



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 602

APPLICANT **TE**

SECOND **M Ltd**
RESPONDENT

The Tribunal orders:

1. TE is to pay M Ltd (M Ltd), \$649.37, on all by 30 November 2023.

Reasons

2. TE contracted with M Ltd for the supply of aluminium joinery for the conversion of a barn to a lecture building with a storage area.
3. Six versions of a quotation were provided, with various changes. After quotation 5 was provided TE requested an electronic lock on one of the doors. There is a dispute as to which door. The sixth quotation, which included the lock, was accepted and signed. The joinery was manufactured and installed, and during this process TE discovered that the electronic lock was on a door in the chemical storage area rather than in the lecture area as she had intended.
4. Following this there was some to-ing and fro-ing between the parties, which resulted in M Ltd offering to install an electronic lock on the correct door TE had intended, with free labour and the lock applied at cost price. TE rejected this and has brought an application to the tribunal seeking \$2500, being the estimated cost for a third party to remove the lock from the chemical storage area and install it in the lecture area. M Ltd claims the unpaid amount of its invoice.

Issue who was responsible for the error?

5. To resolve this application, I need to consider who was responsible for the error in quotation six.
6. I have been provided with a partial copy of quotation 5 and M Ltd's annotated copy of quotation 6. These identify that the doors in question are door four, and either door five or door six. Door four is a single door which opens to a chemical storage area, doors five and six are french doors which open to the lecture area.
7. The electronic lock was added in response to TE's changes to quotation five. The quotations include pictures of the doors, indicating dimensions, direction of opening, and descriptions of the frame type, details of the installation, hinging, glass, and other details. On quotation 6 the description of door 4 has the added comment "*MAY HAVE DIGITAL LOCK*". At the end of quotation six under the heading "*minor amendments*" is the comment "*to be added - the cost for electronic door handle - recommended version accepted*".
8. Quotation six was sent to TE on 21 December 2021.

9. On 28 December 2021, TE and X, M Ltds representative, met on-site. TE says that she identified door five or six as the correct door for the electronic lock during this meeting. Mr Johnson says that she identified door four. Mr Johnson's hand annotated copy of quotation six has "yes" written next to the comments for door 4 and has a sticky note saying "yes to lock" next to the door 4 description.
10. On 12 January 2022, TE signed and returned version 6, accepting the contract.
11. TE says that the changes to the contract should have been highlighted for her, and she would have then realised that the lock was on the wrong door.
12. Mr Johnson says that the changes to version 6 were discussed on-site and TE approved the addition of the digital lock to door four.
13. The onus is on TE to prove that the error in the contract was M Ltd's. I cannot resolve who said what during the site visit on 28 December 2021. However, I do note that quotation 6 is clear as to which door the electronic lock is to be installed on.
14. TE says she should have had the changes highlighted and alerted to her. However, I note that she had made numerous annotated changes in the copies of pages from quotation 5 which I have been provided with. It is clear to me that she had carefully read and considered this copy. I do not accept that M Ltd had a duty to doublecheck with TE about quotation 6, given the on-site meeting, and given the input and discussions around the previous five versions.
15. This being so, TE has not proven M Ltd was responsible for the error as to which door lock would be placed upon and her claim must fail.
16. M Ltd has sought payment of the outstanding sum for its final invoice. Beyond the allegations about the lock error, TE has not challenged to the invoice, which is, I am informed, largely for doorstops provided outside of the contract. Therefore, I make orders that this invoice for \$649.37 is to be paid.

Referee: C D Boys

Date: 2 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>.