



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 141

APPLICANT MT

RESPONDENT CE Ltd

The Tribunal orders:

CE Ltd is to pay MT the sum of \$421.48 on or before 10 September 2022.

Reasons:

1. In June 2021 MT entered a 12 month contract with CE Ltd for internet and phone services. The plan she chose included unlimited data. MT experienced connectivity issues during the August lockdown, and at the end of September lost the connection for three days. On 1 CE Ltd advised her that it was shutting down the repeater tower her signal was coming off. CE Ltd offered an alternate solution, but with a fixed data plan. MT declined this as she believed it would not meet her family's needs and would cost significantly more. MT then signed up for a service from a different provider, that CE Ltd had suggested to her. CE Ltd refunded her outstanding credit and did not charge an early disconnection fee. However, it declined to refund the fee for installing the unit.
2. MT claims the sum of \$890.75 for a refund of the installation costs, plus reimbursement for the set up costs charged by her new provider.
3. The issues to be determined are as follows:
 - a. Was the service fit for purpose?
 - b. If not, what remedy is MT entitled to under the Consumer Guarantees Act 1993?

Was the service fit for purpose?

4. The Consumer Guarantees Act 1993 (CGA) implies guarantees into consumer contracts for the protection of consumers. Section 29 of the CGA provide a guarantee that services will be fit for purpose.
5. MT claims that the service was not fit for purpose as connectivity problems developed within approximately two months, and the repeater tower was decommissioned, terminating the service after 14 weeks and three days.
6. The parties agreed that CE Ltd failed to provide the service from October. At the hearing it was explained that the repeater tower had to be decommissioned, as the owner of the land where the tower was situated no longer wished to have it there. As the service had to be terminated, early in the 12 month contract it did not meet the guarantee of being fit for purpose.

What remedy is MT entitled to under the Consumer Guarantees Act 1993?

7. Under the CGA if a service supplied to a consumer fails to comply with a guarantee the consumer is entitled to a remedy. Where the failure cannot be remedied or is a breach of substantial character, then the consumer may cancel the contract and obtain a refund, unless the Tribunal orders that the supplier may retain whole or part of the money paid. The consumer may also claim consequential losses (s32, s38).
8. CE Ltd did offer another service to MT. However, it had a data cap, and was more expensive than the one she had signed up for, so it was not a like for like service. As the failure could not be remedied and CE Ltd could not offer a similar enough alternative, MT was entitled to cancel the contract and receive a refund.
9. CE Ltd has provided some refund, but has not refunded the set up costs, as that was a one off cost at the beginning of the contract. At the hearing CE Ltd pointed out that its equipment was still at MT's house and was possibly being used by her new provider. If that is the case, then CE Ltd is entitled to keep some part of the set-up fee, as it has provided items that are MT has retained and used.
10. In discussion in the hearing it was agreed that MT's new providers have used the cable, connectors and faceplate installed by CE Ltd. However, the mast is not being used. MT paid \$305.00 + GST for the set up costs. The value of the items still in use totals \$38.50 +GST, which must be deducted from the amount of the refund, bringing it to \$266.50 +GST, or \$306.48 inc GST. CE Ltd is also entitled to remove its mast, and MT has agreed that they may come to the property and do that.
11. MT also claims the costs of setting up with a new provider. At the hearing CE Ltd argued that she had other options, such as the service it offered her, or going back to copper cable based services. However, MT was entitled to sign up for a service to the one provided, and if she incurred extra costs in doing so, that constitutes a consequential loss. CE Ltd also pointed out that different providers have different ways of charging for set up costs, that CE Ltd deliberately keeps them low to attract customers, but other companies may not. Any consequential losses claimed have to be reasonable. While some variation in pricing is to be expected, it would not be reasonable to sign up with an extravagantly priced service provider if more reasonably priced service was available.
12. MT paid \$115.00 more in set up costs to her new provider than she would have paid had CE Ltd continued its service. I accept that this is a reasonable consequential loss. Although it is different to CE Ltd charge, it is not significantly so, and no evidence that the charge is unreasonable was presented. Therefore, I find MT is entitled to this amount. MT also claimed \$75.00 for time off working on her computer while the second installation was done. However, there is insufficient evidence that the time away from her computer resulted in this loss, and that she was unable to do the work at some other time.
13. For these reasons I find that MT is entitled to the sum of \$421.48 for a refund of the original fees, plus damages for the extra costs involved in setting up with a new provider.

Referee: K Rendall
Date: 15 August 2022



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>.