

**BETWEEN**

**EN**  
APPLICANT

**AND**

**ENE**  
SECOND APPLICANT

**AND**

**UM**  
RESPONDENT

**AND**

**UMU**  
SECOND RESPONDENT

Date of Order:

10 February 2017

Referee:

Referee Perfect

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the claim is dismissed.**

## **Facts**

[1] In August of 2016, two young cows belonging to EN crossed the 80-year old post - wire and batten fence separating her property from the respondents' property. EN and ENE report that the fence was in a poor state of repair such that the cows would have been able to simply step over it (rather than having caused damage to the fence) and that cows had got into the neighbouring property on several previous occasions.

[2] On 15 August 2016, ENE issued a fencing notice to UM and UMU in the prescribed form, proposing repairs to the fence at a cost of \$2000.00 plus GST and sharing the cost 50-50. The notice outlined the timeframe of 21 days for a cross-notice as required by the Fencing Act 1978.

[3] However, given the state of the fence and the need to keep the cows out of the neighbours' property, the fence repairs were carried out within days of the fencing notice being issued - the invoice for \$2300.00 from the fencing contractor being dated 19 August 2016.

[4] EN and ENE claim \$1150.00, being half the cost of the fence repairs. Neither UM nor UMU attended the hearing so this order is made in their absence.

## **Issues**

[5] The issues to determine are:

*Are UM and UMU liable to pay half the cost of the fence repairs?*

[6] I find that UM and UMU are not liable to pay half the cost of fence repairs in this case because work on the fence was carried out before the 21-day cross-notice period was up.

[7] Section 10(4) of the Fencing Act 1978 states that the occupier of any adjoining land shall not be liable to contribute to the cost of any part of the work that is done after the service of a fencing notice and before the expiration of 21 days from the date of the service of the notice.

[8] EN and ENE contend that the work was necessary straight away to contain their cows. I accept that their cows needed to be contained. However, the only exception to the

requirement for a 21 day notice period is contained in section 16 of the Fencing Act and this is for situations where a fence is destroyed or damaged by sudden accident or other cause.

[9] There is no evidence that an external event such as a storm was responsible for the state of the fence being such that the cows could step through to the neighbouring property (and of course if the cows themselves caused damage to the fence then EN and ENE would be fully liable for the cost of repair under section 17 of the Fencing Act). The use of the word “sudden” in section 16 means that gradual deterioration leading to failure of a fence is not covered.

### **Conclusion**

[10] The practical effect of this is that fencing notices must be issued in a timely manner if a fence is old and deteriorating, before the point of failure, if one wishes to share the cost of repair or replacement with adjoining property owners.