



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 406

APPLICANT TC

APPLICANT UD

RESPONDENT D Ltd

The Tribunal orders:

1. D Ltd is to pay TC and UD \$768.70, on or by 14 October 2023.

Reasons

2. On 16 and 17 March 2022, D Ltd installed a ducted heatpump in TC and UD's home. The heatpump has a drain system to remove water which builds up through condensation when the heatpump is used for cooling.
3. In early December 2022, TC and UD noticed that water was pooling on carpets in an area near the kitchen and laundry. Investigations revealed that water was coming from the condensation drain pipe which had come loose from the internal heatpump unit.
4. It appears that water had been dripping from the internal unit for some time causing gradual damage to gib board linings.
5. TC and UD had temporary repairs undertaken at a cost of \$615.99. This work involved replacement of gib and plastering but not repainting. They repainted themselves at a lower quality finish. The temporary repairs were undertaken as their wedding occurred at the house shortly after the leak and they did not wish the hallway where damage occurred to be unsightly for photos.
6. D Ltd was contacted but denied liability, believing that the pipe could only have come loose if interfered with by another contractor doing renovation works which involved entering the roof cavity where the internal unit is located.
7. TC and UD seek \$10,879.41 which they say is the cost to re paint the hallway, less \$1,250 they have received from their property insurer. They say that the temporary repairs were undertaken to a level which was not of a satisfactory finish in keeping with the rest of the house, having been temporary in nature.

Issues

8. To resolve this application I need to consider:
 - a. is D Ltd liable for the damage?
 - b. If D Ltd is liable what is the cost of the repairs?

Is D Ltd liable for the damage?

9. D Ltd says that it cannot have been liable for the damage as during installation the pipe was heat moulded and glued onto the outlet on the unit. It says that the only way the pipe could have come loose from the outlet was if it had been knocked by another tradesperson doing renovation work. D Ltd to its credit refitted the pipe at its own cost.
10. TC and UD say that the vibration of the unit when in use caused the pipe to come loose.
11. D Ltd's insurer has provided written submissions arguing that the cause of the disconnection has not been determined with certainty and, therefore, TC and UD have not proven causation.
12. The problem with this argument is that it does not reflect that in litigation the evidentiary onus shifts. If TC and UD can show that it is more likely than not that defective installation was the cause of the pipe coming loose, then the onus to prove that a third party caused the disconnection shifts to D Ltd.
13. During the hearing GS, D Ltd's director, advised that the pipe would have been (and now is) heat moulded and glued into place. Looking at the photos provided it is clear that the heat moulding took place. However, had the pipe been properly glued into place it would not have come loose easily without damaging either the pipe or the outlet, but the photos do not show any damage. This being so, the onus shifts to D Ltd to prove that a third party has caused the disconnection. There is no evidence of this having occurred, rather it is supposition that another trade has entered the roof cavity.
14. Therefore, I find that D Ltd is liable for the damage resulting from the leak.

What is the cost of the repairs?

15. TC and UD provided a quotation for \$10,304.41, at the first hearing. However, this quotation appeared to be excessive and was not sufficiently itemised. I directed that a more detailed quote was to be provided. While it has slightly more detail, the second quotation, for \$10,879.41, does not contain sufficient line information to gauge whether it is correct or accurate, and it remains excessive.
16. The hallway area is approximately 29 m², but the quotation is for 77 m² of wall area, 21 m² of ceiling and 12 doors. D Ltd is not liable to repaint areas which are not affected by the leak, as this would constitute betterment. Some scotia and skirting appears to have been effected by the leak. However, I estimate this to be no more than a two-three linear metre section, nor does it appear that ceilings have been affected. The rate of the labour and material component of the quote, works out at \$99.48 m² (GST exclusive).
17. The quotation is unsatisfactory. I specifically requested an itemised estimate for the work. What I received was barely better than that initially provided, for instance labour is not broken down but

constitutes \$6,950 (GST exclusive). The estimate contains a significant amount of work for areas unaffected by the leak.

18. Looking at the photos I estimate that the area affected is approximately two to three metres wide for the height of the hallway. All up I estimate the area affected is approximately 8 m². On this basis I calculate the cost to repaint as:

a. painting - 8 m ² at \$99.48 per m ² plus GST	\$ 915.21
b. allowance for scotia/skirting	\$ 287.50
c. preliminary and general (an allowance)	\$ 200.00
d. gib and plastering (already carried out)	<u>\$ 615.99</u>
	\$2,018.70

19. This is to be adjusted for the \$1250 already received from the insurer. Therefore, D Ltd is to pay TC and UD \$768.70.

Referee: CD Boys

Date: 15 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>.