



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

[2023] NZDT 758

<b>APPLICANT</b>	<b>NP</b>
<b>FIRST RESPONDENT</b>	<b>X Trust</b>
<b>SECOND RESPONDENT</b>	<b>NI Inc</b>
<b>THIRD RESPONDENT</b>	<b>NS Inc</b>

**The Tribunal orders:**

The claim by NP against the Respondents is dismissed.

**REASONS**

1. In 2001, the Applicant, NP, leased part of a property in [Town] (“the Property”) from the Second and Third Respondents under a written lease at a rental of \$1,000.00 per year. In 2009, NP began using a barn (“the Barn”) at the Property. There was no written lease signed in relation to the Barn.
2. In 2009, NP engaged [electrical company] to run power to, and install, four 400W metal halide lights (“the Lights”) in the Barn. The Lights were connected to the power by electrical wiring and were hung by chains to hooks from the roof/rafters. The lease of the Property and the Barn came to an end in 2017 when NP left [Town]. He returned to [Town] in 2019.
3. In 2020, the Second and Third Respondents sold the Property to the First Respondent under an agreement for sale and purchase dated 12 May 2020. Under the agreement, the Property and all buildings and other improvements were included in the sale. The Lights remain in the Barn and are now being used by the First Respondent’s lessee.
4. NP brings a claim against the First, Second and Third Respondents seeking a return of the Lights or compensation of \$2,093.00 for the Lights, being \$455.00 per light plus GST.
5. I held a teleconference hearing with the parties on 5 December 2023. NP attended as the Applicant. BT and QT attended on behalf of the First Respondent and were appointed as its representatives. ET attended on behalf of the Second and Third Respondents and were appointed as their representatives.

## Issues

6. The issues I need to determine are:

- (a) Are the Lights lessee fixtures or lessee chattels, or are they lessor fixtures?
- (b) Can NP remove the Lights from the Premises or receive compensation for the Lights from all or any of the Respondents?
- (c) Is NP entitled to a remedy for all or any of the Respondents?

## Are the Lights lessee fixtures or lessee chattels, or are they lessor fixtures?

7. The law of contract applies. A lease between a lessee (who leases the premises) and the lessor (who owns the premises) is an enforceable contract and falls within the jurisdiction of the Tribunal regardless of whether the lease is in writing or verbal.
8. Where a lessee brings chattels (items of personal property) onto the leased premises that remain chattels throughout the lease, the lessee may remove them from the premises at any time before the end of the lease (*Maori Trustee v Prentice* [1992] 3NZLR 344 (HC)). Where a lessee brings onto the premises chattels that become fixtures, the lessee is not entitled to remove them at the end of the lease unless they are lessee's fixtures. Under s266(1) of the Property Law Act 2007 ("the PLA"), a lessee may remove any trade, ornamental, or agricultural fixture (except a lessor's fixture) that the lessee has affixed to the leased premises but may only do so either:
  - (a) while the lessee is in lawful possession of the premises; or
  - (b) during a reasonable period after the lessee ceases to be in lawful possession of the premises or that part of the premises to which the fixture is attached.
9. Once an item is confirmed as being attached to the property by the lessee for "trade, ornamental or agricultural" reasons it is prima facie (that is, accepted until proved otherwise) a lessee's fixture, depending on the purpose of the attachment. A lessor's fixture is defined in s266(5) of the PLA as a chattel that has become affixed to the premises in such a manner that it becomes part of the structure of the building or otherwise becomes integral to the land, and s266(5) gives a fence as an example of a lessor's fixture. If a chattel has become a lessor's fixture, it must be left by the lessee as part of the lessor's reversion at the end of the lease.
10. I am satisfied that there was a verbal lease between NP and the Second and Third Respondents regarding the Barn which may or may not have been part of the written lease regarding the Property. This is immaterial because the validity of the lease is not part of the claim. The Respondents say that the Lights became lessor's fixtures because they were wired into the electricity and hung from the roof. NP says that he had the Lights strung up on the roof of the Barn on hooks and they remained his chattels. He has presented a letter from QH of [electrical company] dated 28 November 2023 which states that [electrical company] was engaged and paid by NP to run power and install the Lights in the Barn in 2009 and that [electrical company] supplied four 400W metal halide lights that were each hung by a chain only to a hook. QH says that this is because NP did not want them to become fixtures or fittings.
11. Having carefully considering the available evidence and information, and having heard from both parties, I am satisfied that the Lights became lessee's fixtures when NP had them hung up from the roof of the Barn and had them wired into the electricity. I am satisfied that they did not become lessor's fixtures because NP hung them in such a way that they were not permanently attached to the Barn and could be easily removed, and I am satisfied that he intended to use them for his own benefit while he had the Barn rather than for the purpose of permanently improving the Barn.
12. As I have found that the Lights were lessee's fixtures, NP had a right under s266(1) of the PLA to remove the Lights while he was in possession of the Barn or during a reasonable period after he ceased to be in lawful possession.

