



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 56

QS

SQ

The Tribunal orders:

SQ is to pay QS \$790.00 on or before 21 March 2023.

Reasons

1. QS responded to an advertisement placed on TradeMe by SQ for a room in a house to rent. He met with SQ on 27 November 2022 and discussed the property. They travelled to the property for QS to look at it and they agreed that he would move in that day, with the rent being \$320.00 per week with one week paid in advance and a bond. QS paid \$960.00 by bank transfer to SQ's bank account and showed her a screenshot of the transfer and emailed a copy to her, and they shook hands on the agreement. After 3 days QS terminated the agreement and moved out of the property. He advised SQ that she could keep the one week's rent payment even though he had only been at the house for 3 days and requested her to return the bond of \$640.00 which she has refused to do. QS also messaged her asking her to place some shoes and food items that he had left behind outside the house so he could collect them, but she did not reply, and the items were not left outside the house for him to collect.
2. QS had originally claimed payment by SQ of \$750.00 being a refund of the \$640.00 bond, and compensation of \$110.00 for the shoes and food which QS had requested be returned to him. He amended the claim to \$790.00 at the hearing.
3. SQ did not attend the hearing as there was no response to the phone number attributed to her, and no defence to the claim was provided to the Tribunal. The absence of the respondent does not prevent the hearing going ahead.
4. The issues I need to decide are:
 - a) What was QS's and SQ's agreement when QS moved into the house?
 - b) Was QS entitled to terminate the agreement after 3 days?
 - c) Is QS entitled to have the full amount of the bond paid refunded by SQ?
 - d) Is QS entitled to be paid \$150.00 for shoes and food left behind?

What was QS's and SQ's agreement when QS moved into the property?

5. Parties to a contract must perform their respective obligations. If they do not, they will be in breach and need to account for any loss caused to the other party to the contract. A verbal agreement can be a legally enforceable contract. Sometimes terms will be implied in a contract if they have not been expressly agreed.
6. QS and SQ did not have a written house-sharing agreement, however they had agreed that the rent was to be \$320.00 per week, to be paid one week in advance, and the payment of a bond. QS says there was no discussion about what amount the bond would be; however, his experience was that 2 weeks rent was usually the amount of bond paid between flatmates. The day he moved in he paid SQ \$960.00 by bank transfer being one week's rent in advance and two weeks rent as bond. He showed SQ the bank transfer and emailed her a screen shot of it, and they shook hands on the agreement. However, after he had moved in SQ accused him of not paying the full bond and said he owed her a further \$320.00 as the bond was 3 weeks' rent. I am satisfied that a bond of 2 weeks rent is the usual term in a flat-sharing agreement, and I find on the evidence that SQ agreed to that amount being the bond.

Was QS entitled to terminate the agreement after 3 days?

7. Shortly after QS moved in SQ advised QS that no drinks were allowed in his room, not even water. He says there had been no mention of such a house rule before he agreed to move in, and it would not work for him. Further, he says he became increasingly concerned about SQ's behaviour which he considered aggressive and threatening and that a combination of her actions made him feel very unsafe. He decided after 3 days to terminate the agreement and leave the house.
8. QS says SQ then told him they had agreed on a 6 month stay. QS denies there was any agreement to stay for 6 months and says when SQ had said she would like someone to stay for 6 months his response had been "Let's see how we are going". I find there was no agreement that QS would stay for 6 months, nor was there any minimum notice period agreed. While normally a reasonable notice period would be implied, such as 2 weeks' notice, I find in the circumstances described by QS he was entitled to terminate the agreement with immediate effect.

Is QS entitled to have the full amount of the bond paid refunded by SQ?

9. QS had paid rent one week in advance although he was at the property for only 3 days. I consider given his very brief tenure and the disturbing circumstances described by QS he is entitled to a refund by SQ of the full bond paid, being \$640.00.

Is QS entitled to be paid \$150.00 for shoes and food left behind?

10. The law of conversion applies where a person takes or keeps goods that belong to someone else and does not give them back and deals with them as if they owned them. The person may be liable to pay compensation to the real owner for the value of the goods. The value to be compensated for is the current market value of the goods.
11. QS says he left behind a pair of shoes and some food at SQ's house which he asked her to leave outside the house for him to collect, however she did not reply to his message, and nothing was left out for him.
12. QS claims \$100.00 for the shoes which were a pair of Teva adventure sandals. He says they were purchased about a year ago for about \$300.00 and have had some use over the last year. He did not produce any evidence of the current value of this used pair however I accept \$100.00 as being a reasonable estimate of their current value. In the absence of SQ returning the sandals to him at his request I find he is entitled to be paid \$100.00 by SQ.

13. QS further claims \$50.00 for non-perishable grocery items that he had left behind which SQ has not returned at his request. I find QS is entitled to be paid \$50.00 by SQ for these items.

Referee: B Curtis

Date: 21 February 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>.