



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 276

APPLICANT **TO**
FIRST **ZY & KX**
RESPONDENT
SECOND **M Ltd**
RESPONDENT

The Tribunal orders:

ZY & KX and M Ltd jointly and severally liable to pay directly to TO the sum of \$745.00 on or before 22 August 2023.

Summary of Reasons:

[1] The hearing was convened by teleconference. All parties appeared at the hearing.

Background

[2] The applicant seeks compensation for damage and inconvenience caused to him by residential building work next door. The applicant claims the respondents block their shared driveway and allow construction materials and dust to escape the site. In particular the applicant claims compensation for the cost of a replacement tyre, loss of 3 days plus 1 hour of work, a gate callout fee and cleaning.

[3] The respondents deny liability claiming they are attempting to contain their site but admit that on occasion site materials and dirt and dust may escape to the neighbouring property. They also admit that at times they block the shared driveway. The respondents also claim however that the applicant is obstructive and rude and deliberately parks his vehicle within the construction area.

[4] The difficulty between the parties seems to have arising because the two neighbours share a common driveway and house construction is expansive and messy. As stated at hearing, neighbours are expected to act reasonably and try and accommodate each other, particularly during one off activities such as house building. However, the law also provides neighbours some protection against unreasonable interference or nuisance.

[5] Nuisance is a common law tort that protects against unreasonable interference with the use and enjoyment of land. Nuisance may occur when someone engages in activities on their own land that cause harm or inconvenience to neighbouring landowners, such as emitting noxious odours, making excessive noise, or causing pollution. Nuisance may also apply to acts or omissions that cause damage to land, such as diverting water, blocking access, or creating hazardous conditions.

[6] In this case I accept the respondents' house build has caused the applicant stress and inconvenience and caused some damage, namely to his tyre. The photographic evidence provided proves to my satisfaction that construction debris, dirt and dust has encroached on to the applicant's land. Further even though the driveway is shared, that does not allow the respondents to use it as they please without regard to the applicant's right to pass and repass.

[7] Having found the applicant has been inconvenience and some damage has occurred, I must consider what damages are due. If liability for a tort that protects interests in land is established, the injured party may be entitled to damages, which may include compensation for property damage, loss of use or enjoyment of land, and other losses suffered as a result of the harm.

[8] In the first instance I must consider the jurisdiction of the Tribunal. The jurisdiction of the Tribunal is determined by section 10 of the Disputes Tribunal Act 1988. The Tribunal has jurisdiction in tort¹ but only in respect of the destruction or loss of any property, any damage or injury to any property and recovery of any property. The Tribunal does not have injunctive powers and I am unable to make the order sought by the applicant, that is to order the respondents to not repeat what he sees as *unprofessionalism*.

[9] What the Tribunal can do is order compensation for any damage caused. The Tribunal is required to apply an evidential standard. The burden on the applicant to prove his claim on the balance of probabilities. The applicant has provided evidence of the cost of remedying the damage to his tyre, \$595 and the cost of dirt and dust removal, \$180. I can allow these amounts. The applicant has not provided any invoice from [gate company]. Without evidence from [gate company] either as to the work completed or cost charged, I am not persuaded that this call out was necessary or due to any identifiable actions of the respondents.

[10] A large part of the applicant's claim is compensation for 3 days he claims he was unable to attend work from 30 January to 1 February 2023 due to the tyre damage. There are other ways to get to work. I am not persuaded the respondents are liable to pay the applicant for his time off simply because he chose not to attend work on those days. It may have been more difficult, but not impossible.

[11] Neither am I persuaded the applicant is entitled to one hour's pay at his employed rate for sweeping his driveway, there is no evidence before me that this activity caused him any loss and homeowners can expect to maintain their driveway without pay.

Referee: Hannan DTR

Date: 1 August 2023

¹ Nuisance is a tort.



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 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>.