



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 672

APPLICANT **T Ltd**

RESPONDENT **C Ltd**

The Tribunal orders:

C Ltd must pay T Ltd \$5,852.55 by 4pm on 13 December 2023.

Reasons:

1. The applicant leased a commercial unit to the respondent from 2017. The rent was reviewed in 2019 and 2021. After a rent review in May 2023, the lease was terminated in September 2023. The applicant claims that amounts remain owing under the lease agreement and claims \$7,166.83 which includes interest and legal costs.
2. The issues to be determined by the Tribunal were:
 - a. What was the agreement between the parties?
 - b. Was a misrepresentation made under the agreement?
 - c. If so, did this induce the respondent to enter into the contract?
 - d. If so, what losses has the respondent incurred as a result?
 - e. Is the respondent liable to pay the applicant for the amounts outstanding under the agreement?
 - f. If yes, is the applicant also able to claim interest and legal costs?

What was the agreement between the parties?

3. The relevant law is the law of contract and misrepresentation.
4. In this case the contract was in the form of the standard 6th edition of the ADLS lease agreement dated 4 April 2017. Rent renewals were done by way of Deed of Renewal of Lease and Rent Review in 2019 and 2021.

Was a misrepresentation made under the agreement?

5. The evidence shows that the floor area of the property specified in the lease agreement dated 4 April 2017 was "166.22 sqm more or less". This was then corrected to be 163.50 sqm, a difference of 2.72 sqm or 2.72%. The floor area of 166.22 sqm was used by the valuers to determine the market rent.

6. The respondent's representative, CD told the Tribunal that due to the differences in the floor area, the respondent should be entitled to a refund or credit of an amount of \$2,024.07 including GST as the valuations that had been done to determine the market rent in accordance with the lease were based on 166.22 sqm rather than 163.50 sqm.
7. On the evidence provided I find that there was a misrepresentation as to the floor area which meant that the rent calculations were based on a slightly larger floor area than that set out in the lease.

Is so, did this induce the respondent to enter into the contract?

8. Although I have found there was a misrepresentation as to the floor area of the property and this was used to determine the market valuation, it does not follow that every misrepresentation results in damages payable to the party who claims to have relied on the misrepresentation. The misrepresentation must have induced the innocent party to enter into the contract and it must also show it has suffered a loss as a result of the misrepresentation.
9. On the basis of the evidence provided to the Tribunal, I do not find that the respondent was induced to enter into the contract due to the floor area of the commercial unit being misrepresented when the rent was calculated by valuers. I say this because:
 - a. The rental was assessed, in accordance with the lease agreement, by way of market valuations, completed in 2017 by [real estate company], and 2019 and 2021 by [valuer]. After the market rent was assessed, this was then negotiated by the parties and an amount agreed, which the evidence shows was less than the market rental assessed by the relevant valuer. Therefore, the agreed rent between the parties only partly based on the assessed market rental and therefore the incorrect floor area.
 - b. The respondent told the Tribunal that it had been in the property for at least 12 years. Therefore, it is reasonable to assume that when the applicant purchased the property and entered into a lease agreement with the respondent, that the respondent was in part induced to do so due to the fact that it did not have to move. I have made this assumption based on the fact that the respondent told the Tribunal that it incurred moving costs of \$30,000.00 when the lease was terminated. Therefore, it is more likely than not that this would have been a factor that had induced the respondent to enter into the lease with the applicant and continue leasing the property after each rent renewal.
 - c. As the respondent had been in the property for at least 12 years, it is reasonable to assume that there would have been a number of other reasons why the respondent was attracted to this property including the location and the amenities, not just the cost of renting the property.

If so, what losses has the respondent incurred as a result?

10. Even if I did find that the respondent was induced to enter into the lease agreement due to the floor area being misrepresented, the respondent did not provide any evidence to show the loss it suffered as a result.
11. The respondent provided a reduced lesser rent calculation based on a floor area of 163.5 sqm rather than 166.22 sqm. However, this does not represent a loss the respondent suffered. Also, given the parties negotiated the new rent at each rent renewal and, based these negotiations on the market valuation as the starting point and moved down from there, I am unable to determine what discount would have been agreed on if there was a different starting point.

Is the respondent liable to pay the applicant for the amounts outstanding under the agreement?

12. On the basis of the evidence provided to the Tribunal and after questioning the applicant as to the amounts charged on its statement dated 27 September 2023, I am satisfied that the

respondent is liable to pay the applicant for the amounts outstanding under the lease. These were evidenced as being \$5,852.55 and included amounts payable for rent, insurance and rates.

13. The respondent had questioned the credits it should have received for insurance that was incorrectly charged. However, CD confirmed at the hearing that he was satisfied that he had received the correct credits.

If yes, is the applicant also able to claim interest and legal costs?

14. At today's hearing the applicant's representative, TU agreed to abandon this part of its claim. However, the applicant also wanted to claim its filing fee of \$180.00. Section 43 of the Disputes Tribunal Act 1988 only allows for a party to claim a refund of these costs in certain limited circumstances, none of which apply in these circumstances.

15. In summary, I find that the respondent must pay the applicant \$5,852.55.

Referee: K. Armstrong
Date: 15 November 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>.