



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**[2023] NZDT 707**

**APPLICANT      TC**

**RESPONDENT    NU**

**The Tribunal orders:**

**NU is to pay TC \$759.00 on or before 31 January 2024.**

Reasons

[1] TC claims from NU the cost of removing a large tree branch from his, TC's, driveway. The branch had fallen from a tree on the neighbouring property, owned by NU.

[2] TC said that on the morning of Wednesday 15 October, a large limb fell from NU's tree across TC's driveway. TC's wife was at home with a baby at the time. The branch had completely blocked the driveway, and access in or out of the house along the driveway was impossible.

[3] TC sent a message to NU, requesting that NU remove the branch or arrange for an arborist to do so. NU had replied saying that he would "take a look at the job" on Friday and, if it was not a dangerous job, he would remove the branch himself at a cost of \$400.00 per hour "when I'm free"; and suggested that he and TC should share the cost of the work. TC found an arborist who was able to remove the branch immediately, and he sent the arborist's quote to NU. NU did not agree to it.

[4] TC provided a photo of the branch that was blocking the driveway at the time. The branch was very large. TC said that another branch had fallen from the same tree shortly before the branch in question fell onto his driveway. It had been apparent, said TC, that the tree was diseased and rotten, and therefore dangerous. He provided a photo of the tree, which showed that large branches had split from it.

[5] The work of the arborist, who had cut up the tree and cleared the driveway, was \$759.00.

[6] NU said that he had been in the [Town] area on the day, which was Wednesday, the branch fell into TC's property. He had been unable to attend to the matter immediately, but had said that he would come and look at the situation on Friday. He had not considered the issue urgent.

[7] NU objected to paying for the arborist's work which, he said, he could have done himself.

[8] NU said that the tree had been given protected status by the [City] Council. He intended to go through the process to enable that status to be removed, and to have the tree cut down.

**The issue**

[9] The question for me to decide is whether NU is obliged to cover the cost that TC incurred to remove the tree branch.

## **Decision**

[10] I consider that NU is responsible for the fallen branch, and must compensate TC for the resulting cost to TC. The tree fell from NU's property, and blocked TC's driveway. I do not think it was reasonable on NU's part to expect that TC and his family should wait from Wednesday morning until Friday for NU to inspect the branch and, if he wished, to remove it himself at some point when he was free to do so. NU should, having been unable to attend the site himself at the time, engaged an arborist to do so. TC's wife and baby were in the house and, as TC's evidence established, the driveway was completely blocked. TC and his family were considerably inconvenienced and, in the event of an emergency, no vehicle could have gained access to their house.

[11] NU was aware that a branch had previously fallen from the tree, and knew of its diseased and dangerous state. Such trees, even if significant, can be pruned or cut by homeowners or arborists, in accordance with the rules of the City Council. NU did not take steps to prevent the fall of another branch, and the interference with TC's property resulted.

[12] Thus, NU must pay the cost of the arborist whom TC engaged to clear the driveway. I consider that the cost of the work, as described on the arborist's invoice, was reasonable. NU owns the wood that was cut by the arborist and may, by arrangement with TC, collect it for his own use.

[13] I have not allowed the cost of the Disputes Tribunal filing fee. The Tribunal's very limited jurisdiction to award costs does not include that fee.

**Referee: C Hawes**

**Date: 19 December 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>.