



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

[2023] NZDT 596

**APPLICANT**      TN

**RESPONDENT**    N Ltd

**The Tribunal orders:**

1. TN is not liable to N Ltd for their invoice [number redacted] of \$428.16 dated 15 May 2023. N Ltd's claim for payment of the invoice is dismissed.
2. TN's claim to move the charging station is dismissed.

**Reasons:**

1. In March 2021, TN purchased a [lawn mower] from N Ltd. The mower was covered by a 5 year or 6000 hours guarantee.
2. In May this year TN noticed problems with the mower returning to the charging station and charging. When N Ltd visited the site, they found that a slug had damaged the circuit board of the charging station causing the circuit board to fail. Before N Ltd installed a new circuit board they told TN that this damage was outside the warranty and she would have to pay the cost of the repair. TN agreed to do so at first, but now disputes her liability as she says that the repair should have been covered by her [lawn mower company] warranty or alternatively by warranties in the Consumer Guarantees Act.
3. TN is asking the Tribunal for a declaration that she is not liable for N Ltd's repair invoice of \$428.16 dated 15 May 2023. N Ltd has filed a counterclaim and is asking for an order that TN pay the invoice in full.
4. TN also says claims that the charging station is not in the correct place and she would like it moved somewhere sunnier, where there is less likely to have slugs enter the charging unit.
5. Both parties have claimed the filing fee. Section 43 of the Disputes Tribunal Act 1988 prevents the Tribunal from awarding the filing fee to a party except in very limited cases, which do not apply here. Therefore, the parties' claims for the filing fee are not successful.
6. The issues to be determined are:
  - a) Is the damage to the circuit board caused by the slug covered by the 5-year warranty?
  - b) Is the damage covered by the warranties in the Consumer Guarantees Act?
    - (i) Has the Charging station been positioned in the correct place?
    - (ii) Should TN have been warned to bait the charging station?
    - (iii) Should the charging station be more secure/ robust to ensure that slugs cannot damage the circuit boards?

- c) What is the remedy?
- d) Should the charging station be moved to avoid further damages by slugs?

Is the damage to the circuit board caused by the slug covered by the 5 year warranty?

Clause 9.1 of the warranty says:

*[lawn mower company] warranty covers this products **functionality** for a period of 2 years from the date of purchase. The warranty covers serious faults relating to materials **or** manufacturing faults. **Within the warranty period we will replace the product or repair it at no charge if the following terms are met:***

*The product and the charging station may only be used in compliance with the instructions in this operators manual. This manufacturer's warranty does not affect warranty entitlements against the dealer retailer.*

*Users or non authorised third parties must not attempt to repair the product.*

*Examples of faults which are not included in the warranty*

*Damage caused by water seepage from using a high pressure washer or from being submerged underwater, for example when heavy rain forms pools of water damage.*

*Damage caused by lightning damage*

*Damage caused by improper battery storage or battery handling damage caused by using a battery that is not [lawn mower] original battery damage.*

*Damage caused by not using [lawn mower company] original spare parts and accessories such as blades and installation material.*

*Damage to the loop wire damage caused by non-authorised changing or tampering with the product or its power supply the blades and wheels are seen as disposable and are not covered by the warranty if an error occurs with your [lawn mower company] product please contact [lawn mower company] customer service for further instructions please have the receipt and the product serial number at hand when hard contacting [lawn mower company] customer service. (Own emphasis added)*

- 7. N Ltd and [lawn mower company] (whose representative attended part of the hearing at the request of N Ltd) both made submissions that the warranty does not apply because it is:
  - a) Not damage caused by a manufacturing fault or damage to the materials.
  - b) Acts of god or acts caused by an external force, such as slugs, or lightening are specifically excluded.
- 8. I am satisfied that the warranty is intended to be a full warranty that [lawn mower company] or its dealers will repair or replace all materials that are damaged within 5 years UNLESS one of the exclusions applies I say this because:
  - a) The warranty covers materials **or** manufacturing faults. The use of **or** in this sentence means that any damage to materials does not have to be caused by manufacturing faults. The damage can be caused by something else including external factors.
  - b) The warranty was advertised as 'special 5-year warranty of value' to the client. It therefore must be something more than what the customer was simply entitled to in law. If there was a manufacturing defect the supplier and the manufacturer would have been required to repair the manufacturing defect under the Consumer Guarantees Act at no cost to the customer anyway. I therefore consider that the warranty was represented to the client to cover all repairs and defects for a five year period unless a stated exclusion applied.
  - c) The warranty makes a promise to the customer that it will replace the product or repair it if the terms are met. This warranty is clear- it tells the customer that the product will be repaired or replaced provided the customer has met its obligations or the damage is not caused by a specific act.
  - d) Damage by pests is not excluded.
  - e) The term relating to damage by water or lightening does not cover all other external damage.

- f) There is no requirement in the operating manual that alerts the customer to the potential for slug damage and instructs the customer to bait charging stations to prevent slugs entering the charging station.
- 9. Having found that the contractual warranty applies, then N Ltd were required to repair the damaged circuit board at no cost to TN because the mower was less than 5 years or 6000 hours old.
- 10. As I have found that the contractual warranty applies then I do not need to consider the warranties under the Consumer Guarantees Act.

*Is the charging station in the correct place?*

- 11. Since TN has been told to lay bait, she has not had any problems with her mower. There is no evidence that supports her proposition that a sunnier spot would prevent insects entering the charging station. She would still need to bait her charging station. I am not satisfied that the problem is the placement of the station and therefore dismiss TN's claim that the charging station be moved.

**Referee: T Prowse**  
**Date: 23 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>.