



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 439

APPLICANT **TT**

RESPONDENT **UN**

The Tribunal orders:

UN is to pay \$20.00 to TT on or before 20 October 2023; and

The counter-claim is dismissed.

Reasons

1. TT purchased a house from UN, which had a settlement date of 9 June 2023. Following a pre-settlement inspection of the property, TT via the real estate agent sent a list of issues to UN's solicitor that he requested be rectified. The issues were disputed and settlement proceeded.
2. TT now claims the cost of \$4850.00 for attending to various items (about half of which is for painting), including those raised after the pre-settlement inspection. UN counter-claims \$845.00 for his time off work, time spent responding to the claim and the Tribunal filing fee.
3. The issues to be determined are:
 - Are the items claimed of a kind that would be covered by the vendors' warranties at clause 7.3(1) of the sale and purchase agreement?
 - Were the vanity taps and showerhead in reasonable working order at the time of settlement?
 - Was the hot water connection in the laundry in reasonable working order at settlement?
 - Was the rangehood in reasonable working order at settlement?
 - Was the toilet in reasonable working order at settlement?
 - What is payable on the claim and counter-claim?

Are the items claimed of a kind that would be covered by the vendors' warranties at clause 7.3(1) of the sale and purchase agreement?

4. The standard vendors' warranties clause at 7.3 includes the following:

The vendor warrants and undertakes that at settlement: (1) The chattels included in the sale listed in Schedule 2 and all plant, equipment, systems or devices which provide any services or amenities to the property, including, without limitation, security, heating, cooling or air-conditioning, are delivered to the purchaser in reasonable working order,

but in all other respects in their state of repair as at the date of this agreement (fair wear and tear excepted).

5. Apart from new-builds, to which different rules apply, houses and their various components do not have to be in perfect condition when they are sold. Buyers are expected to carry out their own due diligence, such that damages related to the condition of the property will generally not be available after settlement with one exception being the warranty above, which is limited to particular aspects of a property.
6. TT clearly did carry out due diligence with respect to the general condition of the property because he asked for various general repairs to be carried out to the house in the process of negotiating the purchase. UN declined to carry out repairs and these proposed terms were struck out from the sale and purchase agreement.
7. Part of TT's claim is for repair to windows that won't open due to misalignment and/or broken handles, remedy of stained carpet, painting and repair of some cracks on the walls and ceiling. These items were not included in the repairs he had requested when negotiating to buy the property but they are of a similar nature. These are not items that come under the vendors' warranty above (they are not 'plant, equipment, systems, or devices'), they are part of the general structure of the house, with the exception of the carpet which is covered in the chattels list under 'fixed floor coverings'. However stains on a carpet in a house that is not a new-build do not mean that the fixed floor coverings are not in reasonable working order, as the carpet still functions as a fixed floor covering.
8. Taps, showerheads and toilets are part of systems that provide amenities to the property, as is the rangehood, so those claims will be considered further below.

Were the vanity taps and showerhead in reasonable working order at the time of settlement?

9. TT says that when he took possession of the house, water was leaking from the base of the bathroom vanity tap onto the vanity surface and the showerhead was also leaking at the connection point. A photograph shows the location of the leaking, but a photo, by its nature, cannot show the extent of leaking, and I consider it significant that TT has not yet had the leaking attended to, some months after settlement.
10. I infer from the fact that these issues have not yet been fixed, that any water leaking from the connection points is at a very minor level, certainly not at a level where water usage is particularly affected. TT is clearly able to use these amenities to a sufficient degree and I therefore find that they were in reasonable working order at settlement – it sounds like some minor maintenance is required.

Was the hot water connection in the laundry in reasonable working order at settlement?

11. TT has provided a photograph showing that there was/is no tap head on the hot water connection in the laundry – he says that his plumber has advised it will be quite easy for TT to get a tap head and fit it himself. TT estimates that would cost him \$20 (but he says that he may have to buy two if he can't find a tap head to match the cold water tap) - UN estimates TT could buy a tap head for around \$6.00.
12. I accept that the absence of a tap head means that the hot water connection to the laundry is not in reasonable working order as it would be difficult to turn on the hot water tap in its current condition.
13. TT has not provided evidence for his estimated cost but it is such a low figure that I accept \$20.00 as the reasonable damages. I do not accept that he might also have to replace the cold tap

because if UN had sold the house with non-matching tap heads (which are in a location that will be hidden behind washing appliances) there would have been no breach of vendors' warranty.

Was the rangehood in reasonable working order at settlement?

14. It appears that one of the two rangehood lights simply needs a lightbulb replaced (for well under \$10 according to a quick check of [hardware store] website). I do not accept that the vendors' warranty clause is intended to cover such trivial ongoing maintenance costs as this.
15. In any event, I find that the rangehood was in reasonable working order at settlement because the rangehood works fine with one functioning light. No evidence was provided of any problem with the rangehood beyond the need for a lightbulb.

Was the toilet in reasonable working order at settlement?

16. The house settled on 23 June 2023 and TT had a plumber attend the property on 5 July to fix the toilet which he says was leaking – he describes water coming out from the tank onto the toilet seat area continuously. This issue was not included in the list raised with the vendor's solicitor following the pre-settlement inspection and UN says he does not believe the toilet was leaking when the house was sold.
17. There are no photographs or video of the leaking toilet and the invoice simply states "Plumber follow-up works", so even apart from the issue of timing (whether or not there was a problem with the toilet at settlement or whether any problem commenced after settlement), there is insufficient evidence to prove there was a problem with the toilet.

What is payable on the claim and counter-claim?

18. As per the findings above, UN is to pay \$20.00 to TT for breach of the vendors' warranty.
19. As explained at the hearing, costs associated with preparing for or attending the hearing are not able to be awarded by the Tribunal, except in particular circumstances which do not apply here. The counter-claim is therefore dismissed.

Referee Perfect
Date: 21 September 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>.