



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 110

APPLICANT **NS**

RESPONDENT **OA Limited**

The Tribunal orders:

1. The claim is dismissed.
2. NS is to collect the vacuum cleaner from OA Limited within 2 weeks at her expense, unless the parties negotiate a different arrangement between themselves.

Reasons:

1. On 29 June 2018, NS purchased a [vacuum cleaner] (the vacuum) and associated attachments, with a five year warranty, from OA Limited, for a total price of \$2,202.00.
2. On 22 February 2023, NS returned the vacuum for repair complaining that it was not turning on. There was no dispute that the machine was returned within the 5-year warranty period, or that it could only be used for vacuuming dry material.
3. OA Ltd sent the vacuum to its licensed repairer, but then refused to repair it under warranty because the repairer identified that it was liquid damaged, which it said voided the warranty as the warranty states that these machines are for dry vacuuming only. So, OA Ltd said it would cost NS \$288.85 if she wanted it repaired.
4. NS claims \$2,300.00 which was increased with consent from \$2,202.00, for the vacuum price and \$90.00 for the Disputes Tribunal fee.
5. The issues to be determined are:
 - a) Is the vacuum of an acceptable quality?
 - b) If not, was NS entitled to reject the vacuum cleaner?

Is the vacuum of an acceptable quality?

6. Under the Consumer Guarantees Act 1993, goods supplied to a consumer must be of acceptable quality (s6). Section 7 provides that goods are of an acceptable quality if they are as fit for all the purposes for which goods of that type in question are commonly supplied, acceptable in appearance and finish, and free from minor defects, and safe and durable as a reasonable consumer fully acquainted with the state and condition of the goods, including any hidden defects would regard as acceptable, having regard to the nature of the goods, the price, any statements made about the goods on any packaging or label on the goods, the nature of the supplier and the context in which the supplier supplies the goods, any representation made about the goods by the supplier or the manufacturer, and all other relevant circumstances of the supply of the goods.
7. However, section 7(4) provides that goods will not fail to comply with the guarantee of acceptable quality if – they have been used in a manner or extent which is inconsistent with the manner or extent of use that a reasonable consumer would expect to obtain from the goods and otherwise the goods would have complied with the guarantee of acceptable quality.
8. There was no dispute that the vacuum was not turning on when it was returned for repair, or that it was still under the 5-year warranty and that its purpose was for vacuuming dry material

only. Instead, NS' position is that the repair should be covered by the warranty because it was within the warranty term, it was an expensive vacuum, and she says that she did not use it to vacuum up liquids. Instead, her theory for the liquid damage was humidity, or that it was damaged while stored at OA Ltd.

9. However, on balance, I find that the vacuum was of an acceptable quality and that the cause of the failure was because it had been used to suck up liquid which was inconsistent with its purpose as a dry vacuum. I say this for reasons which include:
 - a. There was no dispute that it had been working for near on 5 years until it stopped turning on a few days before it was returned;
 - b. I accept that the repair report identified that the vacuum was liquid damaged;
 - c. I accept OA Ltd.'s evidence that the liquid was in the motor, and preferred OA Ltd explanation that as this componentry is sealed, the logical cause was that it had been used to suck up liquid, especially when both parties acknowledged that there was no external signs of water damage;
 - d. So, I also preferred OA Ltd.'s evidence that humidity was the unlikely cause when I accept that had this been so, they would likely have received multiple complaints, which they said had not been the case;
 - e. As the vacuum wasn't turning on when it was returned to OA Ltd, I saw no evidence to support NS' position that the damage occurred while at OA Ltd, and find this unlikely.
10. As I accept that on balance the vacuum failed because it was used in a manner inconsistent with its purpose, I find that NS has failed to establish the vacuum was not of an acceptable quality. So, it is not necessary to determine the next issue.
11. However, as discussed at the hearing, in any case the Disputes Tribunal application fee is not recoverable except in exceptional circumstances which do not apply here.
12. The claim is dismissed.

Referee: G.M. Taylor

Date: 26 June 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>.