



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 151

APPLICANT UX

RESPONDENT TT

The Tribunal orders:

TT is to pay the sum of \$500.00 to UX on or before Thursday, 1 June 2023.

REASONS

1. TT advertised [redacted] puppies on TradeMe for \$2,500.00, with a \$500.00 deposit payable to secure a puppy. On 13 March 2023, UX paid a deposit of \$500.00 to TT for a puppy (“the Deposit”). A few days later, UX withdrew from the purchase of the puppy for health reasons and asked for the Deposit to be returned. TT has refused to return the Deposit.
2. UX brings a claim against TT seeking damages of \$500.00, being the amount of the Deposit. She also seeks a refund of the Tribunal’s fee of \$45.00.
3. I held a teleconference hearing of the claim with both parties on 3 May 2023.

Issues

4. The issues I need to determine are:
 - (a) Is TT legally obliged to refund the Deposit to UX?
 - (b) If so, is UX entitled to a remedy and is the amount claimed proved and reasonable?

Is TT legally obliged to refund the Deposit to UX?

5. The law of contract applies. Once a legally enforceable contract is formed, the parties are bound by the terms they have agreed to, and those terms are enforceable by one party against the other. This means that if one party breaches a term of the contract, the other party may seek a remedy.
6. A deposit is a sum of money paid in order to bind a bargain, and is intended to show the payer’s sincerity and intention to complete the purchase. In many contexts, such as that of a conditional contract, it is understood that a deposit will be refunded if the contract is not completed, and it is intended to form part of the purchase price when the contract is fulfilled. However, the fact that a payment is called a “deposit” does not mean that it is automatically refundable if the contract is not completed.
7. UX says that she takes a deposit from purchasers to secure a puppy, and the deposit is not refundable if the purchaser changes their mind and pulls out of the purchase. She says that she made a mistake in the advertisement on TradeMe that UX saw, and it should have read that any deposit paid by a purchaser was non-refundable and would only be refunded if the puppy failed its vet check. She says that had UX visited her to view the puppy before she paid the deposit,

she would have been told that the deposit was non-refundable if she changed her mind, but she did not view the puppy. UX says that she did not know she had made the typo in the advertisement until UX asked for the Deposit back. She says she immediately changed the wording of the advertisement to make it clear that any deposit paid would only be refundable if the puppy failed its vet check.

8. Having carefully considered the available evidence and information, I am satisfied that TT is legally obliged to refund the Deposit to UX. I make this finding for the following reasons:

(a) A legally enforceable contract regarding the sale and purchase of the puppy was formed between UX and TT when UX paid the Deposit on 13 March 2023 (“the Contract”). The terms of the Contract were set out in the advertisement, and UX accepted those terms on payment of the Deposit.

(b) I am satisfied that the Contract included an express term that the Deposit was refundable if the purchaser pulled out of the sale. This is because the wording of the advertisement that UX saw on TradeMe stated:

“...\$500 non refundable deipoist (sic) required to secure your forever pup, this is only refundable if pup fails its vet check or you pull out of sale...”

(c) I acknowledge that TT did not mean to include the words “or you pull out of the sale” in the advertisement, and she made a mistake about this. However, UX was entitled to rely on the wording of the advertisement. In this regard, I accept UX’s statement that she did rely on the Deposit being refundable if she changed her mind, and she would not have paid the Deposit had it not been refundable if she pulled out.

(d) I am satisfied that the law that allows relief for mistake in certain limited circumstances does not apply in this situation to assist TT, because the mistake she made is not the sort of mistake to which s24 of the Contract and Commercial Law Act 2017 applies. In any event, I have taken into account that TT was able to resell the puppy for \$2,500.00, the same price as UX had agreed to pay for it.

(e) For these reasons, I am satisfied that TT is not entitled to keep the Deposit and she has breached the Contract by not doing so. Therefore, I find that TT is legally obliged to refund the Deposit to UX. The claim is therefore proved to the required standard which is the balance of probabilities (that is, more likely than not).

Is UX entitled to a remedy and is the amount claimed proved and reasonable?

9. Once an applicant has proved their claim on the balance of probabilities, they are entitled to a remedy. Before the Tribunal awards monetary damages to a successful applicant, it must be satisfied that the amount claimed is proved and reasonable.

10. UX brings a claim against TT seeking damages of \$500.00, being the amount of the Deposit. She also seeks a refund of the Tribunal’s fee of \$45.00.

11. As I have found that TT breached the Contract by refusing to refund the Deposit, UX is entitled to a remedy. I am satisfied that a full refund of the Deposit is proved and reasonable. I dismiss UX’s claim for the Tribunal’s fee (\$45.00), because I am unable to award such costs under the Disputes Tribunal Act 1988.

12. For these reasons, I award damages of \$500.00 to UX which TT is to pay by the date set out in the order.

Referee: D Brennan DTR
Date: 4 May 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>.