



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 545

APPLICANT YI

RESPONDENT CU Ltd

The Tribunal orders:

CU Ltd are to pay \$2472.38 to YI on or before 16 November 2023.

Reasons

1. YI engaged CU Ltd ('CU') as the property manager for her rental property. Between July 2022 and March 2023, multiple and significant water leaks occurred at the property – as a result YI terminated the contract with CU in May 2023.
2. In July 2022 CU identified a leaking shower and taps at the property and sent a plumber to carry out repairs. That invoice was advised to YI after the event and was paid via deduction from the property income collected by CU. Another high water bill followed, and in August 2022 the same plumber was sent back to the property to carry out further shower repairs. That invoice was also deducted from property income. On the August plumber invoice, the plumber noted that a watermain test had been completed and that the main is leaking underground. The invoice stated that a quotation would be forwarded to replace the mains, either by thrusting or digging, with service locators needing to attend first to see if that was feasible.
3. CU's property manager at the time, YZ, communicated with YI via [online chat] about the mains repairs that were required. In September 2022 YZ obtained a quotation for the mains repairs for \$6600.00 and YI asked for a second quotation because it was so expensive. Before a second quotation was obtained, YZ carried out a routine property inspection and while at the house, noticed [water company] trucks in the street. She sent YI a message to say that [water company] had fixed the pipe and that it was lucky they did not spend \$6000 to carry out the repairs. YZ also told YI around that time that the tenants were reporting no more leaks.
4. No further repairs were undertaken at the property, but in December 2022 another large water bill was received. There had been a high water reading on the October bill but that was for the

period prior to all bathroom leaking having been repaired. The November water bill was only an estimate of water usage so continued leaking was not identified until the December bill. Once the December bill was received, CU submitted a fault report to [water company] on 21 December 2022 and [water company] advised of some occupier testing that could be carried out. [Water company] subsequently visited the property in mid-March 2023 and advised of an extremely high reading on the water meter, resulting in water charges of \$14,192.95. YI eventually received a rebate from [water company] of \$14,502.22.

5. YI contends that CU gave her incorrect advice in September 2022 that the leaks had been resolved, did not address the leaks in a timely manner, and had failed to obtain her consent for plumbing work carried out initially.
6. YI claims total damages of \$4985.57, being \$3290.61 in water charges that could not be claimed from the tenant because of the leaking (and that was not recovered in leak rebate payments from [water company]), \$971.04 refund of one of the initial plumbing invoices, and \$500.00 compensation for time YI spent sorting out the issues with [water company], rescheduling of her flight [overseas] and overdraft interest.
7. The issues to be determined are:
 - Did CU breach the contract by failing to perform its contractual obligations to a reasonable standard?
 - If so, what reasonably foreseeable losses resulted from the breach?

Did CU breach the contract by failing to perform its contractual obligations to a reasonable standard?

8. With respect to the plumbing bills in July and August 2022, I find that CU did not breach the contract by not seeking YI's consent for the initial visit because leaking water is generally a matter that needs urgent attention. I am satisfied, based on the evidence provided, that the bathroom plumbing repairs were necessary and YI was therefore liable to pay the repair costs. I am also satisfied that the repairs were to two separate bathrooms so there was no double-charging.
9. With respect to the leaking water mains, I find that CU's property manager made an unwarranted assumption, based on seeing [water company] trucks in the vicinity of YI's property, that [water company] had fixed the leak. She did this even though CU had been advised by the plumber they engaged privately that there was a mains leak and a quotation would need to be obtained for repair. That plumber would not have advised that a quotation was needed if it was an issue that [water company] was liable to address.
10. Advising YI that the leaking mains had been fixed, based on an assumption, and without any evidence of having checked that assumption with [water company] directly and/or actively monitoring the water readings at the property for the next few months to ensure there was no further issue, was a breach of contract on CU's part. In fact, the leaking from the mains had not stopped, as evidenced by the fact that S Plumbing was engaged to carry out that repair in April 2023, 6-7 months after the initial plumber had advised CU that this was an issue that needed repair.
11. I do not accept that asking the tenant about the leaking after the [water company] trucks were seen nearby was sufficient action on the property manager's part, because the tenant would only have been able to comment on the leaking that had been evident in the bathrooms and recently repaired – the water mains leaking was underground (as advised by the plumber) so the tenant would not know if it had stopped.

What reasonably foreseeable losses resulted from the breach?

12. I have little doubt that the high water bills received for the property in December 2022 and January, February and March 2023 were a result of ongoing leaking from the water mains. The leak was eventually fixed by S Plumbing in April 2023.
13. The reasonably foreseeable losses resulting from CU's breach are the excess water bills from December 2022 to April 2023 minus the amount of the rebate given by [water company]. The water bills for those months were \$1284.31, \$786.44, \$710.90 and \$14,192.95 and the rebate amount was \$14,502.22, leaving a loss of \$2472.38.
14. Any shortfall in water charges able to be collected prior to July 2022 has not been established as resulting from any breach on the part of CU.
15. YI has also claimed \$500.00 compensation for the considerable amount of time she spent trying to sort these issues out directly with [water company], the rescheduling of her flight and overdraft interest. These last two points have not been sufficiently evidenced and time is not generally compensated for unless it also represents an actual loss, such as loss of other income. I note further that the bills above would have included some component of charges which would have been payable by the landlord, YI, in the usual cause of events, and because that amount has not been able to be determined there is effectively an amount of 'general compensation' already included in the \$2472.38 CU is ordered to pay.

Referee Perfect

Date: 25 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>.