



(Disputes Tribunal Act 1988)
RESULT OF APPLICATION FOR REHEARING

[2023] NZDT 753

APPLICANT TT
person or organisation
making
the original claim

RESPONDENT N Ltd
person or organisation
originally
claimed against

Result of application for rehearing: The rehearing application is declined.

Reasons for decision:

TT's grounds for his rehearing application are that due to his mother-in-law being terminally ill and requiring round the clock care, that he and his wife forgot about the hearing. TT's claim related to defects in a property purchased by TT from N Ltd. There have been previous hearings relating to the claim and many of the defects have been rectified by agreement between the parties.

The test for whether or not a case ought to be re-opened and heard afresh via a rehearing process, is whether or not the party applying for the rehearing has had adequate opportunity to present their case and/or whether an unforeseen circumstance has occurred that prevented their attendance. In the absence of an unforeseen circumstance, it is not a question of whether they took up this opportunity. In this case, TT had plenty of notice of the hearing date, the notice of hearing having been sent on 3 July 2023.

I find that despite the sad circumstances, TT was given adequate opportunity to present his claim and that his reasons given for non-attendance are not sufficient to justify re-opening the matter. The rehearing application is therefore declined.

I note that at the rehearing hearing N Ltd offered to continue working with TT to address the remaining outstanding issues with the property.

Referee: Kaho - DTR

Date: 5 December 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>.