



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

[2024] NZDT 17

**APPLICANT**     **ZH**

**RESPONDENT**   **C Ltd**

**The Tribunal orders:**

C Ltd is to pay to ZH the amount of \$2,400.00. Payment is to be made on or before 4 March 2024.

**Reasons**

1. ZH rented a car from C Ltd on October 21, 2023. A bond and rental fee was paid for a two day hire period. The return date was a public holiday whereby C Ltd were closed. ZH was given instructions to return the rental car to the carpark outside the [petrol station] on [road], which is in front of the rental car premises.
2. ZH followed instructions and on the day of return the rental car was parked where she had been instructed, at the [petrol station].
3. When C Ltd picked up the car the following day the side of the car was damaged. C Ltd deducted \$2,400.00 from ZH's bank account. ZH claims a repayment of the \$2,400.00 is owed to her because she did not cause the damage. She claims the damage was done after delivering the car to where she was instructed to leave it by C Ltd.
4. ZH claims C Ltd deducted money from her account without informing her that they were going to do so due to damage they found when picking up the car.
5. The issue for the Tribunal to determine is whether there is a breach of the terms and conditions of agreement, Whether ZH did damage to the rental car? and whether C Ltd was entitled to deduct money from her account without being informed?
6. The relevant law that relates to contract is the Contracts and Commercial Law Act 2017.

*Whether ZH is liable for damages to the rental car?*

7. C Ltd claim that the rental car was not returned to their premises and therefore the responsibility of the car and any damage was with ZH. That she was to return the car within the period of time on her contract and the time it was parked at the [petrol station] was not within the timeframe or at their premises. However, in this claim ZH states she was instructed by C Ltd to return the car to the [petrol station] as they have an arrangement with the petrol station, due to security reasons, that the return cars be left at the [petrol station] when C Ltd are not

open, due to long weekends. ZH understood that when she returned the keys to the [petrol station] operator, the car was returned to C Ltd as per their instructions.

8. According to C Ltd that can not be deemed as the car being returned to C Ltd premises. C Ltd claim their terms and conditions were agreed to by ZH and the terms and conditions state:

**2. The term of hire of the vehicle starts and ends at the times specified in the rental agreement, subject to any extension or early return. Where the vehicle is returned outside of C Ltd's office hours, the hirer remains responsible for the vehicle until C Ltd regains possession of the vehicle when depot re-opens.**

9. C Ltd claim the car remained the responsibility of ZH as they had not taken possession of it. However, according to the terms and conditions of hire, on the date of the hire, the terms and conditions, signed by ZH, are different in relation to the return of car clause. The T&C states: **2. The Hirer shall hire the Vehicle for the period commencing at the time and on the date specified in the Term Sheet as Hire Start and concluding at the time and on the date specified in the Term Sheet as Hire End Hire Period.**
10. C Ltd claim ZH did not return the car at the time specified in the term sheet but parked the car at the [petrol station] in the 48 hours' time frame that she paid for. However, ZH had been made aware that she had to pay a full 48-hour fee for the rental even if the time schedule was at a lesser time. I find, while this was the case, the timeframe made no difference to the rental period, neither did it contribute to the damages to the car.
11. ZH claimed that there was no mention by C Ltd that if she left the car at the [petrol station], where she was instructed to leave it, the responsibility or liabilities of the car remained with her after she had left it there and before C Ltd had returned it to their depot and taken possession of it. ZH states it was not mentioned at all. C Ltd agrees they did not state specifically that that was the case at the time ZH picked up the car. Neither was it pointed out to her that the [petrol station] was not considered as being the depot. The terms and conditions signed by ZH was not the same as the terms stated above.
12. In the agreement signed by ZH the following clauses were stated;
- 3. The Hirer will, at or before the end of the Hire Period, either deliver the Vehicle to the place for return specified in the Term Sheet (or to such other place as agreed in writing with C Ltd) or obtain C Ltd's consent to the continuation of hire (in which case the Hirer shall pay additional hire charges for the extended Hire Period). If the Hirer fails to comply with this clause, the Hirer shall be liable for additional charges for the late return of the Vehicle as set out in this Rental Service Agreement.*
- 4. For the purposes of clause 3 above, C Ltd will not consider the Vehicle returned to it until the Hirer returns the keys for the Vehicle to the same C Ltd depot that the Vehicle was returned to.*
13. ZH relies on the clauses above in her hire agreement that state she delivered the car to where she was specifically instructed to by C Ltd (clause 3) . That she considered the car returned to C Ltd because she returned the keys to the C Ltd depot (the [petrol station]), as instructed and where she returned the car too, (clause 4). ZH did not consider that she was still responsible for the car after she left it where she was told to deliver it to and hand the keys over to the place where the car was parked as arranged by C Ltd as she had no knowledge of this.
14. I find the arrangement that was relayed and instructed to ZH by C Ltd is captured by Clause 3 of the old T & C's. I further find that the hirer, ZH, returned the keys to the same place where she parked the car and was instructed. According to C Ltd, they had used the same method of delivery after hours for many years. There was no evidence provided that C Ltd had told ZH at the time of hire that to leave the car at the [petrol station] was at her risk or that she would remain liable for any incidents until C Ltd picked the car up from their designated parking drop off.
15. I find ZH's delivery to the [petrol station] within the timeframe of her rental payment, a FULL 48 hours from pick up to drop off, is deemed as delivering the rental car back to C Ltd.

