



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 36

APPLICANT SS

APPLICANT YO

RESPONDENT SR

The Tribunal orders:

The claim by SS and YO against SR is partially proved. SR is to pay SS and YO the sum of \$5,374.08 on or by 5:00 pm on 21 March 2024.

Reasons

1. SS and YO (the applicants) bring a claim against SR (The respondent) for \$8,472.39.
2. The issues to be resolved are:
 - (a) What is the legal framework for considering the claim?
 - (b) Was the waste pump installed correctly?
 - (c) If not, was the pump in breach of the Vendor warranties?
 - (d) If so, what is the remedy?
3. **Was the pump installed correctly?**
4. The applicants purchased a house from the respondent in 2021 on a site which was part of a small development. It was not disputed that the respondent had lived in the house for three years before the purchase.
5. Approximately two years after the house was purchased by the applicants, the waste pump began to malfunction.
6. The respondent submitted that the malfunction was two years after the installation and was "wear and tear".
7. The respondent said the house was not new and had been lived in for several years. The respondent said that the pump was not part of the property itself but is a device which can be depreciated because it is constantly used.
8. The respondent said she did not believe the pump was installed incorrectly but failed because it is old.

9. The respondent submitted that because the plumber who cleared and eventually replaced the pump, found wet wipes caught within the pump chamber, the pump's deterioration was the result of misuse.
10. The respondent submitted that everything was accepted as in good working order when the property was sold.
11. Further, the respondent submitted that pumps can wear out and fail if they are pumping large amounts of foreign materials into the system.
12. I am satisfied that the applicant has proved that it is "more likely than not" that the pump failed as a result of accelerated wear and tear caused by the incorrect installation. In making my finding I have taken into account the following:
13. The plumber who cleared the pump on two occasions and eventually replaced it, gave evidence that the pump should have lasted at least 10 years.
14. Further, when he cleared the pump there was some foreign material including wet wipes but normally a pump will handle those materials if it is working correctly.
15. Further, the pump was installed wrapped in mesh which included wires left haphazardly around the blades of the pump. He said "...in no way should the plastic garden mesh and electrical wire have been used in such a way. When he gave evidence by way of a phone call, the plumber confirmed that in his professional opinion the pump became worn out and eventually failed because of the way in which it was installed. Instead of lasting ten or more years the pump needed replacing after a relatively short period of time.

If not, was the pump in breach of the Vendor warranties?

16. I am satisfied that the applicant has proved that the pump was in breach of the Vendor Warranties.
17. When the parties signed the standard Sale and Purchase Agreement for the property in 2021, Clause 7.3 of the Sale and Purchase Agreement provided warranties. Clause 7.3 provided that the Vendor warranted and undertook at settlement that all plant, equipment, systems or devices which provide any services or amenities to the property are delivered in reasonable working order.
18. I am satisfied that the waste water pump and chamber can be characterised as an "amenity". In making my finding I take into account the plumber's explanation for the need for the pump to push waste water up hill to the water level because the property itself is below the water level.
19. The plumber gave evidence that in his professional opinion that pump had been failing for some time before the call outs.
20. Because I have found that the pump was installed incorrectly, I am also satisfied that the pump was not delivered in reasonable working order. While it was accepted that the pump took up to two years to fail, it was clear from the plumber's evidence that the deterioration began because of the installation.
21. I am satisfied that because the pump was installed incorrectly and either beginning to fail or soon to fail at the time the property was handed over, although the pump was working, the pump was therefore not in "reasonable" working order.

If so, what is the remedy?

22. When the Vendor warranties and undertakings are breached the purchaser shall have a right to compensation.
23. The applicant claims for the call outs to clear the pump and then the final invoice for the replacement of the pump.
24. I am satisfied that the applicant is entitled to compensation for the call outs which at the time appeared to have fixed the problem.
25. I am also satisfied that the applicant is entitled to some of the replacement costs as further compensation for the breach of the warranty.
26. I have added up the available invoices which total \$7854.39.
27. I have discounted the new pump and installation cost for invoice 10670 by half. I have halved this invoice to take into account that the pump was half way through an expected 10 year life span. That leaves a total of \$6,574.08.
28. The plumber provided an example of a similar kind of pump that he had attended at other housing developments and explained that those pumps required servicing quite regularly.
29. I take into account that the pump in question is likely to have needed at least one service during the time the applicants have lived in the house, so I reduce the sum awarded by a further \$1200.00. That leaves a total of \$5,374.08.
30. I consider that any further costs including time off work in relation to the dispute and preparation for the hearing to be 'costs'. Costs which include any filing fees cannot be awarded except in very specific circumstances. Those circumstances are provided in the Disputes Tribunal Act 1988, Section 43, and are not present in the current claim.
31. For these reasons I find the claim is partially proved and the respondent is to pay the applicant the sum of \$5,374.08.

Referee: K Johnson
Date: 29 February 2024



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>.