



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 628

APPLICANT UB

RESPONDENT NC

The Tribunal orders:

NC is to pay to UB \$2,697.50 on or before 5:00pm on Friday 22 December 2023.

Reasons

1. UB lives next door to a property owned by NC and tenanted by NC's daughter DE. On NC's property there are many trees and plants. UB stated that the trees are overgrown and for many months she has had issues with the debris from the trees on NC's property. UB said she has requested that the trees be trimmed to prevent the 'ongoing damage'. However, by April 2023, no action had been taken by NC or her daughter to trim the trees back. On 10 May 2023, UB hired a contractor to trim the trees back and paid \$1,500.00. On 15 May 2023, UB handed a letter to NC advising her of the work and asking her to reimburse her the \$1,500.00. The parties have been unable to reach a resolution to this issue and a claim was filed in the Tribunal.
2. At the first hearing, it was determined that the claims regarding the trimming and/or removal of trees/plants were outside of the jurisdiction of the Tribunal. UB stated that she intended to take a claim to the District Court to have these issues considered. However, the parties submitted further evidence regarding other issues for the Tribunal to determine. UB stated that NC's failure to maintain her trees and plants has caused damage to her property, including her iron corrugated fence. NC also submitted that UB or the contractors she hired trespassed on her property and cut her trees/plants without her consent and caused damage to her trees/plants. The hearing was adjourned to allow the parties more time to provide further evidence to prove their claims.
3. UB now brings a claim against NC for \$3,092.50 for damage caused to her iron fence and property. NC also brings a counter claim against UB for \$999.99 for damage caused to her trees/plants.
4. The issues to be resolved are as follows:
 - a. Did NC's trees/plants cause damage to UB's property?
 - b. Did UB or her workers cause damage to NC's property?

- c. What remedies are available?

Did NC's trees/plants cause damage to UB's property?

5. Under the Disputes Tribunal Act 1988 (DTA), the Tribunal has jurisdiction to hear claims regarding torts where damage or loss is caused to property (s 10(1)(c)). A private nuisance is when someone or something causes an unreasonable interference with another person's use and enjoyment of their land.
6. At the hearing, both parties presented evidence including photos, verbal and written submissions, two quotes for repair of the fence and a house inspection report carried out for the applicant before purchase of the property.
7. I have considered all of the competing evidence from both parties and all of the relevant law. Based on all of this, on the balance of probabilities, I find that NC's trees/plants did cause the damage to UB's property, for reasons that include:
 - a. I accept the evidence, including the pre-inspection report from an independent inspector, that shows that the fence, in particular the iron/metal corrugated fencing was checked, and no issues found with the condition of the iron fence as of 30 August 2022 when the report was written. I accept the evidence that the iron fence buckling/lean did not occur until after UB purchased the property.
 - b. I accept that the fence is not new and that some of the damage to the posts may have been pre-existing or due to age. However, neither party provided any expert or independent evidence to quantify the extent of such damage or deterioration.
 - c. I accept the evidence from the two independent companies that have provided quotes that the fence is in need of replacement/repair. I find the evidence from these two companies compelling regarding the replacement required of the corrugated sheets.
 - d. I accept the evidence from the independent companies that the damage to UB's iron fence was caused by NC trees/plants. One company stated that the fence is 'bent from the neighbours' trees and vegetation'.
8. Therefore, I am satisfied, on the balance of probabilities that UB has proven that her fence was damaged by NC's trees/plants.

Did UB or her workers cause damage to NC's property?

9. Under the Disputes Tribunal Act 1988 (DTA), the Tribunal has jurisdiction to hear claims regarding torts where damage or loss is caused to property (s 10(1)(c)). Trespass to land means interference with the possession of land without lawful justification. In trespass, the interference with the possession is direct and through some tangible object.
10. At the hearing, both parties provided evidence including photos, written and verbal submissions. Based on all of the competing evidence and the relevant law, I accept that there was some damage caused by UB or her workers when they cut back or trimmed the trees/plants on NC's property, for reasons that include:
 - a. I accept UB's submission that neither she nor any of the workers she hired 'stepped foot' on to NC's property. I accept that there is not enough evidence to prove, on the balance of probabilities that this happened. However, the principles of trespass include trespass by an 'object'. I find that the photos provided by NC of the cuttings or ends of her trees/plants that have been cut, prove on the balance of probabilities that the workers probably had to reach over the fence line to cut or trim back the trees/plants, and probably did so with a tool or 'object' of some sort.

- b. I accept the evidence provided by NC that 'some damage' has been done to her trees/plants. However, the parties were granted an adjournment to allow them more time to provide more evidence, including evidence from independent experts or arborists that could have helped to prove what damage was caused. Despite this, no report from an independent expert or arborist was provided. Therefore, although I accept the evidence that 'some damage' may have been caused the question regarding the quantum of that damage will be addressed in the next section.

11. Therefore, based on all of the above, I am satisfied on the balance of probabilities that NC has proven that 'some damage' was caused to her trees/plants by UB or her workers.

What remedies are available?

12. The principal remedy for torts where damage is caused, is to put the person that has suffered the damage back into the position they would have been in had the tort not been committed.

13. I have already found that NC caused damage to UB's fence. I have also already found that UB or her workers caused some damage to NC's trees/plants. In considering remedies, I can consider a set-off when both parties are entitled to a remedy.

14. At the hearing, UB presented two quotes from two independent companies for the repair of her fence. She stated that the quotes were not for repair of the entire fence but only for the area close to the house where the iron sheets are 'leaning'. One quote was for \$3,047.50 (incl. GST) and the other was for \$2,700 (plus GST). UB is claiming the lesser of the two quotes - \$3,047.50.

15. At the hearing, NC gave verbal evidence of the costs she believed she was entitled to claim as a result of the damage to her trees/plants. She stated that she estimated the costs to be \$999.99 based on what she said Council had charged someone for cutting 1 branch of a tree in a different situation. However, NC did not provide any evidence to support her claim regarding Council's charges or to prove the reasonable costs for the damage to her trees/plants. As stated earlier, NC also did not provide any independent evidence to prove the quantum of the damage caused to her trees/plants.

16. I have considered all of the evidence from both parties and all the relevant law. Based on all of this, I find on the balance of probabilities that the costs claimed by UB of \$3,047.50 are reasonable. I find that NC is entitled to a nominal claim of \$350.00 for general costs for damage to her trees/plants. Applying the set-off: $\$3,047.50 - \$350.00 = \$2,697.50$.

17. Therefore, based on all of the above, I am satisfied, on the balance of probabilities that the appropriate remedy is for NC to pay to UB \$2,697.50. Accordingly, this amount is awarded.

Referee: DTR Fuli
Date: 8 November 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>.