



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 535

APPLICANT OD

RESPONDENT TD

The Tribunal orders:

TD is to pay the sum of \$2,840.00 to OD on or before Wednesday, 15 November 2023.

REASONS

1. On 27 April 2022, the Applicant, OD, entered into a Residential Tenancy Agreement with [Property Management Company] to rent a four-bedroom property at [address] (“the Property”). The tenancy was for a fixed term of one year from 6 May 2022, with a weekly rent of \$710.00. Under the tenancy agreement paid a bond of \$2,840.00 (“the Bond”) to the Property Manager which was lodged at the Bond Centre.
2. OD advertised for someone to house-share the Property with her and her young son. The Respondent, TD, replied to the advertisement and it was agreed that TD would move into the Property with her two young daughters. The arrangement was that TD would have two bedrooms and would pay \$350.00 per week, with no bond, for the time remaining of the one-year term of the tenancy. TD moved into the Property on or about 23 May 2022.
3. During early October 2022, OD told TD that she had decided to leave the Property to move in with her parents. On 6 October 2022, OD and TD signed a Change of Tenant form with the Property Manager which recorded that OD would leave the Property on 30 October 2022 and TD would become the tenant of the Property. The Bond Centre was advised of the change of tenant so that the Bond could be transferred into TD’s name. OD moved out of the Property on or about 30 October 2022.
4. OD brings a claim against TD seeking damages of \$2,840.00, being the amount of the Bond. I held two teleconference hearings with the parties regarding the claim.

Onus of proof

5. An applicant seeking a remedy in the Tribunal has the onus of proving their claim on the civil standard of proof which is the balance of probabilities (that is, that it is more likely than not). Similarly, if a respondent raises a defence to a claim, that defence must be proved on the balance of probabilities. When assessing whether the onus of proof has been discharged by a party, I need to consider and evaluate the evidence and information presented to me by the parties. I would like to reassure the parties that I have considered all evidence and information that they have presented to the Tribunal, but this order refers only to essential evidence and information

material to the issues and is not intended to be a full record of the hearings or of the information and evidence presented.

Issues

6. The issues I need to determine are:
 - (a) What was the amount of the Bond held at the Bond Centre when TD took over as tenant of the Property?
 - (b) Was there a legally enforceable contract between the parties under which OD lent the amount of the Bond to TD and, if so, has TD breached that contract?
 - (c) Is there a legal reason why TD should not be required to repay the Bond to OD?
 - (d) Is OD entitled to a remedy and, if so, is the amount claimed proved and reasonable?

What was the amount of the Bond held at the Bond Centre when TD took over as tenant of the Property?

7. There has been some confusion between the parties regarding the amount of the Bond held at the Bond Centre when TD became the named tenant of the Property. The Property Manager's representative confirms that the amount of the Bond lodged at the Bond Centre at the beginning of OD's tenancy was \$2,840.00; that the Bond was transferred into TD's name when she took over the tenancy on 30 October 2022; that there were no rent arrears or other outstanding matters at the time of the transfer of the tenancy from OD to TD; and that the Property Manager deducted a total of \$2,231.42 from the Bond for rent arrears at the end of TD's tenancy, leaving a balance of \$608.57 of the Bond held by the Bond Centre. TD confirms that she has not touched the balance of the Bond, and it remains at the Bond Centre.

Was there a legally enforceable contract between the parties under which OD lent the amount of the Bond to TD and, if so, has TD breached that contract?

8. The law of contract applies. A legally enforceable contract can be written or oral; formal or informal. It is more difficult to prove the existence of an oral contract but, once proved, it is legally enforceable between the parties in the same way as a written contract. A legally enforceable contract exists where an offer has been made on sufficiently certain terms by one party to another party; the other party has accepted those terms; there is consideration (an exchange of values); and the parties intend to create a legal relationship. Generally, the parties to a contract are required to honour the terms that they have agreed, and if one party breaches a term of the contract, the other party may seek a remedy.
9. It is not disputed between the parties that TD took over the tenancy from OD on 30 October 2022 and that the Bond was transferred into TD's name at the Bond Centre at that time. It is also not disputed that TD verbally agreed to repay the amount of the Bond to OD when she was financially able to do so, and she has not done so.
10. Having heard from the parties, and reviewing all the communications between the parties, I am satisfied that there was a legally enforceable contract between the parties under which OD agreed to lend TD the amount of the Bond (\$2,840.00), and TD agreed to repay that loan when she was financially able to do so ("the Loan"). In exchange for the Loan, OD agreed with TD and the Property Manager that the Bond was to be transferred into TD's name at the Bond Centre, and this was done. I am satisfied that OD would not have agreed to the Bond being transferred into TD's name unless TD had agreed to repay the amount of the Bond to her, because OD then lost her right to access the Bond that she had paid at the beginning of the tenancy.
11. I find that TD has breached the Loan contract by failing to repay the Loan to OD over the past twelve months, despite numerous requests from OD that she do so.

Is there a legal reason why TD should not be required to repay the Bond to OD?

