



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2022] NZDT 2

**APPLICANT**      **LQ Limited**

**RESPONDENT**    **JN**

**SECOND**          **BN**  
**RESPONDENT**

**The Tribunal orders:**

1. JN and BN are to pay to LQ Limited the sum of \$189.03 on or before 14 March 2022.

**Reasons**

1. BN contracted JI of LQ Limited ("LQ") to repair a hot water cylinder. LQ assessed the problem to be a blown element and fuse. An electrician provided the element and fuse and LQ installed the element and refilled the cylinder. The electrician replaced the fuse and checked the circuits.
2. LQ sent an account on 19 July 2021 for \$524.54. This account remains unpaid. LQ has filed a claim seeking payment.
3. The respondents defend the claim on the basis that the cylinder lost heat again three months later. Just prior to this happening, JI had attended the property to follow up late payment of his account for the first repair. The respondents discovered that the loss of heat in the cylinder was caused by the fuse being removed. The respondents consider that JI unlawfully entered the fuse box, which is on the exterior of the house, and removed the fuse out of frustration for not having received payment.
4. The respondents are also concerned that the account is excessive for the work done.
5. The issues to be resolved are:
  - (a) Is it more likely than not that JI removed the fuse?
  - (b) If so, how much is payable for the work done?

**Is it more likely than not that JI removed the fuse?**

6. The Consumer Guarantees Act 1993 provides that a service should be provided with reasonable skill and care (s28). There is no dispute that the work done on the cylinder was done properly. However, the responsibility to act with due care relates not only to the plumbing work done, but

also to the care shown to the customer in the management of the account. If JI was found to have tampered with the fuse, this would amount to a substantial failing of the guarantee. Tampering with a customer's property in such a way that would deprive them of hot water out of frustration at a payment delay is an intrusion outside the acceptable bounds of the management of the account. A reasonable consumer would not contract for those services had they known this would ensue, thus meeting the test of substantiality (s36). A substantial breach gives a right to cancel, and to non-payment (s32, s36, s38). It would then be LQ's onus to establish there was some value left in the work for which it was nonetheless just that it be paid (s39). JN and BN could then seek to prove a set-off to any such payment of their consequential losses (s32(c)).

7. This is not a case in which there can be certainty about what occurred. However, in a civil matter, findings are made only on the balance of probabilities. In other words, I must assess the evidence available and make a finding about what is most likely to have happened.
8. On 19 October 2021, JI attended the property to seek payment of his overdue account. He knocked on the door, and when there was no answer, he walked down the side of the house, past the fuse box. The reason for doing so is disputed. The respondents believe he used this as an opportunity to remove the fuse. BN wrote a statement that she recalled hearing a noise similar to the fuse box door opening, which alerted her to his presence on the property, and that, with hindsight, she realised he had tampered with the fuse box. JI states that he walked down the side of the house solely to get around to the front garden, where he believed he would find BN. He had knocked on the door, looked through the window, heard music from the lounge, and seen a ranchslider open on the far side of the house. He walked past the fuse box to approach the ranchslider. JI states he did not tamper with the fuse box. He then states that he spoke with BN at the front door, and she agreed to pay the account when she was in a position to do so, which she hoped would be on 23 October.
9. Three days later, on 22 October, BN texted her husband and advised that the cylinder water was not hot. A few days later, JN called JI to ask if he would fix the issue, but JI advised he would not attend until he was paid for the first repair. No payment had been made on 23 October. JN arranged an electrician himself on 27 October. The electrician attended and advised on 29 October that the water had gone cold because the fuse in the outside box had been removed.
10. One of three things has happened:
  - (a) either JN and BN have colluded to send each other a series of messages about the water going cold, when in fact one or both of them has removed the fuse to discredit JI and avoid paying his account; or
  - (b) A third party has removed the fuse; or
  - (c) JI was frustrated with non-payment and removed the fuse.
11. There is insufficient evidence to support the first two scenarios. JN explained that he and BN are separated, and he has had a head injury, and can be forgetful about details. He had genuinely forgotten to pay. Given the relatively modest size of the account and the intention to pay the account on 23 October as expressed to JI, the alleged scheme to avoid payment seems disproportionate. It would require a fabricated exchange of texts and requires me to accept that BN intentionally turned off her hot water for long enough to be a considerable nuisance. This option does not add up.
12. There is no reason why a third party would remove the fuse. It is common for fuse boxes to be outside the front door area, and they are not usually locked. Fuses are not an item of interest to anyone else.
13. Of the three scenarios, I find that the third is the most likely: that JI took out the fuse. Whilst I cannot be certain this happened, I only need determine the matter for the purposes of these proceedings on the balance of probabilities. I have reached this conclusion for the following reasons:

- (a) JI demonstrated a degree of interest in getting his bill paid that exceeds the normal avenues taken. Before sending the overdue account to debt collection, he decided to attend the property himself. This is an unusual step. It is also unusual that he should look through the window and decide to walk around to the front garden. A contractor knocking on the door to seek payment is a confronting action for some customers, particularly for a woman living alone. Walking around to the front lawn uninvited is another level of intrusion that is unusual.
- (b) JI states that he knocked on the door, got no reply, saw signs of occupation by looking in the window, and decided to walk around the other side of the house to the ranchslider. As JI then had a conversation at the front door, his appearance at the other side of the house is not corroborated. BN states she heard the noise of the fusebox first, before the knock on the door. I cannot make findings this was so based on her written statement. However, it is noted that it is not possible to find that JI actually got to the ranchslider, and therefore not possible to relate his movements to that intention.
- (c) I have had regard to the fact that the water did not cool off until 22 October, three days later. However, this gap does not disconnect the events, particularly if BN has not used much water over those days. I have also had regard to the fact that JN did not contact JI for several more days. However, he does not live at the property, and the length of time taken to address the matter does not negate the coincidence of the attendance and the missing fuse. I have had regard to the Police Report on the matter. The Police had no greater evidence than was presented at the Tribunal, and they took the matter no further. It does not assist in weighing the evidence for these proceedings.
- (d) In summary, JI had the opportunity to remove the fuse, and was sufficiently annoyed by the lack of payment of his account to not only attend the home in person, but to attempt to gain contact when there was no answer to the door by patrolling the exterior. It seems sufficiently unlikely that anyone else removed the fuse, and in this setting, I consider it most probable that JI was responsible for why the water went cold.

#### **How much is payable for the work done?**

14. Having determined that JI is likely to have removed the fuse, JN and BN are not required to pay unless there is value in the job for which it is just that they pay (s39).
15. Having regard to all the circumstances, JI ought not to be able to recover his own charges on the account, but his fee in part includes the work of a third-party electrician. As this is an identifiable component of the account it is just and practicable that this cost be brought into account.
16. The first electrician's part of the account was \$317.54 (incl GST). JN was concerned that this account was excessive. I was unable to make a finding that this was so without a report on the matter from a suitably qualified electrician. JN was also concerned that he could have been double charged GST. The discussion on this point at the hearing gave me the impression that JI was unaware of his responsibilities under the Consumer Guarantees Act 1993 to charge no more than a reasonable price (s31). JI intimated that he could on-charge any sum he liked. This is incorrect. However, I have no reason to assume he had added GST to both accounts incorrectly.
17. However, JN and BN were put to the expense of another electrician to replace the fuse (\$128.51). As this is a recoverable consequential loss, this cost has been deducted from the first electrician's account.
18. For these reasons, an order has been made that the sum of \$189.03 is due.

**Referee: J Robertshawe**

**Date: 14 February 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>.