



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 759

APPLICANT	UC
FIRST RESPONDENT	OI – Trustee
SECOND RESPONDENT	NI – Trustee
THIRD RESPONDENT	I Ltd – Trustee

The Tribunal orders:

The OI Management Trust's Trustees, OI, NI and/or I Ltd, jointly or severally, shall pay UC \$1,255.79 by 11 December 2023.

Reasons:

1. UC entered into a commercial lease with the OI Management Trust (herein the Trust) on 6 October 2022, commencing 14 November 2022.
2. At the signing of the lease, the Trust undertook to repair an existing leak, pursuant to clause 10.4 of the lease. The Trust allowed UC early access to the building to facilitate her fit out of the premises for her hair salon business. At some point the Trust decided to replace the roof rather than to continue trying to repair it.
3. On 31 October 2022, UC contacted Trustee OI and advised the roof had leaked over the weekend. UC requested information about the roofing work as she had installed ceiling panels and lighting was about to be installed. UC also advised she was planning to lay laminate flooring the next weekend.
4. On 3 November 2022, OI advised UC that the roof work would begin mid-November 2022, or sooner if the weather was good. The roofing materials were delivered to the property in mid-November 2022. UC had ordered laminate flooring for her salon, having been told the repair work was starting. UC refrained from putting up her exterior signage so as not to interfere with the imminent roofing work.
5. Over the next 4 months, UC repeatedly contacted OI about ongoing leaks, health and safety issues caused by the leaks, including water running down the new light fittings, and querying when the roof would be repaired.

6. On 10 March 2023, UC advised OI that she was reducing her rent payments by 20% as the leaking building was not worth the full rent charged, to which OI accepted this but advised doing so would not speed up the repairs.
7. On 22 July 2023, UC contacted OI to advise that the ongoing leaks had damaged her laminate flooring and it required replacement. On 24 July 2022, UC obtained a quote for the replacement in the amount of \$1,255.79.
8. OI advised that the reduced rent was compensation of the leaking roof and any damage it might have caused and it was unreasonable to expect additional compensation. OI insisted the full amount of rent resume, which UC did as of 3 August 2023, based on OI's false advice that the roof replacement was complete.
9. OI states that it is not the Trust's fault that the roof replacement was not completed until 7 September 2023 and that he met his obligations under the lease agreement because he responded every time UC contacted him about leaks.
10. OI argues UC is not entitled to compensation as she installed the flooring knowing the roof leaked.
11. UC argues that she installed the laminate flooring as part of the fit out before opening her salon. OI allowed her early access to do the fit out and was therefore aware that shop fittings and equipment would be at risk if the leaking roof was not remedied promptly. She did the fit out based on the roof repair requirement in the lease agreement and OI's repeated assurances that the repair work was to start in a week or so, in November 2022.
12. As of the date of the hearing on 2 November 2023, UC advises that the roof still leaks.
13. The Trust confirms the roof replacement was completed on 7 September 2023.
14. The issues are: Did the Trust breach the lease agreement? Was the rent reduction compensation for the damage to the flooring in July 2023? Is UC entitled to the compensation for the ruined flooring?

Did the Trust breach the lease agreement?

15. Clause 10.4 of the lease required the landlord to repair the roof and make it watertight "as soon as practical"; to repair or replace the light over the front entrance; repair or replace the front entrance slider and the slider lock.
16. The lease was signed on 6 October 2022. The roof replacement was not completed until 7 September 2023, nearly a year later. The Trust did not replace the light fitting but told UC she could hire an electrician do it and the Trust would pay the electrician directly, which is contrary to clause 10.4 of the lease, therefore a breach by the Trust.
17. OI argues that Cyclone Gabrielle made roofers hard to come by, however Cyclone Gabrielle did not hit NZ until 12 February 2023. The Trust had a roofer under contract and roofing materials on site in November 2022.
18. As a date for completion of the roof repair was not specified in the contract, the date of completion must be reasonable.
19. OI gave repeated assurances that the roof would be repaired imminently but did not ensure that this was done. That failure negatively impacted UC's business for nearly a year.
20. Merely responding to the tenant's emails does not constitute meeting the landlord's contractual obligations. The Trust failed to ensure the premises were safe and fit for tenants before leasing

the premises and UC only agreed to lease the premises due to the lease term and OI's assurance that the work was starting before UC's business was due to open in late November 2022.

21. Accordingly, the Tribunal finds that the Trust breached the lease agreement.

Was the rent reduction compensation for the damage to the flooring in July 2023?

22. UC advised OI on 10 March 2023 that she was reducing the rent by 20% due to the poor condition and the therefore reduced value of the leaking premises, the reduced use that resulted from the leaks and the considerable time and effort spent repeatedly cleaning up from the leaks.

23. The damage to the floor did not occur until July 2023, after a significant rainfall flooded the laminate floor causing it to swell from underneath and irreparably damaging it.

24. It is not clear how a rent reduction 4 months prior for reduced value of the premises can be construed as compensation for damage that had not yet occurred and was not contemplated at the time the rent was reduced.

25. Accordingly, the Tribunal finds that the rent reduction from 10 March to 3 August 2023 was for the reduced value of the premises and was not compensation for the damage to the flooring.

Is UC entitled to the compensation for the ruined flooring?

26. UC's flooring was part of her initial, known fit out of the premises. The flooring damage did not occur until 9 months later and was the direct result of the Trust's failure to repair the roof in a timely manner, as required by the contract and by a landlord's standard commercial lease obligations.

27. UC has not claimed for nearly a year of mopping up after leaks, inconvenience to herself, her staff and her customers or any other water damage or deterioration to her fittings and equipment.

28. The Tribunal finds that the Trust is liable for the cost of replacing the flooring due to the Trust's neglect of its contractual obligations.

Referee: L. Mueller

Date: 20 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>.