



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 437

APPLICANT UT

RESPONDENT NU

The Tribunal orders:

NU is to pay UT the sum of \$2,287.00 on or before 30 September 2023.

Reasons

1. In October 2022 UT engaged NU to assist with demolition and building work at her rental property.
2. The issues to resolve this claim are:
 - a. What work did the parties agree NU was to do?
 - b. Was this work done and to a satisfactory level?
 - c. What did the parties agree about the price for the work?
 - d. Has UT paid more than the agreed price for the work done?
3. There were significant difficulties in making contact with NU for the hearing. He was finally joined at 2.44pm but left the teleconferenced hearing at 2.55pm. Attempts to contact him further only reached his answerphone. The hearing proceeded with UT.

What work did the parties agree NU was to do?

4. The initial agreement was an oral contract under which NU was to:
 - a. Demolish the cladding on the bathroom/kitchen wall;
 - b. Replace the baseplate to the wall;
 - c. Reclad the wall to the point where it was able to be gib-stopped.
 - d. Prepare the kitchen floor for vinyl.
 - e. Framing work to allow for the installation of a shower rather than the existing bath.
5. As the work commenced, the parties also agreed that NU would do the following additional work:
 - a. Create an opening from the kitchen to the dining room by demolishing a section of the wall and reframing and completing to the point where gib-stopping was possible.

- b. Remove the laundry area, incorporating it into the kitchen and installing a new bigger window.
6. It was agreed that NU would carry out the labour and UT would pay for and provide all necessary materials. It was also agreed that NU was only available to work after hours and at weekends.

Was the work done and to a satisfactory level?

7. Work proceeded satisfactorily until around mid December 2022. During this time, NU carried out the demolition work, replaced the baseplate and did framing work on both the bathroom and the living room walls.
8. UT said that all this work was done well and to a satisfactory standard. There are no issues with the quality of NU's work.
9. The problem arises because the project was not completed. NU essentially did not continue working after 14 December 2022. The parties had a series of meetings to try to resolve the situation and NU did return to site for one day on 18 January 2023. Ultimately, UT brought in another contractor to complete the work.

What did the parties agree about the price for the work?

10. At the outset there was no discussion about how many hours the work might take nor the hourly rate at which NU would be paid. UT says NU indicated the work should be completed by Christmas.
11. On 1 November 2022 UT made a payment of \$3,000.00 to NU for "future labour costs."
12. On 14 December 2022 a further payment of \$2,807.00 was made to NU at his request. A text message sent by him on 13 December 2022 sought this sum and set out that it was for labour and also for a series of materials required for the project. In the message, NU said that *"4018 is all up on my side."* The message said materials were \$1,789.00. No materials were delivered to site by NU.
13. At one of their later meetings, the parties agreed that NU would charge \$30 per hour for labour. They discussed how many hours had been done, but did not agree. UT believes it to be about 38 hours. NU said it was 84 hours.
14. Looking at all the available evidence, it is difficult to establish what the agreed price for work was.
 - a. On 13 December 2022 when \$4,018.00 was notified by him in his message, the parties were not in dispute and UT raised no concern with NU about this estimate, making payment to him of an additional \$2,807.00 in accordance with his message.
 - b. It is unclear from that message what the \$4,018.00 referred to - work done to that time or an estimate of all work to completion of the job. It is also unclear what rate NU used in calculating this figure.
 - c. UT says her estimate of 38 hours is generous and reflects contemporaneous notes she made at the time.
 - d. However, UT agrees she was not always on site and some of her entries are an estimate only of what NU might have done.
15. I find that the parties agreed that the price for the work completed by NU was to be charged at \$30 per hour.

16. UT has the onus of proof of establishing on the balance of probabilities that her estimate of time is correct but she has not been able to show this.
17. NU's figure of \$4,018.00 amounts to approximately 134 hours at \$30 per hour but at a later meeting he stated he had worked 84 hours.
18. I find a fair assessment of NU's work on the project to be 84 hours, which at \$30 an hour amounts to \$2,520.00. Over the 6 weeks or so of the project, this allows for approximately 14 hours per week, which is consistent with the nature of the arrangement between the parties.

Has UT paid more than the agreed price for the work done?

19. UT has paid NU \$5,807.00 in total.
20. I have found that the fair price for work done by NU at \$30 per hour is \$2,520.00.
21. UT has paid NU \$2,287.00 more than this and is entitled to be repaid this amount by NU.

Referee: S Simmonds
Date: 4 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>.