



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

District Court

[2023] NZDT 113

**APPLICANT** TQ

**RESPONDENT** EN

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. TQ bred [Dog], a [dog breed], and sold her to EN on 23 December 2021. The parties signed a contract which provided, at clause 5, that *'The Buyer represents ... that ... Buyer will have the dog spayed or neutered by the age of six months'*.
2. TQ alleges that EN never had [Dog] spayed and that EN bred from her. TQ claims compensation of \$3,500.00 being the purchase price.
3. The issues to be resolved are:
  - a. Did EN breach the contract by giving [Dog] to a new owner?
  - b. Did EN breach the contract by not having [Dog] spayed by six months old?
  - c. Did [Dog] have a litter of puppies?
  - d. If any of the above breaches occurred, what monetary amount would restore TQ to the position she would have been in if the breach hadn't occurred?

**Did EN breach the contract by giving [Dog] to a new owner?**

4. The relevant law is the law of contract. When parties make promises to each other they must keep those promises. If they do not, they may have to compensate the other party to restore them to the position they would have been in had the promise been kept.
5. I find that if EN has given [Dog] to a new owner, this is not a breach of the contract. This is because TQ confirmed during the hearing that there is no clause in the contract prohibiting EN from giving [Dog] away.

**Did EN breach the contract by not having [Dog] spayed by six months old?**

6. I find, on the balance of probabilities, that EN did breach the contract by not having [Dog] spayed before she was six months old. This is because if EN had done so it would have been a simple matter to provide veterinary evidence of it to the Tribunal before the hearing, however EN did not do this.

7. I have considered EN's explanation that she believes that she gave [Dog] away before she was six months old. However, I do not find this more likely than not because EN gave contradictory timeline statements regarding this during the hearing. Further, if a person has purchased a puppy at the considerable expense of \$3,500.00 in December 2021, and within six months it had developed a heart condition as EN alleged, it could reasonably have been expected that EN would have contacted the breeder to discuss this. This is particularly so as EN mentioned that she works hard six days a week to support her family of five children. Yet EN confirmed during the hearing that she did not contact TQ to discuss any health issues. Nor did she reply to TQ's August 2022 reminder to provide a copy of the vet spay certificate saying that she no longer had [Dog] as she could reasonably have been expected to do.

### **Did [Dog] have a litter of puppies?**

8. I have been unable to find, on the balance of probabilities, that [Dog] had a litter of puppies. I accept that it is possible that she did, but the evidence provided by TQ was insufficient to meet the standard of proof required.
9. This is because while there was evidence that EN had one pup for sale, her explanation that this puppy was a 'stud' fee for her male dog is plausible. While TQ said she had seen photos of more than one puppy, she was unable to provide this as evidence. As the parties gave conflicting statements on this point, without supporting evidence I have been unable to prefer the view of one of them above the other.

### **If the contract was breached, what monetary amount would restore TQ to the position she would have been in if the breach hadn't occurred?**

10. I have found above that it is likely that EN has breached the contract by not having [Dog] spayed. The contract itself is silent on any remedy for breach of contract. Therefore, the usual remedy for a breach of contract must apply, which is to restore TQ to the same position that she would have been in if the breach hadn't occurred.
11. I have been unable to find that any monetary amount would restore TQ to the position that she would have been in if [Dog] had been spayed before six months old. This is because TQ was unable to quantify a value, or provide evidence of any financial loss that she has incurred as a result.
12. I have considered TQ's view that she has lost her reputation as a breeder, however I have not been persuaded that this is more likely than not. This is because a reputation as a breeder is based on the dogs she has for sale, and whether or not [Dog] is spayed has little impact on this.
13. I have also considered TQ's concern that she wishes to have control of bloodlines for the well-being of the dogs, the integrity of the breed for health reasons, and for the honour of the industry. These are difficult things to place a monetary value on, however even if it was possible, I would not have been able to award such compensation as I have only found it likely that [Dog] has not been spayed, not that she has been bred from which is the thing that could lead to the issues that TQ is concerned about.

### **Conclusion**

14. For completeness, I record that I advised TQ during the hearing that I did not have the power to award her Tribunal costs, or her time spent on this issue. The contract between the parties did not allow for such costs, and while section 43 of the Disputes Tribunal Act 1988 allows costs to be awarded in limited circumstances, none of these apply here.
15. For the above reasons, the claim is dismissed.

**Referee: L Thompson**

**Date: 2 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>.