



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

District Court

[2023] NZDT 420

**APPLICANT**      **WQ**

**RESPONDENT**    **QZ**

**The Tribunal orders:**

The claim is struck out.

**Reasons:**

1. In May 2022, QZ commenced renting the downstairs premises of WQ's house. WQ lived upstairs. The arrangement was recorded in a 'Flat/House sharing agreement' which included payment of a \$900.00 bond, rent of \$450.00 a week and \$30.00 for electricity/gas. The arrangement ended in July 2023.
2. WQ claims \$2,404.00 increased from \$2135.00, which she says is \$1920.00 for 4 weeks rent and electricity payments, \$15.00 for a rent shortfall, a further \$269.00 for 4 days rent, and \$200.00 to clean the carpets.
3. QZ stated that on 11 September 2023 she lodged a claim in the Tenancy Tribunal regarding this matter.
4. The issue to be determined is whether the Disputes Tribunal has jurisdiction.
5. Under section 82 of the Residential Tenancies Act 1986 (RTA) the Tenancy Tribunal has exclusive jurisdiction to determine any residential tenancy dispute.
6. WQ's position is that the Disputes Tribunal has jurisdiction because a flat sharing agreement was signed on the advice of her real estate agent, that the agreement states that any dispute should be dealt with in the Disputes Tribunal which is also reflected in the Tenancy Services website, and that for the duration of the agreement QZ raised no objection to the nature of the agreement being a flat sharing agreement.
7. However, on balance, I accept QZ's position that the Disputes Tribunal does not have jurisdiction, as the matter concerns a residential tenancy dispute over which the Tenancy Tribunal has exclusive jurisdiction under s 82 of the RTA. I say this for reasons which include:
  - a. While I accept that the agreement was recorded as a flat sharing agreement, I do not accept that this label accurately reflects the substance of the arrangement. Despite the owner WQ living on the premises, both parties acknowledged and I accept that upstairs premises where she lived, while adjacent, was separate from the downstairs premises where QZ lived. Each premise was separated by a locked door, each party had exclusive

use of their respective premises, each was self-contained without any shared use of facilities, and each had its own separate entrance.

- b. Under section 11 of the RTA, a landlord cannot contract out of its responsibilities by stating that any dispute should be heard in the Disputes Tribunal;
8. As I consider the matter falls within the exclusive jurisdiction of the Tenancy Tribunal and there is no ability under the Disputes Tribunal Act 1988 to transfer the claim, it is struck out.

**Referee: GM Taylor**

**Date: 14 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>.