



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

[2023] NZDT 629

**APPLICANT** NO

**RESPONDENT** UM

**The Tribunal orders:**

UM is to pay \$900.00 to NO by no later than 20<sup>th</sup> December 2023.

**Reasons:**

1. UM engaged NO, who operates a gardening services business trading as “BN”, to undertake gardening work on her property. She sent photos to NO showing the section and the tidying up work that was required.
2. A written quote in the amount of \$1,200.00 was provided to UM which she accepted, and she paid a deposit of \$300.00 as was requested.
3. NO’s gardener undertook the work. UM has refused to pay the remaining amount of \$900.00 on the basis that the work done was not what she wanted done, or rather how she wanted it done.
4. The issues to consider are:
  - a. Were the gardening services provided with reasonable care and skill and fit for purpose?
  - b. If yes, what is UM liable to pay for the work done?

**Were the gardening services provided with reasonable care and skill and fit for purpose?**

5. I find that the gardening services provided were provided with reasonable care and skill and fit for purpose because the section was tidied as per the quote for services provided.
6. The Consumer Guarantees Act 1993 (CGA) provides that where services are provided to a consumer there is a guarantee that the services will be provided with reasonable care and skill, and that the services, and the product of the services, will be reasonably fit for any purpose that the consumer makes known to the supplier.
7. UM approached NO to provide gardening services, messaging that the “gardens have got on top of us”. She provided photos of her section so UM could provide a quote for the services.
8. On 02 October 2023 a quote was provided in the amount of \$1,200.00 for “one-off tidy up of gardens, trimming also, waste removed”. UM accepted the quote and the required deposit of \$300.00 was paid.

9. The parties agreed that the job was scheduled to be done on 16<sup>th</sup>/17<sup>th</sup> October 2023. The gardener undertook the work on 16<sup>th</sup> October which involved using a weed whacker to cut down weeds, weed spray was used around the gardens, and waste removed from the site.
10. NO contacted UM and advised that the work had been completed and that the balance of the payment, being \$900.00 was now payable.
11. UM refused payment on the basis that she wanted the weeds removed by hand, and not a weed whacker, that waste from the weed whacking work had not been cleared, and that she had not agreed to weed spray being used in her garden.
12. NO was provided photos from her gardener of the work done as compared with the “before” photos provided by UM. She was satisfied from the photos that the work that had been done was done appropriately. She did not go to UM’s property to see what UM’s issue was with the work done.
13. I have seen the before and after photos provided to me by NO. I have also seen the photos provided by UM showing the waste from the weed whacking that she says should have been removed.
14. I am satisfied, from the evidence, that the garden services provided were as quoted by NO, being a tidy up and trim of the site. No discussion was had between the parties as to how the tidy up was to be done. UM did not state that she wanted her property hand weeded, nor did she make it known that she did not want any weed spray used. In fact, the gardening services provided was a tidying up of the section, however, there seems a difference in expectation of what this involves in their respective views.
15. While there was insufficient communication between the parties as to what a “tidy up” of a section would or should involve, I find that the work done by NO’s gardener did clear the property. And, that UM, being present at the property when the work was done, had the opportunity to query why a weed whacker was being used, or to clarify that she required the weeds be dealt with by hand. She did not.
16. While there is a photo provided by UM of some debris (leaves, cut grass etc) left – I am satisfied, on balance, that the gardener did remove waste material. And that the debris in the photo does not mean that the overall gardening services were not provided appropriately given the work done.

**If yes, what is UM liable to pay for the work done?**

17. I find that UM is to pay \$900.00 for the gardening work done.
18. I am satisfied with the clarification provided by NO that while two days are allocated to all jobs, the work done for this property was completed in one day, and the quote was for the work to be done, and not invoiced based on number of days worked. Further, that UM accepted the quote that was provided to her even if she considers this an excessive amount now.
19. I therefore find that gardening services to tidy the section were provided to UM and as such, she is liable to pay the remaining amount being \$900.00.
20. NO has also claimed \$300.00 for stress. I have limited discretion to order an amount for stress, hurt, humiliation, and I do not see any reason to award this amount in the circumstances.

**Referee: A Chand**  
**Date: 21 November 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>.