



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1427

APPLICANT TX

RESPONDENT HC

The Tribunal orders:

Mr C is to pay Ms X \$1,906.99 within 28 days.

The fence to be constructed between the parties' properties at C Street, [city redacted], is to be:

- **a ColourPanel fence as quoted for Ms X, 1.8 metres in height and 28 metres in length, to be located on the boundary line as surveyed by Surveying Company.**

Reasons

[1] Ms X and Mr C own adjoining properties in [City], at C Street respectively. They propose to build a new fence between their properties, and have agreed on the intended materials and dimensions of the fence itself. They disagree as to the location of it, and seek an order from the Disputes Tribunal on that matter. They have complied with the notice requirements of the Fencing Act 1978.

[2] Ms X had a survey carried out in February 2021 by Surveying Company Ltd ("SCL"). Its redefinition survey plan shows that the location of a hedge, which is currently between the parties' properties and will be removed and replaced by the proposed new fence, is not accurately on the boundary. The old, now found to be inaccurate, boundary is 10 cm inside Ms X's property. She would like the new fence to be on the newly surveyed boundary, which means that it would be 10 cm closer to Mr C's house than is the "historical" boundary.

[3] Ms X considers that, if a new fence is to be built, it should be on the boundary. She says that placing the new fence precisely on the boundary will avoid the risk of future disputes and uncertainties relating to fencing or boundary issues. She considers that locating the fence 10 cm closer to Mr C's house will not inconvenience him.

[4] Mr C said that the "historical boundary", as he referred to it, was a line that was followed in 1934. He accepts that the recent survey done by SCL was accurate, allowing for the possibility of a minor margin of error. His main objection to having the new fence built on the recently-defined boundary was that it would bring the fence closer to his house by 10 cm. At present, there is about 1 m between the hedge and his house. He accepts that the foliage of the hedge projects into that space, but says that the foliage can be removed when he needs to work in or use that area.

[5] Mr C provided photos of the site. He has the outside unit of a heat pump alongside the house, and a gas cylinder. He says they will be more difficult of access if the fence comes nearer to his house. He is

concerned that pipes or drains might be adversely affected. He also says that it will be more difficult for him to place a ladder in the 1 m strip if the fence is moved 10 cm as Ms X would like.

The issue

[6] The question for me to decide is where the proposed fence should be placed.

The law

[7] Section 22 of the Fencing Act 1978 provides:

22 Where fence to be built

Save as otherwise agreed or ordered by the court, the middle of a fence shall be upon the boundary line.

.....

However, s 21 states:

21 Give and take fence

(1) Where it is impracticable or undesirable to erect a fence on the boundary of adjoining lands, and the occupiers cannot agree upon a line of fence on either side of the boundary, the line of the fence shall be determined by the court in the manner hereafter provided in this section

Section 21 goes on to provide for the possibility of an inspection being carried out. In this case, an inspection is not necessary, as a recent survey has been done, and I have been provided with detailed photos and information about the area.

Where should the fence be built?

[8] I have considered the evidence provided by the parties. Having scrutinised the photos closely, and having had regard to Mr C's objections, I have concluded that the fence should be built on the boundary as recently defined by SCL. I do not think that Mr C's evidence reveals that it is "impractical or undesirable" to erect the fence on the boundary. The distance from the "historical" boundary is only 10 cm, and the strip of land between the boundary and Mr C's house is already covered to some extent by a hedge. His evidence does not show that he will be inconvenienced or restricted in his activities, or that any damage will be caused, by the building of a fence, which will be much narrower than the existing hedge, on the boundary. It is, in general, desirable that fences are on boundaries, for the avoidance of future problems. Of course the erection of the fence on the boundary does not affect the parties' title to their land in any way.

[9] Thus, my order is that the fence should be erected on the boundary line as defined by SCL in its survey. Ms X has agreed that she will pay for the removal of the hedge. Mr C's obligation is to contribute half of the quoted cost of the fence, which is a total of \$3,813.98. Mr C's contribution is therefore \$1,906.99. He must permit the fencing contractor to be engaged by Ms X to enter his land when necessary for the construction of the fence.

Referee: C Hawes

Date: 28 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 20 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.