



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

**[2023] NZDT 586**

**APPLICANT**      **O Ltd**

**RESPONDENT**    **U Ltd**

**The Tribunal orders:**

U Ltd is to pay the sum of \$28,527.68 to O Ltd by no later than 24 November 2023.

**Reasons:**

1. O Ltd provided building services to U Ltd for a property at [address] from June 2022 until November 2022 in accordance with a quote. Progress payments were made however U Ltd withheld the final 20%. No dispute was raised until February 2023. As the dispute was not resolved, O Ltd claim in the Disputes Tribunal for the amount outstanding.
2. The issues for the Tribunal to determine are as follows:
  - i. Did O Ltd provide services in accordance with the contract?
  - ii. If so, is U Ltd liable to pay the amount outstanding?

***Did O Ltd provide services in accordance with the contract? If so, is U Ltd liable to pay the amount outstanding?***

3. A contract is formed when the parties agree on the terms and conditions.
4. Ms Z, General Manager of O Ltd, states their quote was based on the plans provided which show an area of 90 square metres. U Ltd however has subsequently stated the area is actually only 70 square metres and they want to reduce the amount invoiced accordingly.
5. Ms Z states the method of measurement by U Ltd is incorrect. They also note the house at [address] was marketed as being 90 square metres.
6. U Ltd have not provided any evidence to support their view the area shown on the plans was incorrect or that their method of calculation is standard industry practice. I find the method put forward by Ms Z to be more likely, as it takes into account all areas within the building. I therefore find no basis upon which to reduce the amount invoiced for a reduced area.
7. U Ltd have further stated O Ltd did not complete various works. Ms Z agrees minor work was not completed as U Ltd did not ask them to return after the Council inspection. Ms Z agrees a

credit for remaining works is due. In addition, Ms Z states they were prepared to compromise and issue a credit for other areas raised as a dispute, being the purlins, firewall and hours. The total credit for all issues is \$6480 plus GST. Without evidence to the contrary, I find this to be fair and reasonable.

8. In view of the above, I find U Ltd owes the following:

Original contract price plus extras as per invoice dated 21/11/2022	\$135,634.50
Less credit	<u>\$ 6480.00</u>
	\$129,154.50
Plus GST	<u>\$ 19373.18</u>
	\$148,527.68
Less paid to date	<u>\$120,000.00</u>
Balance outstanding	\$ 28,527.68

9. This matter was heard by teleconference at 9.15am on 26 October 2023, however as the representative of U Ltd did not answer calls made to the numbers provided for them, the hearing proceeded in their absence. Written submissions made by U Ltd have been taken into account.

**Referee: K. Edwards**  
**Date: 7 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>.