



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 14

APPLICANT **SX**

RESPONDENT **R Ltd**

**SECOND
RESPONDENT** **M Ltd**

**FIRST
RESPONDENT
INSURER** **E Ltd**

The Tribunal orders:

1. The claim is dismissed.

Reasons:

2. SX owned a rental property at [address] which was property managed by M Ltd, a franchisee of R Ltd. SX alleges M Ltd acted negligently on her behalf because it gave her poor advice which she acted on and the result was she lost three weeks and one days rent. Further she states she agreed to an early exit for the tenants under duress. SX claims \$2495.36.
3. The issues I must decide are:
 - a. Is R Ltd, or its franchisee, in breach of the parties' contract to provide professional advice and as a result of poor advice SX agreed a variation to the parties' contract under duress?
 - b. If yes, did that breach result in the loss of three weeks and one day rent?

Is R Ltd, or its franchisee, in breach of the parties' contract to provide professional advice and as a result of poor advice SX agreed a variation to the parties' contract under duress?

4. The law of contract provides that a party who has entered a contract under duress may request the Court to vary the contract. Duress is the illegitimate pressure which coerces a person into signing a contract and involves such things a violence or threats of violence. In relation to economic loss duress can also include situations where one party to the contract varies an existing contract by an unlawful threat not to perform the contract. Duress does not include contracts where one party may be seen to drive a hard bargain or where there is freedom of choice.

5. SX states her home was tenanted for a fixed term and between M Ltd, the tenant and herself they had agreed to an early termination. She states that while the tenant was in the process of moving, she, along with others, briefly went in through a back gate entrance onto the grounds of the home. She states that M Ltd then called her and told her the tenant had complained and that she (SX) was in breach of her legal obligation to only enter the property with proper notice and that the tenant was threatening to go the Tenancy Tribunal. She states M Ltd told her the tenant now wished to terminate even earlier and in fear of further repercussions she agreed to an early termination under duress. SX states M Ltd should have proactively given her the opportunity to consider her options before she agreed to an earlier termination.
6. JU, for R Ltd, told the Tribunal SX was in breach of s48 of the Residential Tenancies Act for entering without notice and she was recommended to release the very irate tenant early rather than risking fines by the Tenancy Tribunal.
7. MB, for M Ltd, told the Tribunal she strongly refutes that she pressured SX and SX shouted at her down the phone, "don't involve the Tenancy Tribunal". She states that the tenant was irate that SX had breached the law, that as a property manager, M Ltd must abide by the law. MB told the Tribunal she had agreeance from SX to terminate the tenancy immediately and SX made that decision. She states she strongly believes SX was saved from a claim against her by the tenant in the Tenancy Tribunal and a potential fine.
8. First, the contract between the parties is a commercial contract and at law parties entering such commercial contracts are expected to fully understand what they are agreeing to and what their legal obligations are, and this extends to variations agreed. On the evidence provided by the respondents I find the advice to endeavour to mitigate damages by terminating early rather than face the potential consequences of a decision of the Tenancy Tribunal is fair and reasonable and is not poor advice. On the allegation of entering the oral variation under duress I find there has been no illegitimate pressure, such as a threat of violence, SX could have requested a short delay to consider her options and she did not. Therefore I find the advice provided by M Ltd was reasonable and professional in the circumstances and SX did not enter the oral variation to the tenants early release from the tenancy under duress.
9. The claim must be dismissed.

Referee: C Murphy
Date: 27 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>.