



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 563

APPLICANT **ST**

RESPONDENT **F Ltd**

SECOND **NS**
RESPONDENT

The Tribunal orders:

1. NS is to pay the sum of \$2,990.55 to ST on or before Monday 27 November 2023.
2. NS may arrange to collect the damaged vanity from ST at a mutually convenient time. If it has not been collected by 4 December 2023, ST may dispose of it as he sees fit.

Reasons:

1. In May 2022, ST purchased a bathroom vanity unit for \$1,968.00 from F Ltd and had it installed at his home by his builder NS. He claims that within two months the vanity was delaminating at the side. Both NS and F Ltd have acknowledged there is a problem, but neither of them has accepted responsibility for the problem.
2. ST has filed a claim against F Ltd and NS for \$2,968.00 for the cost of purchasing and installing a replacement vanity.
3. NS did not attend the hearing, but his written response to the claim has been taken into consideration. The absence of a party does not prevent the hearing going ahead.
4. The issues to be determined are:
 - a) Was either F Ltd or NS responsible for the problem with the vanity?
 - b) What remedy, if any, should be given to ST?

Was either F Ltd or NS responsible for the problem with the vanity?

5. NS noted that the custom-wood edges of the vanity had not been taped for protection against water, and that custom wood is “never a good idea” in a bathroom.
6. However, F Ltd stated that MDF and particle board are widely used in bathrooms, and are fit for purpose so long as they are installed properly. F Ltd pointed out that its installation instructions specify the edges must be sealed with silicon to stop water reaching the carcass, which had not been done. Also, the top was installed hard against the wall whereas the actual unit was not, resulting in the white top being essentially flush with the edge of the vanity. If the vanity had

been installed hard against the wall, there would be a 7mm overhang along the edge to help protect the unit.

7. I therefore find that the responsibility for the failure of the vanity lies with NS. The inadequate installation amounts to a failure under s 28 of the Consumer Guarantees Act 1993 (CGA), which provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill.

What remedy, if any, should be given to ST?

8. The failure to install the vanity with reasonable care and skill cannot be remedied by completing the installation properly, as the vanity has been damaged by water ingress. ST is entitled under s 32(c) of the CGA to recover damages for the cost of repairing or replacing the damaged vanity, as a reasonably foreseeable consequential loss.
9. I accept that repair was not a reasonable option, since F Ltd said it would be difficult to remove the top without damage and it would not be in an acceptable condition to reuse. The damaged vanity has now been removed is not in a good state. Also, repairing the damaged panel would take around four weeks, during which time the family would be without a bathroom vanity.
10. Therefore I accept that ST is entitled to recover the cost of purchasing and installing a replacement vanity. He provided receipts for those costs, which totalled \$2,990.55. Since NS only had notice of a claim for \$2,968.00, ST is limited to the amount of his claim. I have therefore made an order for payment of \$2,968.00.
11. ST said he listed the damaged vanity on [online marketplace] at a \$1 reserve and did not get any bids. However, in case there is any residual value in the damaged vanity, I have given NS an opportunity to have it if he wishes.

Referee: E Paton-Simpson

Date: 6 November 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 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>.