



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1578

APPLICANT IT

RESPONDENT UO

The Tribunal orders:

UO is to pay the sum of \$2,568.10 to IT on or before Wednesday 25 August 2021.

Reasons:

1. On 15 December 2020, IT and another person entered into an agreement to purchase a property at [address], from UO and another person for \$550,000.00. Settlement took place on 29 January 2021.
2. IT now claims \$2,800.00 from UO, comprising \$350.00 for cleaning, \$150.00 for removal of a cat door, \$150.00 for tiling inside a wardrobe, and \$2,150.00 for missing sliding wardrobe doors. He also claims compensation for swipe cards and keys not provided.
3. UO did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issues to be determined are:
 - a) Did UO breach the contract?
 - b) What damages, if any, are payable?

Did Mr UO breach the contract?

5. The common law of contract allows parties to enter into legally binding agreements. A contract for sale of land must be in writing.
6. IT claimed that UO failed to clean the house adequately. However, there was no obligation in the written agreement to clean the house before settlement. There is generally no obligation to clean a house before settlement unless expressly specified in the contract. If a large amount of rubbish is left behind, this could be a breach of the obligation to provide vacant possession, but there was only a small amount of dust and debris on the floors, so there is no breach in relation to cleaning.
7. IT said that UO verbally promised to remove the cat door and to tile inside the wardrobe. However, in the absence of any mention of those obligations in either the written contract or the settlement communications, I find that agreement to attend to these matters has not been proven.

8. IT said that the wardrobe had sliding doors at the time he entered into the agreement and at the time of inspection, but provided evidence that these doors were missing at the time he took possession. Since these doors were part of the property at the time of the contract, I find that the absence of the doors at the time IT took possession was a breach of the contract.
9. IT also said that the agent told him there were three sets of keys and three swipe cards for the property, but that UO only supplied only one key and one swipe card. He also says that the property manager could see in the system that UO had tried to access the property after settlement, so IT changed the locks. I find that failure to provide all keys and swipe cards was a breach of clause 3.4 of the agreement.

What damages, if any, are payable?

10. I am satisfied on the evidence presented that changing the locks and replacing swipe cards cost IT \$418.10. He produced a quotation for \$2,528.15 for the cost to replace the sliding doors to the wardrobe. However, given there is only one quotation and the amount originally claimed was only \$2,150.00 for this item, I find that he can only recover \$2,150.00.
11. The total sum payable is therefore \$2,568.10.

Referee: E Paton-Simpson

Date: 11 August 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 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>.