclaim against the Applicant for \$10,000.00 for unspecified damages.
14. The Applicant made an insurance claim with her insurer, [The Applicant's insurer]. [The Applicant's insurer] assessor investigated and determined that the sink could not be repaired and required replacement and obtained a quote for \$1,277.02, upon which [The Applicant's insurer] accepted the claim and cash settled with The Applicant for that amount, less her \$400.00 excess. [The Applicant's insurer] now seeks to recover this amount from the Respondent. The Respondent declined to make a claim with his insurer.
15. The Respondent argues that the sink could have been repaired and refinished. The supplier of the sink had been contacted about repair and stated that it could not be repaired. The Respondent responded with evidence of how to refinish a stainless steel sink, which is not relevant here.
16. The Respondent now claims that this is a fraudulent claim and that the Applicant had made the same claim against a prior cleaner the year before. The Respondent's evidence of this is a statement from the alleged prior cleaner, dated 16 June 2022. The statement does not provide the date or any specifics of the circumstances of what occurred except that it involved a sink and scratches. It is noted that this statement is in the same font, style and language of all of the Respondent's submissions, including the written statement purportedly from the cleaner in this case.
17. The issues are: Did the Respondent's staff scratch the Applicant's copper sink? Are the Applicant and [The Applicant's insurer] entitled to recover damages from the Respondent? Is the Applicant liable for the agreed cleaning fee?

Did the Respondent's staff scratch the Applicant's copper sink?

18. The standard of proof in the Tribunal and any other civil jurisdiction, is on the balance of probabilities. The burden of proof is on the Applicant to prove their claim. Pursuant to s28 of the Disputes Tribunals Act 1988, [The Applicant's insurer] , is entitled to be a party to this claim and seek to recover the loss they have indemnified the Applicant for.
19. The Applicant claims that the copper sink was new, the bathroom having been renovated 4 months prior, and that the cleaner came to her on the day, upset and advised her that she had accidentally scratched the bathroom sink. The cleaner called the Respondent right then to report the incident. The Applicant states that she had to repeatedly calm the cleaner and assured her that she would deal with the Respondent herself and not to worry. The cleaner calmed down and went back to work.
20. The Tribunal finds it very unlikely that the above described incident would have occurred had the cleaner merely observed pre-existing scratches. Further, the Respondent did not inspect the sink. The photos do not support the Respondent's description of the state of the sink and it is highly unlikely the cleaner would attempt to clean a sink in the condition the Respondent now

describes, with a soft glass cleaning cloth. It is more likely that the cleaner attempted to scour the sink as one might a porcelain or stainless steel sink but the softer copper sink was damaged.

21. It is also noted that in the initial correspondence between the parties, the Respondent describes the initial cleaning of bathrooms can involve “special equipment, chemicals and tools”, not just a soft glass cleaning cloth as they now claim is only used.
22. On the balance of probabilities, I find that the Respondent’s staff member caused the scratches in the copper sink. The Applicant was present at the time and the Respondent was not and the Respondent made no effort to investigate what happened at the time. I find that the Applicant’s version of events is more likely than the Respondent’s version of events.

Are the Applicant and [The Applicant’s insurer] entitled to recover damages from the Respondent?

23. The Applicant has suffered a loss for which [The Applicant’s insurer] has indemnified her pursuant to the contract of insurance between [The Applicant’s insurer] and the Applicant. Pursuant to s28 of the Disputes Tribunal Act 1988, [The Applicant’s insurer] is entitled to recover that loss from the Respondent.

Is the Applicant liable for the agreed cleaning fee?

24. The Applicant was given a price for a cleaning service, which she accepted. The cleaning service was provided to an acceptable standard but for the incident above. Accordingly, that service should be paid for, which has been the Applicant’s position throughout the months of correspondence between the parties.
25. The invoice sent by the Respondent the day after the clean was three times the amount the Applicant was advised in writing that the price would be. The invoice charges an hourly rate for 6 hours, being 2 staff at 3 hours each. This was not what was discussed or agreed prior to the job. The invoice states that the travel costs were waived. Travel charges were not discussed or agreed to prior to the job.
26. The invoice states that the ongoing price for future cleans would be the same, less GST, therefore \$273.91. Again, this is not what was discussed or agreed to prior to the job. It also contradicts the Respondent’s argument that the price the Applicant was given in writing was for ongoing cleans, not the initial clean, which takes longer.
27. All of the factors and operating costs that the Respondent has subsequently stated have to be considered when pricing a job were all known to the Respondent prior to providing the Applicant with a price. If the Respondent required an inspection of the house before providing a price, then they should have carried out such an inspection before pricing the job. The Respondent provided the price without such an inspection.
28. All of the pricing discussions prior to the job are documented in writing in the emails between the parties. The invoice that was issued after the job has no basis and appears to have been created to offset the anticipated damage claim from the Applicant.
29. The Applicant was told, in writing, that the price would be “higher than 90 but less than 100”. The Tribunal finds that the price of \$95.00 fits with that range provided by the Respondent and is thus due.
30. The balance of the counterclaim is struck out as not being within the jurisdiction of the Tribunal or barred by s43 of the Act.



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>.