



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1421

APPLICANT TQ

RESPONDENT LX

The Tribunal orders:

LX is to pay TQ the sum of \$11,528.88 by 4pm on 22 April 2021.

Reasons:

1. On 13 September 2019 TQ was walking her dog, B, in the [Gardens] when her dog was attacked by LX's dog, N. B required vet care to treat his injuries that resulted from the attack. TQ claims the costs for this care amounted to \$14,335.57 and claims this amount from LX.
2. LX attended the first hearing but did not attend the second hearing. The absence of a party does not prevent a hearing going ahead.
3. The issues to be determined by the Tribunal were:
 - a. Is LX responsible for the damage to TQ's dog?
 - b. Are the costs claimed reasonable?

Is LX responsible for the damage to TQ's dog?

4. The relevant law is the law of negligence and the Dog Control Act 1996 (DCA). The law of negligence requires dog owners to ensure that their dog does not cause damage to others. Section 52 of the DCA requires dog owners to keep their dog under control at all times. Section 63 of the Dog Control Act 1996 provides that:

"The owner of a dog shall be liable in damages for damage done by the dog, and it shall not be necessary for the person seeking damages to show a previous mischievous propensity in the dog, or the owner's knowledge of any such mischievous propensity, or that the damage was attributable to neglect on the part of the owner of the dog."
5. On the evidence provided to the Tribunal, I find that LX is responsible for the damage to TQ's dog. I say this because:
 - a. The evidence shows that N was not wearing a collar or a leash at the time of the attack;
 - b. A witness account which was provided to the [Council] collaborated TQ's version of events that N attacked B and was on top of B, pushing him down. This witness also said that they had to restrain N and that B appeared to be in pain after the attack and was limping;

- c. [Council] issued LX with an infringement notice after the incident for failing to control her dog; and
 - d. The veterinary surgeon who operated on B after the attack confirmed that the injuries received by B were consistent with TQ's and the other witness' account of how N attacked B.
6. Therefore, in accordance with section 63 of the DCA, I find that LX is liable for the damage done by N to B.

Are the costs claimed reasonable?

7. The law of negligence and the DCA both require that LX is liable for the costs caused as a result of the damage done by N to B. These costs must be reasonable, foreseeable, established and consistent with the damage caused.
8. TQ provided evidence to the Tribunal of the veterinary costs for B's care that she claimed she has incurred as a result of N attacking B in the form of itemised invoices. These costs amount to \$14,335.57.
9. TQ also provided evidence from one of the veterinarians who treated B that B had no pre-existing conditions that complicated the treatment he received as a result of the attack by N. I also was provided evidence by the surgeon who performed the surgery and aftercare for B who explained the treatment that was required, the costs involved in that treatment and the follow up care that was needed after the surgery.
10. Based on the evidence provided to the Tribunal I find that TQ can claim the following costs:

[Vet Clinic] - Initial consultation by the local veterinarian before B was taken to the emergency after hours clinic	\$84.44
[Suburb] After hours veterinarian	\$1,456.40
[Location] Surgery – costs from 14 September 2019 – 25 October 2019	\$9,988.04
Total	\$11,528.88

11. The amount of \$11,528.88 is less than the amount of \$14,335.57 claimed by TQ however, based on the evidence provided to the Tribunal, I find that the care B needed after 25 October 2019 was discretionary. Therefore, even though this care would not have been needed but for the attack on B by N, it was not deemed absolutely necessary by the veterinary surgeon and this means that I do not find that these costs were reasonable or foreseeable by LX.

Referee: K. Armstrong
Date: 1 April 2021



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.