



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

[2023] NZDT 674

**APPLICANT**      **WD**

**RESPONDENT**    **HT**

**The Tribunal orders:**

HT shall pay WD \$4,935.00 by 27 November 2023.

**Reasons:**

1. On 6 April 2023, WD purchased a 2006 caravan from HT for \$28,000.00 via [online website]. WD relied on HT's listing description, photos, a video and a pre-purchase inspection by a mechanic when he agreed to purchase the caravan and paid the deposit.
2. The pre-purchase inspection detected elevated moisture levels in the bathroom and some minor water damage.
3. HT delivered the caravan from [City 1] to [City 2]. WD inspected the caravan upon arrival and paid the balance on 8 April 2023.
4. The [online seller] listing stated the caravan was "completely watertight". HT also told WD that there were no issues with the electrical system.
5. WD had issues with the electrical system within a day or two of purchase, which cost \$615.00 to repair.
6. On 16 May 2023, WD contacted HT to advise him significant leaks in the caravan. HT denied knowledge of any leaks and insisted the caravan had never leaked.
7. On 19 May 2023, WD took the caravan to [caravan specialists] for assessment and significant long-term water damage was discovered behind the bathroom walls and ceiling and to the floor under the bed and quoted \$7,050.00 for the repairs.
8. HT claimed that WD must have left the battery box door open which allowed water to enter and pool on the floor under the bed, however that is inconsistent with the long-term damage found by [caravan specialists], which said this would have taken years to develop.
9. HT states that whatever happened after the purchase was not his responsibility, but he later agreed to assist WD with the cost of repairs, however no agreement was reached regarding an amount.
10. HT argues that WD was aware of the moisture issues in the bathroom at the time of purchase so the portion of the repairs attributable to the bathroom should not be included.

11. The issues are: Did HT misrepresent the caravan? Is WD entitled to damages?

**Did HT misrepresent the caravan?**

12. A misrepresentation is a statement of fact that is untrue. It does not matter if the misrepresentation was innocent or intentional. The sale is not “as-is” if representations have been made by the seller and the seller is accountable if the representations were untrue.
13. The Contract and Commercial Law Act 2017 (CCLA) applies to private sales of second-hand goods. Pursuant to s35, if the purchaser has relied on the seller’s misrepresentations in making the decision to purchase, the purchaser can make a claim against the seller for misrepresentation.
14. HT advertised the caravan as being completely watertight, which was untrue. HT also told WD that there were no electrical issues, which was untrue.
15. Accordingly, the Tribunal finds that HT misrepresented the caravan.

**Is WD entitled to damages?**

16. WD accepted the caravan with moisture issues in the bathroom, however this was in the context of HT’s assurance that the caravan was completely watertight, thereby indicating that the moisture was merely residual internal moisture in a wet area, not the extensive long-term water damage from external leaking.
17. The measure of damages for misrepresentation is diminution in value, being the difference between the value of the caravan as it was represented versus the value based on the true condition the caravan.
18. Consideration must also be given to the betterment that will occur once the repairs are completed, that the caravan, particularly the bathroom, will be in better condition than it was at the point of sale.
19. The Tribunal finds that the fair contribution to be made by HT to put the caravan into the condition he stated it was, without betterment, is 70% of the repair quote, being \$4,935.00.

**Referee: L. Mueller**

**Date: 1 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>.