12. TD says that it would not be fair for her to have to repay \$2,840.00 to OD. She says that this is because she entered into the house-sharing arrangement based on misrepresentations; that OD breached the house-sharing agreement by moving out before the end of the fixed term; and that OD unfairly coerced her into agreeing to take over the tenancy. She says that she did not willingly take over the tenancy or willingly agree to pay the amount of the Bond to OD.
13. TD says that she saw OD's advertisement for a flat mate, and OD told her that the tenancy was for one year, the Property was fully furnished, and TD's share of the rent would be \$350.00 per week with no bond payable. TD agreed to this and moved in with her two young daughters. She says that they also agreed that neither of them would have overnight male visitors. TD says that OD did have a male visitor staying overnight on occasions (which TD felt uncomfortable about), and OD's ex-partner caused TD's safety concerns. TD also says that the arrangement was that both herself and OD would remain living at the Property for the fixed term of one year, as it was not intended to be a short-term arrangement. She says that OD misrepresented this to her, and by leaving the Property before the fixed term she breached the house-sharing arrangement. Further, TD says that OD gave her four weeks' notice before moving out on 30 October 2022 and told her that she would have to take over the tenancy, pay the full rent at \$710.00 per week, and pay her out for the Bond when she was financially able to do so. TD says that she felt she had no option but to agree to this, because otherwise she and her daughters would have had nowhere to live. She says that when OD moved out, she took all the furniture with her, leaving TD to obtain replacements of necessities with assistance from Work and Income (as loans which she had to repay) and had to rely on food banks to feed her daughters because she struggled to pay the rent of \$710.00 per week. At TD's request, the Property Manager released her from the tenancy about a month before the end of the fixed term. She confirms that she has not touched the Bond, so the balance of the Bond is still held at the Bond Centre after outstanding rent was deducted by the Property Manager.
14. Having carefully considered the available evidence and information, and having heard from the parties, I find that there was no actionable misrepresentation or breach of the verbal house-sharing arrangement by OD. While TD is of the view that a man stayed at the Property when the agreement was that no men would stay over, and OD's ex-partner caused issues, I do not regard these situations to be an actionable breach of the house-sharing arrangement they had agreed to, and does not affect TD's liability to repay the Loan. In the same way, I do not regard TD's decision to leave the Property prior to the end of the fixed term as a breach of the house-sharing agreement. While I appreciate that both parties expected to remain at the Property for the fixed term, the circumstances changed and the parties mutually agreed to end the arrangement. It is also not materially relevant to the repayment of the Loan that TD felt she had to sell her furniture before moving in and later needed new furniture when OD moved out, or that OD may have left part of a dog kennel at the Property.
15. I acknowledge that TD felt pushed into taking on the tenancy because she had nowhere else to live, and because OD gave her no other options. I also acknowledge TD's financial worries and serious health issues. However, I am satisfied that TD was not obliged to take on the tenancy in her own name when OD moved out, rather, the tenancy could have been brought to an end when OD (the named tenant on the tenancy agreement) broke the fixed term. Instead, TD chose to take over the tenancy when she signed the Change of Tenant Form with the Property Manager. I note that there is an email from OD to the Property Manager dated 4 October 2022 which explained that TD had a poor credit-rating due to a previous relationship and asked whether the Property Manager would take on TD as the tenant and, if so, whether TD could pay OD out for the Bond so that there would be no need for the Property Manager to return funds to her. The Property Manager replied to OD on the same day that TD could take on the tenancy, TD could pay OD for the Bond, and attaching a change of tenant form to be signed and returned so that the Bond Centre could be notified of the change of tenant so that the Bond was transferred into TD's name.

16. I note OD's comment that the intention was that TD would find someone to house-share with her, rather than pay the whole rent herself. This comment is confirmed by a text message from OD to TD dated 14 December 2022 which asks how TD was going with finding someone for the Property, and requesting the amount of the Bond so that she could use it to fund her move to Nelson. I also note that, on 9 January 2023, TD sent a text message to OD saying that she would pay the Bond back in 4 to 5 weeks, which did not happen.
17. In the circumstances, I am satisfied that if TD had any concerns about taking over the tenancy or taking the Loan from OD for the Bond, the time to raise those concerns was before she signed the Property Manager's Change of Tenant Form, and before she agreed to the Bond being changed into her name and the Loan.
18. There is no evidence which persuades me on the balance of probabilities that OD was coerced by TD into taking on the tenancy to such an extent that I could provide her with relief from paying back the Loan. Relief for coercion, harshness or unconscionability is generally only provided by the Tribunal (under s19(1)(d) of the Disputes Tribunal Act 1988) in exceptional circumstances where there is a serious imbalance of bargaining power between the parties and one party has taken unfair advantage of the other. There is no evidence of such circumstances, and I note that TD is in her mid-30s and OD is in her 20s, and each represented themselves well at the hearings and explained things clearly.
19. For these reasons, TD's reasons for not repaying the Loan are not accepted, and the Loan remains due and payable in full.

Is OD entitled to a remedy and is the amount claimed proved and reasonable?

20. Once an applicant has proved their claim, they are entitled to a remedy. The usual remedy for a breach of contract is monetary damages which are designed to compensate the successful applicant and put them in the position that they would have been had the contract been performed as agreed. Before monetary damages are awarded to an applicant, the Tribunal must be satisfied that the amount claimed is proved and reasonable.
21. As OD has proved her claim, she is entitled to a remedy under the law of contract. I am satisfied that the appropriate remedy is that TD repays the Loan in full. It is immaterial that deductions have been made from the Bond for rent arrears, because I am satisfied that those rent arrears were not caused by OD.
22. For these reasons, I award damages of \$2,840.00 to OD, which TD is to pay by the date set out in the order.

Referee: D. Brennan
Date: 25 October 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>.