



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 548

APPLICANT SC

RESPONDENT OX

The Tribunal orders, on the claim and counter-claim:

OX is to pay \$636.44 to SC on or before 19 October 2023.

Reasons

1. SC moved into a flat in July 2020 for which OX was the head tenant. He signed a flat sharing agreement on 12 July 2020 and moved in about 22 July 2020. The rent was \$250.00 per week, with the proviso in the agreement that that could change depending how many rooms in the 3-bedroom flat were occupied. A bond of \$1000.00 was paid. When SC moved in, just he and OX were living there – two new flatmates moved in in early October, around the time SC gave notice. He moved out on 27 October 2020.
2. When SC moved out, there was a dispute about what he owed for bills. He relied on the agreement which stated “the flatmate will pay 30 into a holding account for water, cleaning and power bills”, which he took to mean that total bills would be more or less \$30 per week. OX says this is not what it means, it simply provides for some ongoing contribution to a bills account – I note the same paragraph of the agreement begins with - “The flatmate must pay their percent of the cost of electricity, gas, water, telephone rental and other shared expenses such as cleaning and fireplace inspections...”.
3. SC states that OX offered to refund \$764.90 from the \$1000.00 bond, retaining the rest to cover the bills available at that time, but when SC disputed the bill calculation, OX added into his calculation that SC should have been liable for a half-share of rent for the empty room for six weeks, being \$810.00.
4. OX counter-claims \$251.52 on the above basis (that the agreement provides for SC to pay a share of rent for the empty room). The counter-claim was lodged shortly before the first hearing on 18 May 2023, and while a full hearing was held that day, SC requested an adjournment to allow him additional time to consider and respond to the counter-claim. The adjournment request was granted and the hearing continued on 20 September 2023. SC did not participate in the second teleconference hearing because he did not answer his phone after multiple attempts to call him were made. The continuation hearing therefore proceeded without him. No new evidence was presented by OX.
5. OX agrees that no refund for bond has been made due to the disputed issues, so the starting point for determining the issues in dispute is that \$1000.00 bond is owed to SC, from which should be deducted any payments he owed when he left – this may result in SC owing OX money, as is OX’s position on his counter-claim.

6. The issues to be determined are:

- Is SC liable to pay \$810.00 additional rent to cover a half-share of the 3rd room that was vacant for most of the time he lived at the flat?
- What bill payments is SC liable to pay?
- What is payable on the claim and counter-claim?

Is SC liable to pay \$810.00 additional rent to cover a half-share of the 3rd room that was vacant for most of the time he lived at the flat?

7. The flat-sharing agreement that SC signed is quite unusual in that it contains the statement that the weekly rent payable “may change depending on how many rooms are occupied”. While this is not the norm in most flatting arrangements (at least for flatmates whose names are not on the residential tenancy agreement) flat sharing agreements are contracts like any other contracts, and the parties are free to agree what they like. SC signed the flat-sharing agreement containing that clause.
8. However, it is reasonably implied that any change to the weekly rental amount due must be notified in advance and it was not. When OX moved in, he was to pay \$250.00 per week and the third room was already empty at that point. It is not reasonable for OX to seek to apply a change in that arrangement retrospectively, after SC had given notice and after a dispute had arisen about how bills were to be shared. I therefore find that SC is not liable to pay the \$810 rental claimed for six weeks half-share of the empty room that forms part of OX’s counter-claim calculations.

What bill payments is SC liable to pay?

9. I find OX’s other bill payment amounts claimed under the counter-claim to be reasonable and supported by evidence, with the exception of the late fee of \$155.92 on the September power account. OX has attributed 100% of the late fee to SC because he was disputing the expensive bill so it did not get paid on time. However, OX has a duty to mitigate his loss in this respect, particularly because the power account was held in his sole name. I therefore deem it reasonable for the late fee to be shared 50-50 as with all other bills.
10. I do not accept SC’s argument that he should pay a lesser proportion of certain bills based on usage because it is simply not possible to determine, in most flatting situations, who has used what percentage of power and water etc.
11. I accept OX’s contention about the meaning of the \$30 payment provided for in the flat sharing agreement as not representing the total or even an estimate of the total bill payments likely to be due. The agreement clearly states that bills will be shared on a percentage basis.
12. OX has provided copies of the actual bills for the period claimed and I accept his calculations as accurate, and reduce the September late fee by half, resulting in total bill payments owed by SC of \$363.56.

What is payable on the claim and counter-claim?

13. For the reasons above, \$363.56 is to be deducted from the bond of \$1000.00, leaving an amount of \$636.44 for OX to pay to SC. Interest is not added because SC had the opportunity to accept the (slightly higher) amount offered as a refund by OX at the time the flatting arrangement ended in 2020 and opted not to bring a claim until some years later.

Referee Perfect

Date: 21 September 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>.