



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

[2023] NZDT 670

**APPLICANT** TU

**RESPONDENT** I Ltd

**The Tribunal orders:**

I Ltd is to pay TU \$22,121.90 within 30 days of the date of this order.

**Reasons:**

1. In 2015, I Ltd provided a [wastewater septic system] that was installed at [address]. The Applicant, TU, moved into the property on 11 August 2016 and was the first occupier of the house since the wastewater system was installed.
2. TU first noticed issues with the system in 2017 when the systems high level alarm, which identified issues with the system, went off. The alarm usually indicates that the system was not working as intended and was overflowing as a result of debris blocking the systems filters. The alarm notification began to occur regularly.
3. TU contacted I Ltd about the issues with the system and NG of I Ltd attended the property several times to attempt to rectify the issues. Despite this, the system has continued to malfunction. TU claims that as the system does not operate correctly and has not throughout the duration of its use, despite extensive attempts to remedy the issues, that under the Consumer Guarantees Act, the guarantee that a product is fit for purpose has been breached. Furthermore, TU submits that the services provided by I Ltd to remedy the issues have been unsatisfactory. At the time TU lodged his claim with the Tribunal, the system had not been operational for five months.
4. Evidence of communications between TU and NG, and other contractors enlisted by I Ltd show TU requesting assistance to fix issues with the system on many occasions, and in several instances, receiving no response. Included in the various efforts to fix the system were system upgrades, electrical repairs, replacement of the pump, a replacement of the non-return valve and finally, in July 2019, a full system rebuild. The majority of these interventions were at TU's cost of over \$11,621.90. In February of 2021, major drainage works to the property were carried out by another company.
5. In March 2020, TU contacted NG for a service of the system, which was carried out. Issues again arose with the system in 2021, as a circuit breaker for the system had tripped and the system had overflowed. NG installed a new pump and informed TU that water may still be

getting into the system and the entire system may need replacement. Given that this occurred after major drainage works occurred to ensure surface water was not getting into the system, TU sought advice from another plumber who assessed this as unlikely in light of the drainage work carried out. TU then requested a replacement option. For the remainder of 2021 and into early 2022, communications show TU attempting to contact NG regarding the persistent issues. NG replies intermittently but ultimately did not carry out further work on the pump or replace the pump.

6. NG's response to TU's claim is that he is not liable for the claim as he only supplied the system, and did not install it, although he concedes he carried out the majority of the remedial work that had been done on the system since the faults were discovered. NG ultimately accepted that the system he supplied was defective, and that the repairs were unsuccessful.
7. Following the Disputes Tribunal hearing on 31 May 2023 the Referee adjourned the hearing as the parties indicated that they wished to try and settle the matter between themselves. Although agreement was reached between the parties, that NG would supply and install a new septic system and decommission the old one, the agreed work was not carried out by NG and the matter came back before the Tribunal.
8. At the subsequent hearing on 7 November 2023, I Ltd did not attend, and the hearing went ahead per s42 of the Disputes Tribunal Act 1988.
9. TU provided evidence of email communications between the parties showing that following the third hearing, the parties had reached an agreement about what steps NG would take to remedy the system. The offer from NG was that he would supply and install a new septic system at TU's property and decommission the old system.
10. TU accepted NG's offer on the condition that the install would be monitored by an independent installation company he would organise. This condition was accepted, and NG started digging at the property but unfortunately, due to various delays, the work did not proceed further. According to TU, NG again became incommunicative when approached regarding completion dates for the work. Evidence provided by TU shows that there were multiple communications from him to NG over the seven months since the hearing on 31 May 2023, trying to have the settlement agreement fulfilled. Due to the delays, water got into the hole NG had dug on TU's property and collapsed the walls, making the hole unsafe and unsuitable for use.

*Issue: Is I Ltd liable to pay for the costs of a new septic system and its installation?*

11. The applicable area of law is the Consumer Guarantees Act 1993 (CGA). Under the CGA, manufacturers and other suppliers guarantee their goods will be of acceptable quality. Acceptable quality means that the goods do what they are made to do, that they are acceptable in appearance and finish, that they are free from minor defects and that they are safe and durable. If an issue with goods is substantial, the consumer is entitled to reject the product and choose a full refund of the purchase price. Substantial means that the goods are substantially unfit for purpose.
12. Applying the law to the facts, I find that the septic system manufactured and supplied I Ltd and to TU was not of acceptable quality. I am satisfied that the defects in the product are substantial because the evidence shows that they rendered the septic system substantially unfit for purpose.
13. Section 29 of the CGA provides a guarantee that where services are supplied to a consumer the service, and any product resulting from the service, will be reasonably fit for any particular purpose; and of such a nature and quality that it can reasonably be expected to achieve any particular result that the consumer makes known to the supplier, before or at the time of the making of the contract for the supply of the service.
14. I find, based on the evidence provided to the Tribunal and given by the parties at the hearing, that the services supplied by NG in regard to the septic system were not carried out with

reasonable skill and care and as a result, was not rendered fit for its intended purpose; specifically, to functions as a working septic system. NG attempted to remedy the issues with the tank several times unsuccessfully.

15. Having had regard to all the evidence submitted by the parties and given in evidence, I satisfied that NG breached both the consumer guarantees in the CGA in regard to the product I Ltd manufactured and supplied TU, and the services he provided thereafter to remedy the issues with the product.
16. Under the CGA, a supplier may comply with a requirement to remedy a failure of any goods to comply with a guarantee by repairing the goods or by replacing the goods with goods of identical type; by providing a refund of any money paid or other consideration provided by the consumer in respect of the goods.
17. Where services do not comply with CGA guarantees the consumer may, where the failure can be remedied, require the supplier to remedy it within a reasonable time. Where a supplier who has been required to remedy a failure refuses or neglects to do so or does not succeed in doing so within a reasonable time, the consumer may have the failure remedied elsewhere and recover from the supplier all reasonable costs incurred in having the failure remedied.
18. In this instance, NG has been given the opportunity to replace the defective product and remedy the defective works at TU's property. NG has not taken up this opportunity. As a result, I find that TU is entitled the amount he claims from I Ltd of \$22,121.90.

**Referee: Kaho**

**Date: 8 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>.