*Whether ZH did damage to the rental car.*

16. I have considered all submissions and testimony presented by both parties. I find it is more likely than not the damage to the rental car was NOT caused by ZH because at the time of the delivery to the [petrol station] she was able to get in and out of the car from the driver's side door and there was no damage when she parked it. On the testimony of C Ltd's service manager, he claimed that when he picked up the car on the first working day, the driver's door was unable to be opened and he had to enter the car from the passenger side of the car. He stated it was because the driver's door was too damaged and unable to be opened.
17. The CCTV footage of the area did not extend to the parked area, however ZH states that when C Ltd and the Police examined the CCTV footage of the forecourt, they would have identified ZH exiting the car from the passenger side if there was damage to the driver's door while she was in possession of the car and filling up the car with petrol on the forecourt. There was no footage presented that showed ZH exiting the car from the passenger side to get petrol. In other words there was no damage on the drivers door when she filled the car with petrol just prior to her parking the car.
18. I accept it is more likely on the balance of probability that the damage occurred some time after she parked at the [petrol station] by an unknown third party.

*whether C Ltd was entitled to deduct money from ZH's account without being informed?*

19. According to most rental car contracts, there is a charge for damage to a car during the rental period. ZH submitted she was entitled to be notified of extra charges and this process should have happened prior to the credit card being charged in order that she had opportunity to dispute any damage or if any repair charges are excessive. While there are terms in the hire agreement such as clause 21,22 and 23 of the terms and conditions that gives C Ltd full authority to deduct monies from the hirers credit card, this was challenged by ZH as being unfair as she was not informed prior to the deduction.
20. An unfair term of a standard contract may be considered unfair if it puts you at an unfair disadvantage by creating a significant imbalance in the rights and obligations between the hirer and the rental company, or if it would cause the hirer detriment if the rental company relied on the term and was not reasonably necessary to protect the rental company's needs.
21. ZH believes she was not given opportunity to understand that damage had been found and opportunity to dispute any liability. In this claim ZH was accused of causing damage and was given no opportunity to dispute this claim prior to the deduction of funds from her credit card. C Ltd submitted that even if ZH did not cause the damage, she is still liable because the car was not delivered back to the C Ltd premises but to the carpark next door.
22. Section 18 (7) of the Disputes Tribunal Act 1988 provides a discretion to the Tribunal to consider the generality of subsection (6), being the merits and justice and application of the law, but also consider any agreement or document that directly or indirectly bears upon the dispute between the parties, disregard any provision in that agreement or document **that excludes or limits**—(a)conditions, warranties, or undertakings; or (b)any right, duty, liability, or remedy that would arise or accrue in the circumstances of the dispute if there were no such exclusion or limitation.
23. I have considered all parties submissions on this issue. I find ZH was disadvantaged and denied opportunity to defend her position of non-liability of the damages claim from C Ltd. I find C Ltd have limited the right of remedy to ZH by enabling an authority in their terms and conditions to take money directly from ZH's credit card without a proper process of disputes

resolution or investigation as to liability of damage in the first instance. I have considered this provision of the Act carefully and apply the discretion to disregard the hire agreement clause 21,22,23 of the hire agreement terms and conditions because they excluded or limited any right or remedy of the disputed issues by ZH.

24. Having found that ZH did not cause the damage to the rental car, and that ZH had deposited the car to the car park area outside C Ltd premises under their instruction within her time period of 48 hours, ZH is entitled to receive a refund of the \$400.00 withheld as a bond and the \$2,000.00 that was taken by C Ltd from the credit card prior to notifying ZH or the damages or giving her an opportunity to defend her right or claim.

**Referee: S Connell**

**Date: 10 February 2024**



## 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>.