



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1696

APPLICANT LX

RESPONDENT GQ Ltd

The Tribunal orders:

1. The Respondent shall pay The Applicant \$1,715.00 by 17 June 2021.
2. The Respondent shall collect the washing machine from The Applicant's premises by 24 June 2021 or pay The Applicant an additional \$250.00 by that date to dispose of it.

Reasons:

1. The Applicant purchased a matching Respondent brand washer and dryer set from a shop on 17 February 2020. On 19 February 2021, the washing machine failed when the tip of a drawstring on a pair of shorts caught in a hole in the drum, torn off and destroyed the inner plastic drum.
2. The Respondent's technician advised that the drum could not be repaired and the whole machine would likely be replaced. The technician left and stated he would take care of it. The Applicant heard nothing further and after repeated efforts to contact the Respondent, was finally advised that the failure was not covered by the warranty and she would have to pay for the repair. No repair quote was provided.
3. The Respondent states that the failure was caused by a screw, likely from a pocket, which pierced the drum and this is not covered by the warranty. The Applicant disputed this and the Respondent subsequently acknowledged that this was not the case and that the damage was caused by the tip of a drawstring torn from a pair of shorts during the wash cycle, as originally stated by their technician.
4. The Applicant brings this claim pursuant to the Consumer Guarantees Act 1993 (CGA) and seeks a refund of the \$1,299.00 purchase price of the washing machine and the costs of having to go to the laundromat in the meantime in the amount of \$416.00, for a total claim of \$1,715.00.
5. The Respondent argues that the issues with drawstrings, as shown by anecdotes on "Reddit", are not uncommon and that this is not a warranty issue or manufacturing defect. RESPONDENT also suggested that the manufacturer of the pair of shorts might be liable or The Applicant's failure to follow the washing instructions on the clothing label might be at fault.
6. The issues are: Did the washing mashing meet the guarantees of acceptable quality pursuant to the Consumer Guarantees Act 1993? Did the Respondent comply with their obligations

pursuant to the CGA? Is The Applicant entitled to a refund and damages for consequential losses?

Did the washing machine meet the guarantees of acceptable quality pursuant to the Consumer Guarantees Act 1993?

7. The Consumer Guarantees Act 1993 (CGA) requires that goods are of acceptable quality, including free from minor defects, safe, durable and fit for purpose.
8. The Applicant claims that the drawstring garments, including shorts, are very common articles of clothing and a washing machine should be able to cope with it, as her previous washing machine had for 15 years.
9. The Respondent did not address the CGA in their defence of the claim and merely presented the personal opinions, personal laundering habits and experiences of their representative and speculation of other causes at the hearing. The "Reddit" Google research by the Respondent's representative related to clothing being tangled up by clothing drawstrings, not the destruction of the washing machine.
10. The Applicant's failure to wash the sports shorts in cold water, pursuant to the garment care label, did not cause, or contribute to the cause of the failure of the washing machine.
11. Contrary to the Respondent's representative's speculation, the shorts were not old and worn and were produced at the hearing in near-new condition, not showing any wear or fraying, but for the portion of the drawstring torn off by the washing machine.
12. The Respondent acknowledges that their claim that a screw caused the damage was not true and that they failed to investigate the failure properly or timely.
13. The Tribunal finds that there is no evidence that The Applicant misused her washing machine and that washing machines have and should be able to cope with a very common type of clothing without self-destructing in the first year. Accordingly, the washing machine does not comply with the CGA guarantees of acceptable quality, particularly durability and fitness for purpose.

Did the Respondent comply with their obligations pursuant to the CGA?

14. The CGA requires manufacturers to address consumer complaints of defects related to the guarantees of acceptable quality with repair or replacement and damages, if any.
15. The Respondent failed to address The Applicant's complaint sufficiently or timely. When the Respondent finally responded, they provided unfounded allegations and blamed The Applicant for the failure.
16. The Respondent has failed to acknowledge or address their obligations to The Applicant under the CGA.
17. Accordingly, the Tribunal finds that the Respondent failed to comply with their obligations pursuant to the CGA.

Is The Applicant entitled to a refund and damages for consequential losses?

18. The CGA allows The Applicant to claim a loss in value of the goods due to the failure. As the goods are inoperable and irreparable, and were only a year old, the loss is the total value paid.
19. As the goods were still under warranty, The Applicant was entitled to repair or replacement of the goods, which the Respondent failed to supply or address.

20. The CGA also allows for consequential damages that were a foreseeable result of the failure, here being weekly trips to the laundromat, exacerbated by the Respondent's failure to respond to The Applicant timely. The Respondent states that they accept The Applicant's claim for laundromat expenses of \$416.00 and will reimburse those expenses. The Applicant has now purchased a replacement machine elsewhere in order to mitigate any further losses and inconvenience. The Applicant is disappointed that she no longer has the matching set of washer and dryer that she had originally bargained for.
21. The Fair Trading Act 1986 (FTA) also applies and allows damages for deceptive and misleading conduct by those in trade. The Respondent misled The Applicant as to her rights and their obligations in this matter and provided false evidence as to the cause of the failure, which they retracted at the hearing.
22. The FTA allows The Applicant to cancel the contract and obtain a refund and damages. The Tribunal awards the refund of the purchase price of \$1,299.00, \$416.00 in consequential expenses, for a total of \$1,715.00.
23. The washing machine will have to be disposed of and this should not be at further expense or inconvenience to The Applicant. The Respondent is to collect the failed washing machine or pay The Applicant \$250.00 to organise disposal herself.

Referee: L. Mueller

Date: 31 May 2021



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 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 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 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>.