



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

**District Court**

**[2023] NZDT 191**

**APPLICANT      TH**

**RESPONDENT    KX**

**The Tribunal orders:**

1. The claim is dismissed.
2. The counterclaim is dismissed.

**Reasons:**

1. TH and KX were in a de facto relationship for less than one year. KX lived in TH's house without paying any rent. TH claimed for rent for the 48 weeks of their relationship. KX counterclaimed for his labour and costs he incurred to renovate TH's property and other expenses he incurred.
2. The issues to resolve the claim are;
  - (a) Did TH allow KX to move into her home on the agreement that he would pay her \$250.00 rent each week?
  - (b) If so, how many weeks of rental is KX liable for and what loss can TH prove she has incurred that she is entitled to be compensated for?
3. The issues to resolve the counterclaim are;
  - (c) Did TH agree to pay KX for his time to work on her house and if so, what work did KX do and what compensation is he entitled to receive for that work? Did KX pay debts on TH's behalf that she agreed to repay him for?
  - (d) What loss can KX show he has incurred that he is entitled to be compensated for?

**Did TH allow KX to move into her home on the agreement that he would pay her \$250.00 rent each week?**

4. TH and KX met in December 2019. Before KX moved in, TH said that she had a boarder and needed that income to pay her mortgage. It was therefore important to her that KX paid board when he moved in. She said it was verbally agreed that KX would pay her \$250.00 each week when he moved in on 11 March 2020.
5. KX said there was no agreement that he would pay rent. At the time he was struggling financially as he was setting up a new business and was paying rent on a [tenancy]. He said the only agreement was that he would help towards living expenses as he could, and they would help each other. KX disagreed that they started cohabiting in March of 2020 and said it was September of that year when he moved in. He provided a bond refund from Tenancy Services that showed his bond for [his tenancy] was refunded in September.
6. I find that it is more probable that KX moved in on 11 March 2020 because:
  - (i) Miss C, a friend of both TH and KX, and is TH's neighbour, provided evidence as a witness. She saw KX move his furniture to TH's home and move in, in March before the lockdown.
  - (ii) At the end of the relationship an incident occurred, and the police were called. They provided a report on 11 February 2021 and recorded that the parties had been together for 14 months and that KX had been living with TH for the past 10. What the police recorded after speaking with the parties is consistent with TH's evidence.
  - (iii) Through her solicitor, TH filed a statement of claim dated 1 February 2022. At paragraph 5 it was claimed that around February of 2020, the parties entered into a verbal agreement that KX would move into TH's house. KX provided a statement of defence through his solicitor and agreed that he lived in the property on the dates TH provided. It appears that KX has only recently altered his view of when he moved in.
  - (iv) In the hearing on 18 April 2023 KX agreed that he stayed at TH's property during the March lockdown because she lived near the beach and they could walk their dogs there.
  - (v) When the matter was first called and adjourned, KX agreed he contacted Mr G, who was boarding with TH before KX moved in. Mr G wrote that:  
*"On the evening of 18/04/23 I was contacted by [KX]. He asked me to write a letter to the courts in his favour, stating that between December 2019 and when I moved out on February 26th, 2020 that he didn't stay at [TH's address] very often. This is untrue and in fact quite the opposite of the truth. In fact, [KX] spent most of the time at the flat, and as he was always staying this was a major factor in why I moved out".* Mr G had his statement sworn before a justice of the peace.
7. As the parties were in a relationship, there is no presumption that they will be legally bound by the agreements they make unless the surrounding circumstances show that they intended to be legally bound by what they agreed to. It is for TH as the applicant to provide some evidence that shows the parties made an agreement that KX would pay \$250 each week in rent and their subsequent conduct confirmed that. From the evidence provided, I am not satisfied that TH has proven that there was an agreement that KX would pay her weekly rent because:
  - (i) The parties made no effort to record the agreement in writing.
  - (ii) There was no pattern of KX paying TH \$250.00 or any other money.
  - (iii) There was no reference to missed rent payments or to their agreement in any text message or other communications before, or during their relationship, despite KX not making the payments.
  - (iv) Although TH usually had a boarder, KX did not have his own room.

- (v) They were living in a relationship and there was nothing to suggest that they agreed to be bound by any other arrangement that is ordinarily experienced in a close relationship based on trust and mutual support.
8. I therefore find that it is more probable that the parties did not intend to be bound by an agreement that KX was to pay a weekly rental of \$250.00. I therefore do not need to determine what loss TH can show she has incurred as she has not proven her claim for 48 weeks of rent arrears.

