



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 282

APPLICANT X Ltd

RESPONDENT DN

The Tribunal orders:

DN is to pay X Ltd \$1,955.00 on or before 21 August 2023.

Reasons

1. DN rented a caravan from X Ltd (X) on or about 19 May 2016. When he took the caravan, he said he would start paying for the rental of the caravan, but he did not. When he returned it, it was damaged, in the roof vent. F of X discussed the damage with DN who indicated that X should just get it fixed. X secured two repair quotes. X chose the smaller of the two quotes, got the caravan fixed and sent DN an invoice for the unpaid rental and repair cost on 31 December 2016. DN refused to pay and X filed a claim in the Disputes Tribunal on 23 December 2022.
2. This is a claim for breach of contract for the cost of rental in the sum of \$500.00 plus GST and the cost of repair of damage, in the sum of \$1,700.00 plus GST, totalling \$2,530.00.
3. The issues to be determined today were as follows:
 - a. Has DN breached a legally binding agreement?
 - b. If so, what is payable by way of compensation?
 - c. Does the Limitation Act 2010 affect the recovery of one or both of the amounts claimed?
4. The hearing was convened in person. DN did not attend the hearing. Nonetheless I attempted to phone DN. However I was unable to contact him. Under the Disputes Tribunal Act 1988 I can resolve a dispute in the absence of one of the parties.

Has DN breached a legally binding agreement?

5. When two parties reach agreement about an exchange of items of value, a legally binding contract arises. The contract can be oral, as evidenced by what the parties discussed, or in writing, as evidenced by what the written terms are. When one person breaches their obligations under the contract that may allow a claim for damages or compensation from the other party.
6. In this case, the written contract which would normally be used was not signed by DN. However he took the caravan on the terms agreed as discussed with F of X. DN is required to pay for the rental because this was a term of the oral agreement.

7. Contracts can have implied terms if those terms are so obviously required that it is not needed to be discussed, or if it is necessary to make the contract work, or if the law would require the implied term for other reasons. I find that it is an implied term of the contract that DN is to pay the reasonable cost of repair of any damage to the hired caravan. It appears that this was what was agreed by the parties because DN's communications with X, telling him he did not need to inspect the caravan before X had it repaired, suggests he was acknowledging this implicit term. Even if the parties had not agreed the term, DN would have owed X a duty of care not to damage the caravan while it was in his possession, and the damage that occurred would have been recoverable under the tort of negligence, if not contract.
8. As a result, I find that DN is liable to pay the cost of the damage he caused to the caravan.

If so, what is payable by way of compensation?

9. When one party breaches a contract, the other party can claim damages/compensation, in the amount they have lost as a result of the breach.
10. DN has not paid \$575.00 including GST in the cost of hiring the caravan. He has also not paid the amount invoiced as to the cost of repair, which is \$1,955.00 including GST.
11. In terms of the cost of repair, DN is only required to pay the reasonable cost of repair. X obtained two quotes, one for \$1,955.00 and the other for \$3,726.00 including GST. X chose the lower quote and I find that this amount is reasonable. X is making no claim for loss of profit while the caravan was being repaired, because the lower quote meant the caravan could be repaired much more promptly. The larger quote would also have required waiting for more than six months for the repair.

Does the Limitation Act 2010 affect the recovery of one or both of the amounts claimed?

12. The Limitation Act 2010 provides that it is a defence to a money claim if the claim has not been filed in a court or tribunal within six years of the date of the act or omission on which the claim is based.
13. The claim for the rental is based on X's failure to pay the amount he was obliged to pay from about 19 May 2016. The claim for this amount was not filed until 23 December 2022, and so it was filed outside the six year limitation period. The claim for the cost of the rental is therefore dismissed.
14. The law on limitation in other courts is required to be pleaded (specifically raised by the defence) before it is available, but I consider that is not appropriate in the Disputes Tribunal, and that I should apply the Act even in the absence of a Respondent if I am satisfied there is sufficient evidence to do so. In my view, to do otherwise would undermine the purpose of the Disputes Tribunal Act 1988, for various reasons, including in particular that legal advisers are not permitted to appear in the Disputes Tribunal. Many parties are not legally advised at all. In each hearing, the law is expected to be applied appropriately by the Referee, and in many cases, this is without the parties having or requiring any knowledge of the law. This should, in my view, apply to the principles of the Limitation Act 2010 in the same way it would apply to other rules of law, and the Act should be applied as the circumstances require.
15. The claim for the repairs however was not quantified and communicated to DN until the invoice dated 31 December 2016. Because the claim was filed in the Tribunal on 23 December 2022, the claim for the repair was made within the six year limitation period. DN is required to pay this amount, which is \$1,955.00.

Referee: M Wilson
Date: 24 July 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>.