



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 78

APPLICANT SG

RESPONDENT UT

The Tribunal orders: UT is ordered to pay SG the sum of \$1,476.00. Payment of this sum is ordered no later than 17 March 2023.

Reasons:

- 1) There was no appearance of the respondent, and the hearing proceeded in his absence. The applicant, and the respondent, are the owners of adjoining properties in [City]. The applicant says that on 2 occasions in, respectively, May, and November, 2021 the respondent 'trespassed' on to her land and cut down the limbs of 2 trees.
- 2) SG seeks compensation for:
 - a) the cost of purchasing security cameras for her privacy, and as a result of the respondent's alleged "actions and threats,"
 - b) the cost of an arborist (\$690.00) "removing the hazard created by [UT],"
 - c) compensation (\$500.00) for the work the applicant had to do "chainsaw up the branches of a tree once felled,"
 - d) compensation of \$2,000.00 for "irreparable damage" to the applicant's property and
 - e) compensation of \$2,000.00 for "distress."
- 3) The relevant law is the law as to the tort, or civil wrong, of trespass. The issues to be determined by the Tribunal are:
 - a) Is the respondent liable for the actions alleged by the applicant in her claim?
 - b) If so, what would be a reasonable sum to award the applicant as compensation?
- 4) On the basis of the evidence presented by the applicant, it appears that on the first of the 2 occasions referred to by SG in her claim, (May 2021) the respondent did no more than cut back branches of the applicant's tree overhanging the respondent's boundary. The respondent cannot be liable for that. Tree branches overhanging on to the respondent's property constituted a nuisance' which the respondent was entitled to abate by cutting back those branches to, but not beyond, the boundary.
- 5) However, I accept the applicant's evidence that on the second occasion, namely November 2021, the respondent went much further than he had previously. He went on to the applicant's land, and cut branches at the trunk. In so doing, there was a trespass on the part of the respondent, resulting in damage to property. I further accept the applicant's evidence that she found holes drilled in the trunk of the tree which damaged it. I conclude that it is more likely than not that the respondent was responsible for these holes being drilled.

- 6) The applicant decided that, as a result of the damage caused by the respondent, it was no longer [I here paraphrase] viable to keep the tree. I consider that the applicant was reasonably justified in coming to that decision.
- 7) The applicant is, therefore, entitled to compensation. I am not prepared to award the applicant the cost of the security cameras she installed. I would not see this as a direct, foreseeable, consequence of the matter before me in relation to which I have jurisdiction, namely, a trespass resulting in damage to a tree. Contextually, I note that this is a situation in which clearly there were branches overhanging the respondent's land.
- 8) I award the applicant the amount of the invoice of C Ltd dated 20 September 2022 for \$690.00. This relates to the initial trimming of the tree, the later removal of the tree, and the resulting debris. The applicant is also entitled to some compensation for her own time with respect to the removal of debris, and the required clean-up of her property. SG says this took about 8 hours. I award her \$200.00 under this heading.
- 9) The applicant further claims compensation of \$2,000.00 for "irreparable damage to [her] private property ... robbing [her] of privacy and shade." There is also a claim of the same sum, \$2,000.00 "for the distress and danger caused by" the respondent. I see some overlap between these 2 aspects of the claim. I consider that the applicant is entitled to something by way of general compensation for the loss of her tree. Again, in this regard, I come back, contextually, to the point that the origin of this situation was one in which there were branches of a tree on the applicant's land overhanging on to the respondent's land. Unfortunately, it would appear that the dealings between the parties regarding the matter of this tree quite simply got totally out of hand. I award the applicant general damages of \$500.00.
- 10) Finally, the applicant seeks reimbursement of the cost of replacing fence capping railing removed by the respondent. This was 8 metres @ \$10.80 per metre, or a total of \$86.00. This sum is also allowed.
- 11) The applicant is awarded the total of the sums referred to in paragraphs 8-10 above. This is \$1,476.00.

Referee: GP Rossiter
Date: 1 March 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>.