



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

**[2023] NZDT 716**

**APPLICANT      UT**

**RESPONDENT    DU**

**The Tribunal orders:**

1. DU is to pay UT the sum of \$400 by 31 January 2024.

**Reasons**

2. In February 2022 UT purchased a mattress for a shared apartment in [Town]. The apartment was owned in quarter shares. The mattress cost \$1,600. UT is now seeking to recover a  $\frac{1}{4}$  of this purchase price from DU. DU has declined to pay for the mattress on the basis that the mattress was not required.
3. The issue for determination by the Tribunal is whether DU owes \$400 to UT. This will depend on what was agreed prior to the mattress being bought.

**Does DU owe \$400?**

4. UT explained that she is one of four owners of an apartment in [Town]. DU is one of the other owners. It was practice for all the owners to share equally in the cost of the apartment. Most costs were arranged and split by the Body Corporate but others were arranged by the owners themselves. UT said that the owners used the apartment in different ways. Some had children, others did not. Some used the downstairs more than others. They all paid for a new television but some owners never watched it.
5. UT said that in January a couple of the owners complained about the mattress in the master bedroom. She didn't have a problem with it but others found it uncomfortable. In an email on 25 January 2022, she asked DU how she felt about the mattress. She asked her how she felt about replacing it. DU emailed back on 26 January 2022 and said that she didn't have a problem with the mattress but if everyone else did then she would be "happy to add dollars to a new one".
6. UT said that on the basis of this email, she bought a new mattress for the apartment for \$1,600. She was then reimbursed \$400 by each of the other owners. She sent her bank details to DU so she could pay her share. DU did not pay and instead said that there was a problem with the bank account. UT said she sent multiple reminders, but payment never arrived. DU later told her that they had sold the apartment and would not be paying the \$400. She also said she had never used the mattress.
7. DU acknowledged in the Tribunal hearing on 12 December that she might have said she would pay for the mattress but later when she was talking with her husband she changed her mind and

thought why should she. She didn't have a problem with the old mattress; they were not going down there anymore and they had decided to sell the apartment. DU said that UT had decided she wanted the mattress and just ploughed ahead and got it. DU also said that were many things that owners paid for themselves. Costs were not always shared. DU did not recall paying for the new television which she did not watch.

8. The claim is governed by the law of contract. A contract is a mutually binding commitment and can be written, verbal or a combination of both. Unless the contract specifically allows for it, a contract cannot be unilaterally varied or cancelled without the agreement of all parties. Where a contract has been breached, the other party to the contract may be entitled to compensation.
9. I have listened to the evidence and reviewed the emails and I find that DU is liable to pay \$400 to UT. I say this because:
  - a. The emails of 25 and 26 January are sufficient to form a contract. DU agreed to contribute to the cost of a new mattress.
  - b. DU was not entitled to unilaterally pull out of this contract. The fact that she changed her mind and decided not to pay for the mattress amounts to a breach of contract.
  - c. It was common practice amongst the owners for costs to be shared equally.
10. UT was also claiming costs and interest on the late payment. These costs are not able to be awarded because they were not part of the original agreement.

**Referee:** LK Whineray  
**Date:** 19 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>.