



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 484

APPLICANT TU

RESPONDENT TN Ltd

The Tribunal orders:

TN Ltd is to pay TU \$3,718.61 by 10 October 2023.

Reasons:

1. In January 2023, TU bought a rug from TN Ltd for her living room. In April 2023, she noticed the rug was starting to fade badly. She claims a refund of the \$3,718.61.
2. Both parties attended the hearing.

Background

3. TU paid for the rug in December 2022, and it was delivered in January 2023. The rug was recommended by her interior designer. In March she noticed it was starting to fade badly, and in April she took photos which she sent to her designer. The designer approached TN Ltd in May.
4. TN Ltd's initial response noted the patchy appearance of the fading and said this was inconsistent with sun fading as there would be a more even overall change in colour. It asked whether the rug had been cleaned or whether any chemicals had been used on the floor or near the rug. TU replied that the rug had only been vacuumed and no chemicals had been used. She said she thought sunlight was the cause and expressed surprise as there had been little sun so far that summer.
5. The rug was sent to TN Ltd for inspection. It concluded that the rug was not faulty, and that the fading was caused by strong UV light coming through TU's full length windows.

Law

6. The law of contract and the Consumer Guarantees Act 1993 apply. The CGA provides for a guarantee in all consumer contracts that goods will be of acceptable quality (ss 6 and 7 CGA). The term 'acceptable quality' includes: being fit for purposes for which goods of that type are commonly used, acceptable in appearance and finish, free from minor defects, safe, and durable. The standard is based on the expectations of a reasonable consumer having regard to matters such as: the nature of the goods, the price of the goods, any statements made about the goods, the nature of the supplier, and context of the supply.
7. Section 8 contains a further implied guarantee of fitness for a particular purpose, where the consumer makes the purpose known to the supplier and the supplier represents that they will be fit for that purpose. The guarantee does not apply where the circumstances show that the consumer does not rely on the supplier's judgement.

8. Where a guarantee is breached, the consumer must give the supplier an opportunity to remedy, provided it is capable of being remedied and is not substantial in character (s 18(2) CGA). The supplier has to option to repair, replace or refund (s19(1) CGA).
9. If the supplier fails to remedy the breach within a reasonable time, the consumer can reject the goods and claim a refund of any money paid (s 18(2)(b)(ii), 22 and 23(1) CGA).

Is the rug of acceptable quality

10. The fading to the rug is extensive and patchy in appearance. In places the colour has faded from the original moss green to a colour TN Ltd described as “*yellowy gold*”.
11. The main issue is whether the rug is fit for purpose. TN Ltd says that it did not give any advice on the suitability of the rug for TU’s living room and, had it been asked, it would have said it was not suitable for an area with high exposure to sunlight.
12. Because TU did not seek advice from TN Ltd, the guarantee of fitness for a particular purpose under s 8 CGA does not apply. The question then is whether the use to which the rug was put was one “*for which goods of the type are commonly supplied*” (s 7(1)(a) CGA).
13. TN Ltd says the rug is made of Tencel fabric. It has the appearance of silk but is more durable (although at the lower end of the scale in terms of colour retention). The fabric has a partial loop pile and partial cut pile, with the cut areas appearing darker. TN Ltd says darker colours are more prone to noticeable fading.
14. TN Ltd says the rug is not suitable for areas which are subject to intense exposure to UV light, and that this is the cause of the fading. The fabric underneath the faded surface has retained its original colour. It says there have been no other complaints of colour fading with rugs from the same batch, which the manufacturer confirmed.
15. The photographs provided by TU show that the living room where the rug was located has light coloured walls and light coloured flooring. Therefore, there is a lot of reflected light in the room. However, TU says there was not a lot of direct sunlight on the rug, which was 2.5 metres from the nearest light source. She says the doors and windows are double glazed and filter UV light, and there are blinds and light filtering curtains on windows and doors. The room gets angled sunlight in the morning and then again later in the afternoon. She says her husband habitually pulled the curtains when he was watching the television. She also says the weather during the three-month period during which the rug faded was cool and wet.
16. The rug TU purchased was an expensive item, and TN Ltd deals in high end products. Therefore, there is nothing about the price or circumstances that would limit objectively reasonable expectations about the acceptable quality of the product. Placing a rug in a living room is a common use for a rug, and there is nothing unusual about a living room having full length glass doors or windows. Nor is there anything unusual about modern living rooms having light coloured walls that create a light ambience.
17. There is nothing that points to the rug being exposed to excessive UV light. The period of time during which the fading occurred was short, about three months. The windows were double glazed, which would have provided at least some additional UV protection. I accept TU’s evidence that there was minimal direct exposure to strong sunlight. While no meteorological statistics were provided, there is no doubt that [City] (along with much of the upper North Island) experienced a very poor summer, with higher than average rainfall and lower than average sunshine hours. For the rug to fade so badly in these circumstances provides strong evidence that it was not fit for purpose. The fact that there have been no other complaints about fading is potentially relevant but not decisive.
18. In conclusion, I find that the rug was not of acceptable quality under ss 6 and 7 CGA.

Is TU entitled to a full refund?

19. TN Ltd was given an opportunity to remedy the breach by providing a replacement or refund. It refused to do so. Therefore, TU is entitled to cancel the contract and obtain a full refund of the original purchase price.

Referee: J P Smith

Date: 26 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>.