



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 729

APPLICANT XP
RESPONDENT O Ltd

The Tribunal orders:

O Ltd is to pay XP the sum of **\$750.00** immediately.

Reasons

Hearing

- 1) XP filed this claim on 9 August 2023 and a hearing was notified for 4 October 2023.
- 2) However when contacted on that day, a representative of O Ltd informed the tribunal that O Ltd :

“was unprepared for the hearing today...because the manager who was to act on behalf of the company was at hospital for a procedure ...The Registry was not notified of this.”

- 3) Accordingly a further hearing was adjourned to today.
- 4) Today, when O Ltd was telephoned, the tribunal was informed that the manager was out of the office and believed to be at the bank, and that it was uncertain when she would return.
- 5) Following O Ltd's failure to attend at the first hearing, the tribunal noted in its adjournment order:

“I have indicated to O Ltd's company that should they be unprepared for the next hearing the matter may proceed in their absence.”

- 6) Accordingly, as is permitted, the tribunal continued with the hearing today, hearing only from XP.

Background

- 7) XP applied for an order that O Ltd reimburse her the sum of \$750.00 that she paid for blinds supplied and installed by O Ltd in a room XP intended to use as a home office.
- 8) When the blinds were installed, O Ltd submitted that the blinds were unfit for purpose in that *“there was a toxic smell emanating from the blinds that caused nausea, headaches and vomiting to all family members who entered and stayed in the room where the blinds were installed.”*

- 9) XP informed O Ltd that the blinds were unfit for use, and that her home office room was uninhabitable.
- 10) She then requested O Ltd remove the blinds and provide a set of blinds that *“did not produce such harmful odours”*. O Ltd duly took back possession of the blinds.
- 11) However, days later XP after inquiring about progress regarding a replacement set of blinds, was informed by O Ltd that there was nothing wrong with the blinds, and that *“the smell would dissipate in a few days with open windows.”*
- 12) O Ltd then declined to install a replacement set of blinds, and XP requested a refund of the purchase price being \$750.00, which O Ltd declined.
- 13) In the meantime XP has possession of the removed set of blinds and XP’s money.

Were the blinds of acceptable quality and fit for purpose?

- 14) After carefully considering XP’s submissions and listening to her submissions, I find as follows:
 - a) when supplied the blinds did emanate a smell that on balance was not reasonable; and
 - b) would not have been acquired by a reasonable consumer who was aware of their state at the time of purchase; and
 - c) therefore the blinds were not fit for purpose or of acceptable quality; and
 - d) such a failure was a failure of substantial character; that
 - e) entitled XP to cancel the contract; and
 - f) reject the blinds and obtain a full refund.
- 15) Following XP’s valid rejection of the blinds, the ownership of the blinds reverted in the supplier being O Ltd i.e. O Ltd now owns of the blinds.
- 16) I note O Ltd choose to re-take possession of the blinds, which of itself indicated O Ltd either intended to remedy the problem or replace the blinds, and they did neither.
- 17) In the meantime, O Ltd has refused to reimburse XP the purchase price but has had the use of XP’s money.
- 18) Further, according to XP, O Ltd has also threatened to charge her a storage cost for the blinds, that they choose to take repossession of.

Conclusion

- 19) My order is that O Ltd is required to refund XP the purchase price immediately.
- 20) XP was concerned about payment. Should O Ltd fail to comply with this order, then in addition to enforcement, it is open to XP to also pursue other options, that may reflect on O Ltd’s reputation.

Referee: John Hogan

Date: 12 December 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>.