## Can NP remove the Lights from the Barn or receive compensation for the Lights from all or any of the Respondents?

13. If a lessee has not removed a lessee's fixture from the leased premises by the end of the lease or within a reasonable period after that, it becomes the lessor's property. What is to be regarded as a reasonable period for a lessee to remove a lessee's fixture under s266(1) of the PLA will vary from case to case. The lessee is entitled to, during the reasonable period, have access to the premises that is reasonable and necessary for the purposes of exercising the right to remove the fixture (s266(4)) and must cause as little damage as possible to the leased premises when removing the fixture and make good any damage caused (s266(3)).
14. As I have found that the Lights were lessee's fixtures, I need to decide whether NP failed to remove the Lights within a reasonable period under s266(1) of the PLA, so that the Lights became the property of the Second and Third Respondents (which have since been sold to the First Respondent with the Property).
15. NP has explained that he had to leave [Town] in 2017 and was unable to return until 2019. He therefore had to relinquish the Property and the Barn. In his absence, and with his consent, representatives of the Second and Third Respondents cleared out NP's belongings from the Barn and took them to the property of NP's (late) father where they were stored until NP's return. On his return to [Town], NP checked his belongings in storage and found that the Lights were not included. He says that he contacted a (late) representative of the Second and Third Respondents who said he would sort it out but that did not happen before the relevant representative died.
16. This is an unusual situation in that NP had to leave [Town] and did not return for two years. The lease was brought to an end when he left, and the Barn was cleaned out in his absence. I am satisfied in the circumstances that the representatives of the Second and Third Respondents acted as NP's agent when they moved his belongings from the Barn into storage, and that this moving work was separate to the lease. Further, I am satisfied that NP is bound by what his agents did on his behalf.
17. Given the unusual circumstances, I am satisfied that a reasonable period for removal of the Lights from the Barn would be longer than usual, so if NP had removed them in 2019 when he returned to [Town] and realised that they were not with his other belongings, that would have been within the reasonable period. However, NP did not do that. He may have raised the issue with a representative of the Second and Third Respondents, but that is not sufficient to comply with s266(1) of the PLA which provides that the lessee may remove lessee fixtures while in possession of the premises or during a reasonable period after that. Further, I am satisfied that NP had a sufficient and reasonable time prior to the sale of the Property to the First Respondent to remove the Lights, but he did not do so. Therefore, I find that NP is now unable to remove the Lights or seek compensation for them from any of the Respondents because the reasonable period within which he could have removed them has expired. The Lights have therefore become the property of the Second and Third Respondents (as lessor), and have since been sold to the First Respondent with the Property.
18. For these reasons, NP's claim is dismissed against all three of the Respondents. It is therefore unnecessary for me to consider the final issue because NP is not entitled to a remedy from the Tribunal.

**Referee: D. Brennan DTR**  
**Date: 5 December 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>.