



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

**District Court**

**[2023] NZDT 446**

**APPLICANT** X Ltd

**RESPONDENT** GN

**The Tribunal orders:**

The Respondent shall pay X Ltd Limited \$7.50 by 22 September 2023.

**Reasons:**

1. The Respondent contracted X Ltd to repair her laptop computer which had stopped working since it was last repaired by X Ltd a year before.
2. The laptop had water damage, which the Respondent acknowledged could have been caused by her cat and the house plant on the table next to the laptop.
3. X Ltd diagnosed the damage to the laptop, prepared a report for the Respondent's insurer and invoiced the Respondent \$57.50 on 22 May 2023, due in 7 days.
4. The invoice included a reference to terms of trade available on request and that 20% per month compounding finance fee and costs for non-payment would be charged.
5. The Respondent failed to pay the invoice by the due date and X Ltd added penalty interest of 18% per month.
6. The Respondent paid \$50.00 on 30 June 2023, leaving a balance due of \$7.50. X Ltd continued to add penalty interest.
7. X Ltd filed this claim for \$1,000.00 on 11 July 2023, seeking the unpaid balance of the invoice and interest of \$50.50 and costs of \$949.50.
8. The Fair Trading Act 1986 requires that all terms and conditions of a contract must be made known to the other party prior to contracting, otherwise the other party cannot be deemed to have agreed to them. Putting a reference to terms and conditions on the invoice after the work has been done is too late.
9. Further, terms and conditions that are excessive and harshly punitive are not enforceable. 20% compounding monthly penalty interest is usury and \$950.00 in costs for a \$7.50 debt is unconscionable and unenforceable.

10. The Tribunal finds that the terms and conditions did not form part of the contract as they were not made known to the Respondent prior to contracting. Even if they had been, the Tribunal would not have enforced such harsh terms.

11. Accordingly, the Tribunal finds that The Respondent only owes the original balance of the original invoice.

**Referee: L. Mueller**

**Date: 4 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>.