



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 542

APPLICANT WH

RESPONDENT P Ltd

The Tribunal orders:

1. P Ltd must pay WH \$8,000.00 by 6 November 2023.
2. After the payment referred to in paragraph 1 has been made, WH must make the materials P Ltd originally installed in her kitchen available for a period of 21 days for P Ltd to collect at a time that is reasonably convenient to both parties. If P Ltd fails to collect these materials within this time frame, WH may dispose of these materials as she sees fit.

Reasons:

1. In October 2022 the applicant entered into a contract with the respondent for the respondent to renovate the applicant's kitchen. The contracted work was not completed and the respondent did not return to finish the work before the applicant cancelled the contract and had the kitchen installed by another supplier. The applicant paid a deposit of \$8,000.00 to the respondent and claims this amount from the respondent.
2. There were two hearings on this matter. The first hearing was adjourned to provide the parties with an opportunity to provide further evidence to the Tribunal which they both did.
3. The issues to be determined by the Tribunal were:
 - a. What work was the respondent contracted to do?
 - b. Has the respondent breached the Consumer Guarantees Act 1993 by not providing its services within a reasonable time?
 - c. If so, has the respondent been given a reasonable opportunity to remedy any breach?
 - d. Has the respondent repudiated the contract?
 - e. If so, is the applicant entitled to cancel the contract and have all money paid refunded?
Is the work done to date of any value?
4. The relevant law is the law of contract, the Consumer Guarantees Act 1993 (CGA) and the Contract and Commercial Law Act 2017 (CCLA).

What work was the respondent contracted to do?

5. The respondent provided a quotation to the applicant that set out the work that was to be done and the price to be charged by the respondent. The total price was \$13,000.00 and the work included the removal of the old kitchen and the installation of a new kitchen, including cabinets, a worktop, a cooktop, sink and dishwasher. The old kitchen was to be relocated to the garage as a means of temporary kitchen while the new kitchen was being installed.

Has the respondent breached of the Consumer Guarantees Act 1993 by not providing its services within a reasonable time?

6. Section 30 of the CGA sets out that where services are supplied to a consumer there is a guarantee that the service will be completed within a reasonable time in any case where the time for the service to be carried out is not fixed by the contract.
7. The respondent provided a quotation to the applicant which does not set out the time that the work would be done by. The applicant said she was told by the respondent it would all be done within two weeks of starting. The respondent said it would have been impossible to do all the work in two weeks. However, when considering the time that had been spent on the job before the applicant cancelled the contract and the days the respondent said he needed to complete the job, the evidence shows that the respondent was confident the work could have been done in this time.
8. On the evidence provided to the Tribunal, including the verbal evidence of the parties, I find that the respondent breached the contract by not completing the work in a reasonable time. I say this because:
 - a. The applicant paid a deposit on 27 October 2022, but no work started until 17 December 2022, and this was just to demolish the applicant's kitchen. I appreciate that the respondent's representative, Mr L, had to return to [country 1] due to a bereavement for three weeks, however there was still about 4 weeks during which the respondent could have started the work. Mr L was unable to remember exactly when his mother died and when he was in [country 1].
 - b. The respondent did not return to site until 22 January 2023, and this was at the insistence of the applicant as her husband had died. As she had a number of guests to attend the funeral, she needed some form of kitchen. At this point the respondent constructed a temporary kitchen in the applicant's garage and removed the rubbish from the demolition.
 - c. The respondent then did not return to the site until 2 February 2023 and started to construct the kitchen, but evidence shows it was far from finished even though the respondent told the Tribunal that all that needed to be done was to install the benchtop, a sink and appliances. The applicant said this kitchen had no benchtop, appliances, running water and wires were hanging down. Therefore, she was unable to use the kitchen.
 - d. The applicant then went to [country 2] for a number of weeks. The applicant said that she agreed with the respondent that her nephew would be contactable to arrange access to enable the work to be finished. The respondent denied this although I was able to speak to the applicant's nephew who told the Tribunal that the respondent was unable to come on the day the benchtop was to be installed and he was not able to contact the respondent again. The respondent also denied this but provided no other evidence to support his version of events.
 - e. When the applicant returned to New Zealand on 19 March 2023, she again requested that the respondent return and finish the kitchen. The respondent told the Tribunal that it agreed to come in a few days' time. However, the respondent did not return to site and the applicant cancelled the contract on 12 April 2023 by asking for the respondent to come and collect the kitchen carcasses and return her deposit. I note that 12 April 2023 was over three weeks after the respondent agreed to return and finish the work which the respondent said would have taken no more than a few days.

- f. The evidence shows that the applicant called and sent text messages to the respondent on numerous occasions to persuade the respondent to come and finish the work. The respondent confirmed to the Tribunal that the telephone number the calls were made to, and messages sent to, was the correct number.
- g. This timeline shows that although both parties were away from time to time, from 27 October 2022 to 12 April 2023 there were multiple opportunities for the respondent to finish the work. Its failure to do so represents a breach of section 30 of the CGA.

If so, has the respondent been given a reasonable opportunity to remedy any breach?

- 9. Section 32 of the CGA sets out the remedies available to a consumer where the supplier has failed to supply its services within a reasonable time. Where there is a failure and the failure can be remedied, the consumer is required to give the supplier the opportunity to remedy the failure. If the supplier fails to remedy the failure within a reasonable period of time, the consumer can cancel the contract and have the failure remedied by someone else. The consumer can also claim reasonably foreseeable damages due to the failure of a supplier to provide its services in accordance with the guarantees set out in the CGA.
- 10. As set out in paragraph 8 above, I find that the respondent was given multiple opportunities to finish the work but did not do so.

Has the respondent repudiated the contract?

- 11. Section 36 of the CCLA sets out that a party to a contract may cancel the contract if, by words or conduct, the other party repudiates the contract by making it clear that they do not intend to perform or complete their obligations under the contract.
- 12. On the evidence provided to the Tribunal, I find that it is more likely than not that the respondent has repudiated the contract with the applicant. I say this because the respondent did not complete the work in a reasonable time as set out in paragraph 8 above despite being given multiple opportunities to do so.

Is the applicant entitled to cancel the contract and have its deposit refunded? Is the work done to date of any value?

- 13. The respondent's repudiation of the contract gives the applicant a right to cancel the contract and claim for damages pursuant to section 42 of the CCLA.
- 14. The respondent said it had incurred costs due to the materials ordered and the work done to date, including the demolition of the kitchen. The respondent said that the kitchen was 'practically complete'. Therefore, it should be entitled to retain the deposit paid by the applicant.
- 15. The applicant provided evidence to the Tribunal that she had the part-built kitchen the respondent installed removed and replaced by another kitchen installer. This kitchen installer provided evidence to the Tribunal that the work done by the respondent was incomplete and of poor workmanship. On this basis I find that the work done by the respondent was of no value to the applicant.
- 16. I appreciate that the respondent had incurred costs. However, its failure to meet the guarantees set out in the CGA means that the applicant should not bear the burden of these costs this is especially so given the work done and the items ordered are of no value to her.
- 17. However, I do find that the respondent is entitled to have back the materials it installed into the applicant's kitchen. The applicant confirmed that these materials were available to the respondent for collection.
- 18. As the applicant has received no value for the deposit paid to the respondent, I find that the deposit the applicant is an adequate measure of damages. Therefore, the respondent must

return the amount of the deposit, being \$8,000.00, to the applicant. After this amount is paid to the applicant, the respondent may collect its materials from the applicant. The timeframes for these actions are set out in the orders above.

Referee: K. Armstrong
Date: 16 October 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>.