



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

**District Court**

**[2023] NZDT 303**

**APPLICANT      NT**

**RESPONDENT    HO**

**The Tribunal orders:**

HO is to pay NT \$455.71 on or before 9 September 2023.

**Reasons:**

1. In around September 2022 NT and HO entered into a flatting arrangement. HO is the head tenant of an apartment in [City]. NT moved into the apartment in September 2022 and the arrangement came to an end in March 2023. NT seeks an order that HO is liable to pay him \$480.00 which is part of the bond that NT paid HO when he moved into the apartment.
2. The issue to be resolved is whether NT is entitled to repayment of part of the bond he paid HO?
3. On the day of the first hearing HO emailed the Tribunal to say he had Covid and could not attend the teleconference hearing. The hearing was adjourned until today. This morning HO emailed the Tribunal and said he could not attend because he was working. He asked for a further adjournment to a particular day in around a week when it would suit him to attend. This request was declined because it was made only a few hours before the hearing and it was not possible to reschedule to the date HO suggested. HO was advised that if he could not attend the hearing he could send a written submission prior to the hearing.
4. I called HO for the hearing but my calls went to voicemail. No written submission was received prior to the hearing. The hearing went ahead without HO.

**Is NT entitled to repayment of part of the bond he paid HO?**

5. I find that NT is entitled to a refund of bond \$455.71 from HO.
6. HO is the head tenant of [apartment]. In September 2022 HO was looking for a new flatmate, and NT applied and was accepted to move into the apartment. The arrangement was that NT would pay rent of \$280 and expenses of \$30.00 per week, payable fortnightly in advance. In addition, NT paid a bond of 4 weeks rent, a total bond of \$1,120.00.
7. The law that applies to flatting arrangements of this nature is the law of contract. HO is the head tenant and his relationship with the landlord of the property is covered by the Residential Tenancies Act. However, that Act does not apply to the relationship between flatmates – that relationship is governed by the law of contract.

8. It is for flatmates to agree the terms of their contract. It is helpful if flatmates sign a written flatting agreement, which records in writing the terms of their agreement. If they do not do so the terms of the agreement will be those that it can be established were agreed by the parties orally, together with any terms that are required to be implied in order for the arrangement to be workable.
9. At its most basic level the agreement between flatmates is that each flatmate will pay their rent, and reasonable notice will be required to be given if either party wishes to end the arrangement.
10. On 19 February 2023 HO gave NT written notice to move out of the apartment by 19 March 2023.
11. NT says he accepted this notice and planned to move out on 19 March. He says his rent was paid up until 24 February 2023. He says he decided to stop paying rent after he received notice from HO, on the basis that HO could the deduct the rent from 24 February until 19 March from NT's bond.
12. HO did not agree with this plan, and asked NT to keep paying rent until he moved out. HO eventually served NT with a trespass notice on 7 March, requiring NT to leave the property by Sunday 12 March. NT moved out on 12 March as requested.
13. NT failed to pay rent after 24 February. This was a breach of the flatting arrangement. HO decided to respond to that breach by evicting NT.
14. I consider that the effect of the eviction notice was that NT's obligation to pay rent ceased on 12 March which is when the trespass notice HO gave him expired and NT moved out.
15. This means that NT was liable to pay two weeks of rent for the period from 25 February until 11 March (\$620.00) together with one day of rent for 12 March (\$44.29). This means that HO is entitled to deduct a total of \$664.29 from NT's bond of \$1,120.00, and NT is entitled to a refund of bond of \$455.71 ( $\$1,120.00 - \$664.29 = \$455.71$ ).
16. NT says he left his room and the property in good condition and there is no basis for any deduction from his bond for damage. He says he returned his fob for the apartment to HO shortly after he left. There is no evidence before me that any further deductions from NT's bond were required or justified. I note that HO has had several months since this claim was filed to provide details of any further deductions he considered were justified from NT's bond, and has not done so.
17. On this basis I find that HO is liable to pay NT \$455.71.

**Referee: L Trevelyan**

**Date: 9 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 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>.