



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

District Court

[2020] NZDT 1537

**APPLICANT**      **NE & LE**

**RESPONDENT**    **IN**

**SECOND  
RESPONDENT**    **KC**

**THIRD  
RESPONDENT**    **CN**

**The Tribunal hereby orders:**

1. CN is joined as a respondent at the request of the parties.
2. IN, KC and CN, jointly and severally, are to pay the sum of \$368.75 to NE and LE on or before Monday 3 August 2020.

**Reasons:**

1. On 30 July 2019, NE and LE entered into a sale and purchase agreement to buy the respondents' house using the standard form ADLS/REINZ Agreement for Sale and Purchase of Real Estate (ninth edition 2012(8)). Settlement was on 8 November 2019. In early December 2019, the purchasers had the heat pump inspected by [Company], which reported that the remote control was non-functional, the bottom vane was not opening and closing due to broken plastic, the indoor coil was only achieving 37 degrees on heat mode (the target being 45-52 degrees), and the refrigerant was low and banned for sale in New Zealand.
2. The applicants now claim \$3,740.00 for the cost of a new heat pump since spare parts and refrigerant are not available to repair the old heat pump.
3. The issues to be determined are:
  - a) Was the heat pump in reasonable working order?
  - b) If not, what damages are payable?

**Was the heat pump in reasonable working order?**

4. Under clause 7.2(1) of the agreement, the vendor warranted that the heat pump would be delivered to the purchaser in "reasonable working order" at settlement. The respondents said that the heat pump was working when they sold the property, aside from the remote. However, since settlement took place in spring when it was not very cold, the heat pump was not being

required to produce much heat, and some of its issues may not have been obvious to the vendors. I find it more likely than not that all of the issues identified by [Company] were present at the time of settlement. LE said she had not been using the pump before finding it to be faulty, which makes sense given the time of year.

5. The vendors pointed out that the pump was old and was still functioning to some degree, but I find that it was not in reasonable working order because it had significant faults that affected multiple aspects of its functioning.

**If not, what damages are payable?**

6. The normal measure of damages for breach of contract is the amount required to put the innocent party in the same position as if the contract had been performed. If the heat pump had been in reasonable working order, it would still have been a fairly old heat pump (12 years) with a refrigerant that may not be replaceable. It is quite likely that it would have been necessary or more economic to replace it with a new heat pump even if it had been in reasonable working condition. The cost of a new heat pump cannot be awarded as damages, because this would put the purchasers in a much better position than if the contract had been performed.
7. One way to measure the compensation required would be to calculate the expected value of a heat pump after twelve years of depreciation and subtract the salvage value of the heat pump with its faults (presumably zero). Using Inland Revenue depreciation rates for heat pumps acquired before 2010, and assuming the cost twelve years ago was around the same as now (\$3,740.00), this would yield \$0 (zero) using the straight-line method or \$139 using the diminishing value method.
8. However, depreciation calculations may not be a good way of measuring the value of an old heat pump that is still in reasonable working condition. Also, basing damages on the value of a second-hand pump would take no account of the fact that the purchasers have been put in the position of first attempting to repair the old pump and then facing the cost of a new pump. The courts have held that basing damages only on the depreciated value of an item may under-compensate the innocent party. In situations where replacement of a faulty item would necessarily involve betterment, the courts weigh up various factors, including the inconvenience of immediate expenditure.
9. The purchasers spent \$248.75 on the [Company] inspection with the intent of repairing the heat pump, and this sum was wasted since the heat pump could not be repaired. They have also suffered the inconvenience of having to replace the heat pump shortly after purchasing the house. Taking these factors into account, I find that the sum payable in damages is \$368.75.

**Referee: E Paton-Simpson**

**Date: 20 July 2020**



## 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 28 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/finances/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>.