### The Counterclaim

#### **Did TH agree to pay KX for his time to work on her house and if so, what work did KX do and what compensation is he entitled to receive for that work?**

9. KX claimed to be reimbursed \$15,000 for his time that he spent working around TH's section and a further \$14,572.00 that he spent on her house.
10. KX is a builder and said that while he stayed with TH he removed her existing kitchen and installed a used, but more modern kitchen cabinetry, that he purchased off Trade Me.
11. TH said that she directly paid for appliances for the renovated kitchen and she helped KX on an EQC job he had and he said he would spend what she earned on that job towards the kitchen. She said the job was done for little cost through contacts KX had in the building industry using 'mates rates' or not charging at all.
12. There is no evidence that TH engaged the services of KX or requested for the kitchen to be remodelled. KX did not assert that he was professionally engaged and did not state that TH had contracted with him to remodel her kitchen. Rather, he referred to a desire to help TH and improve their joint lives. In his response position summary he wrote that there was nothing committed to writing because the relationship was personal and not a business one. KX was very aware that he was not contributing towards the costs of running the household, although it was not disputed that he paid approximately \$550.00 to TH over the course of his stay.
13. In addition to the kitchen, KX did pay for some other miscellaneous expenses that TH agreed were incurred, such as \$160.00 to remove tree stumps and \$380.00 for a digger and driver. KX considered there were other expenses he incurred but he was unable to show he had incurred those expenses. For example, KX said he paid \$979.86 for the repair of TH's vehicle, however, TH provided evidence from her bank statements that she had paid that invoice. KX also said he paid two of TH's overdue debts, however, he was unable to provide any evidence he had paid any account TH or what the accounts were.
14. From the evidence provided, I find that TH did not engage the services of KX and there was no agreement she would reimburse him for the work he performed. Indeed, it was not KX's position that TH had engaged his services as a builder. I have therefore considered whether TH has been unjustly enriched at KX's expense as she has benefited from KX's expertise for the upgrading of her kitchen.
15. Of the \$14,572 that KX claimed he spent on the kitchen, he provided invoices in support of what he paid that accounted for \$7,386.02. One invoice calculated as part of that sum for \$601.00 however, was issued nine months after KX and TH separated. Even with that invoice left in, and if I allowed another \$2,000 for the cost of the Trade Me kitchen and other miscellaneous amounts, \$550.00 for the undisputed cash he paid to TH, and \$500 for a digger and stump removal, then over the course of 48 weeks, KX would have contributed approximately \$220 each week. If other expenses were added (that KX has no evidence of having incurred), then it may be that the weekly average is closer to \$250 or maybe even \$300 each week. That amount however, is within reason of what KX would expect to contribute for his stay with TH.

16. I have also considered whether there was an unequal labour contribution so that KX contributed a greater personal expertise than TH. KX did not provide any breakdown of his estimated labour cost of \$15,000. I find that KX claimed for other expenses, such as for car repairs, that he did not incur and it is likely that he has done the same with his estimate of labour. TH also gave her labour for the benefit of KX by assisting with the EQC job, walking his dog, cleaning and all the incidental tasks to run a home. From the evidence provided I am not able to monetarily quantify the labour contribution of each of the parties and there is no reason for me to value one of their contributions higher than the other so that either should have to financially compensate the other.
17. I am persuaded that although TH was enriched in as much as her kitchen was modernised, she also suffered the detriment of meeting the expenses to maintain the household on her own which included the mortgage, rates, insurance, power and internet. It was therefore not 'unjust' that she obtained the benefit of the work KX performed. KX was freed to direct his energy into starting his new business unencumbered with paying his living expenses. Taking an objective and global assessment of what each party contributed, it appears from the evidence it was well balanced and equally matched. The devotion of time and resources were balanced between the parties and were consistent with what would be the usual give and take in a close relationship. I therefore find that TH was not unjustly enriched at KX' expense.
18. KX also sought an order for various items of property that he considered belonged to him to be returned, but he claimed no monetary compensation for any of those items. KX understands that his belongings have been deposited with TH's lawyer for some time, however, he has made no attempt to recover the goods despite their being part of his counterclaim. KX has had an opportunity to collect his goods and claim for the value of any not returned to him, but he has chosen not to collect the goods despite claiming for their return as part of his counterclaim. On the evidence provided by KX I am unable to find that TH has withheld any of his property. If KX has suffered the loss of items he owns, it is due to his decision to not collect them as he has been requested to do on several occasions.
19. As KX has not proven any of his counterclaim, it is dismissed, and an order made to that effect.

**Referee: K Cowie DTR**

**Date: 26 June 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>.