



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 426

APPLICANT QC

RESPONDENT KN

The Tribunal orders:

1. KN is to pay QC \$800.00 on or before 01 August 2023.
2. The balance of the claim is dismissed.

Reasons

Introduction

1. In or around early June 2022 QC and KN began discussing a room that was available in KN's flat to be sub leased to QC. On 3 July 2022 they entered into a Tenant/ Sublettee agreement which set out that rent was \$230.00 per week, a Bond of \$800.00 was payable prior to moving in and an agreed move in date. Further terms of the arrangement were set out in the agreement. In February 2023 QC gave notice in accordance with the agreement that she intended to move out. QC seeks repayment of her bond, administration costs for bringing a claim, and filing fees in the Tenancy Tribunal and Disputes Tribunal. Her total claim is \$1040.44.
2. KN disputes the claim saying that QC breached the terms of the agreement, and therefore the weekly rent should have been more; and, that QC damaged a wall by putting a TV bracket on the wall without permission and claims the Bond is held to cover these costs that she incurred.
3. The issues to be resolved are;
 - a. What were the terms of the agreement?
 - b. Did QC breach the terms of the agreement by;
 - i. not undertaking additional work around the property; and/or,
 - ii. By putting two holes in the wall for a TV bracket
 - c. If there was a breach of the agreement, what was the remedy available?

- d. What did the Bond cover? Is KN entitled to keep it? If not, is QC entitled to the bond, administration costs of \$215.00 and filing fees of \$65.44

What were the terms of the agreement?

4. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by it. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms. When a party fails to undertake a term of the contract then they can be in breach of the contract.
5. KN says that a term of the contract was that QC was receiving discounted rent on the grounds that she said she would help with painting, cleaning, gardening and sharing the mowing of the lawn. She states that these conditions were agreed to prior to QC moving in and are over and above the written agreement that both parties signed on 3 July 2022. She says that because QC didn't stick to the agreement she is entitled to charge QC a higher rent than what she paid during her sublease agreement.
6. QC provided the tribunal text discussions between the parties and prior to the signing of the agreement. It is clear in the text messages between the 7 and 9 June 2022 that KN and QC did discuss the additional conditions, but that on 9 June KN text QC saying;

*Let me rephrase that!
Happy with 230x
Also by any chance feel
like helping with couple hours
here and there cleaning,
gardening etc to get place up
to scratch that be AMAZING as
it driving me nuts..aiming to
start myself this weekend
though [emoji] x*

7. QC responded saying that they would need to sit down and re write the "contract".
8. The agreement signed on 3 July 2022, makes no reference to the additional work KN says was agreed to. It does not say that the weekly rent of \$230.00 per week is conditional on additional work being completed. The only reference in the agreement to contribution to work around the house is in clause 11, which by implication is no more than sharing of household chores in a flatting situation.
9. On this evidence, I find that the terms listed in the Tenant/Sublettee Agreement were the agreed terms of the contract for the duration of the flatting arrangement between the parties.

Did QC breach the terms of the agreement by;

- i. not undertaking additional work around the property; and/or,**
- ii. By putting two holes in the wall for a TV bracket**

10. Because I have found that the terms of the agreement were as written in the Tenant/Sublettee Agreement of 3 July 2022, I have already determined that there was no term of the agreement that there was a condition to undertake additional work around the property.
11. QC said that her TV bracket was installed by a third party that was working at the property in early August 2022. The installation happened in or around the same time that the TV aerial socket was installed. KN recalls seeing the bracket and TV installed in August 2022 and accepts she never raised it with QC at the time.

12. KN stated that QC didn't seek permission to have a TV bracket installed in her room, and that she would not have agreed to it. She further provided a quote that the damage caused to the wall by having two lug holes put in the wall will cost \$531.30 to fix.
13. KN is a tenant, and not the landlord. There is no evidence from the landlord that there is damage to the property or that the Landlord has made KN liable for damage caused to the wall. Therefore, without any written express condition that the bracket could not be fitted and an implied acceptance by KN after the installation, and that there is no actual cost of damage caused to KN, I find there has been no breach.

If there was a breach of the agreement, what was the remedy available?

14. In finding that there have not been any breaches to the agreement, I do not need to consider if there is the need to remedy.

What did the Bond cover? And is KN entitled to keep it? If not, is QC entitled to the bond, administration costs of \$215.00 and filing fees of \$65.44

15. The agreement does not define what the bond collected can be used for. KN, called it her safety money, that she could use if there was damage or unpaid rent. She went further to say that she could keep the bond because of the significant discount for rent when QC did not do the jobs she had agreed to do in consideration of cheaper rent.
16. In already finding that QC did not breach the terms of the agreement, that there was no evidence of a cost of damage to KN and that rent was duly paid, I do not see any reason why KN can keep the bond. Since KN is not entitled to keep the Bond, KN needs to return the Bond to QC.
17. Section 43 of the Disputes Tribunal Act 1988 sets out when costs can be awarded to an applicant. The grounds listed in section 43 have not been established in this matter and therefore the claim for the administration costs and filing fees is dismissed.

Referee: Nigel Wolland

Date: 10 July 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>.