



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 25

APPLICANT **KM**

RESPONDENT **BE**

The Tribunal orders:

KM's claim for \$345.00 is dismissed.

Reasons:

1. On 12 July 2021, KM purchased a [Television company] TV unit from BE. KM paid \$300.00 cash for the unit, which was enable her family to watch a rugby game on 17 July 2021.
2. The unit did not function as expected on 17 July 2021, and KM contacted BE to tell her she no longer wanted the unit and wanted a refund. BE gave evidence that after hearing from KM, she contacted the [Television company] support team in [country], trying to ascertain what the issues with the unit were and whether they could be remedied.
3. On 22 July 2021, KM filed a claim for the refund with the Disputes Tribunal.
4. BE subsequently offered KM a refund of the \$300.00 that she paid for the TV unit if she returned it, but KM requested a payment of \$345.00 to cover 'her costs'.
5. BE refused to pay the extra \$45.00. KM then retained the [Television company] unit.
6. KM claimed that even if she had accepted the offer of \$300.00, she could not return the unit because of the covid lockdown that took place in August of 2021.

Issues:

- a) *Is KM entitled to a refund for the [Television company] unit under the Consumer Guarantees Act 1993?*
- b) *Has KM forfeited her right to a refund due to retaining the unit for 9 months?*

Reasons:

Is KM entitled to a refund for the [Television company] unit under the CGA?

7. The right of consumers to have defective goods remedied replaced or refunded is covered under the Consumer Guarantees Act 1993 (CGA) which provides a set of guarantees for consumers. One of the guarantees is that the goods purchased will be 'fit for purpose'. If the guarantees are breached, the consumer is entitled to a remedy, one of the remedies available being a refund of the purchase price.
8. When KM discovered the [Television company] unit was defective, she requested a refund from BE. Although BE gave evidence that she first tried to ascertain the problem with the [Television company] unit and rectify it via the [Television company] support team in [country], she subsequently agreed to provide a refund of \$300.00 to KM.
9. KM stated that she refused the refund because she wanted \$300.00 refund for the [Television company] unit plus \$45.00 to cover her costs as she had filed in the Disputes Tribunal.
10. KM also claimed that even if she had wanted to, she could not have returned the unit to BE due to the covid lockdown of August 2021.

Has KM forfeited her right to a refund due to retaining the [Television company] unit in her possession for 9 months?

11. KM has had the [Television company] unit in her possession for 9 months.
12. Section 20 of the CGA states that under certain circumstances, the consumer may lose the right to reject the goods.

20. Loss of right to reject goods

The right to reject goods conferred by this Act shall not apply if—

(a) the right is not exercised within a reasonable time within the meaning of subsection (2)

13. Subsection 2 goes on to state that the term 'reasonable time' means a period from the time of supply of the goods in which it would be reasonable to expect the defect to become apparent, having regard to the type of goods and the use to which a consumer is likely to put them, the length of time for which it is reasonable for them to be used, and the amount of use to which it is reasonable for them to be put before the defect becomes apparent.

22 Manner of rejecting goods

(1) The consumer shall exercise the right to reject goods under this Act by notifying the supplier of the decision to reject the goods and of the ground or grounds for rejection.

(2) Where the consumer exercises the right to reject goods, the consumer shall return the rejected goods to the supplier.

14. Section 22 of the CGA goes on to list certain circumstances under which the goods do not have to be returned, for example, the failure to comply with the guarantee, or the size or height or method of attachment of the goods makes the cost of transporting the significant, in which case

the supplier must collect the goods. Section 22 (2) provides that it is the responsibility of the consumer to return the goods unless they have already been returned to or retrieved by the supplier.

15. In this case, KM became aware of the defect with the product within 5 days of her purchase and she advised BE that she wanted a refund of the purchase price.
16. KM was offered a refund of the purchase price, and as per section 22 of the CGA, it was then her responsibility to return the [Television company] unit to BE.
17. However, due to KM requesting \$45.00 more than the \$300.00 purchase price to cover her costs of filing at the Tribunal and BE's unwillingness to pay KM more than the purchase price, KM said at the hearing that she opted not to return the unit to BE. I find that KM did not have grounds to claim more than the purchase price of the [Television company] unit from BE.
18. KM also claimed that even if she had wanted to return the unit, she could not have done so due to the Level 4 covid lockdown in Auckland that commenced on 17 August.
19. I am satisfied that KM had sufficient time between 17 July when she discovered the fault with the unit and 17 August when the lockdown began, to return the unit and obtain her refund from BE, had she accepted it. Furthermore, the lockdown shifted to Level 3 on 17 September 2021, and KM could have returned the unit then.
20. I find that by retaining the [Television company] unit in her possession for 9 months, KM failed to exercise her right under the CGA to reject the goods and obtain a refund because the right was not exercised within a reasonable time as required by section 20 of the CGA.
21. KM has claimed her costs in filing at the Tribunal. The Tribunal is not able to award this cost as section 43 of the Disputes Tribunals Act 1988 provides that costs are not to be awarded against any party unless a claim falls within the narrow exceptions specified. This claim does not fall within the stated exceptions.
22. KM's claim is dismissed.

Referee: Kaho

Date: 29 April 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>.