



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1413

APPLICANT RT Ltd

RESPONDENT LC

**SECOND
RESPONDENT** NC

The Tribunal hereby orders:

1. LC is to pay RT Ltd \$711.32 on or before 13 August 2020.
2. NC is struck out as a respondent party to the claim.

Reasons:

1. RT Ltd operates a wheel clamping and towing business. RT Ltd alleges it clamped a vehicle owned by NC, but driven by LC, in a vehicle park designated for "D" customers and the clamp was removed and left damaged by LC. RT Ltd claims \$1414.45.
2. The issues I must decide are:
 - a. Did RT Ltd have the authority of the land occupier to operate a clamping business at D?
 - b. Did LC consent to accepting the risk of being clamped and being required to pay a fee to have the clamp removed?
 - c. Did LC remove and damage the clamp?
 - d. Is RT Ltd entitled to claim debt collection fees and an administration fee?
 - e. Are the costs claimed reasonable?

Did RT Ltd have the authority of the land occupier to operate a clamping business at D?

3. The law that applies is the law of civil trespass to land. Parking on another's land is deemed trespass if the person parking does not have the authority of the land occupier.
4. In this claim, RT Ltd states it is acting as an agent for the land occupier. RT Ltd provided copies of the contract between the land occupier and RT Ltd.

5. The contract provides for RT Ltd to act for the land occupier and for this reason I find RT Ltd did have the authority of the land owner to operate a clamping business on its behalf and is entitled to make this claim in its own right.

Did LC consent to accepting the risk of being clamped and being required to pay a fee to have the clamp removed?

6. If a land occupier gives clear notice the land is not available for private parking, that a person breaching the notice may be clamped and a fee charged to remove a clamp then a person breaching the clear notice is deemed to have accepted the risk of clamping and an associated fee.
7. NU, the director of RT Ltd, states there are several notices on the wall in front of the parking stating parking is for D employees or customers. He states there is also a clear notice giving warning this is a no parking zone, it is private property and any vehicles without the correct authority to park will result in the vehicle being clamped or towed and a release fee of \$250.00.
8. LC, the driver of the vehicle that was clamped, told the Tribunal he reverse parked alongside another vehicle, got out of his vehicle and went down an alley and he did not see any notice about clamping. He states he does not believe the notice was in place the night when he parked. He also states that when he later viewed the notice it was at about hip height and unable to be easily seen. He states he has parked in this parking area many times, he was aware it was a private park and he has never had any issues parking before.
9. LC accepted the park was a private park and therefore knew he was on private land. RT Ltd provided photographic evidence the sign regarding towing or clamping was in place at the time LC parked in the carpark owned by D on 30 May 2019. I accept he may not have seen the sign regarding towing or clamping on this date. However, wilful blindness does not excuse LC from taking a few seconds to check the conditions upon which he was parking on private land. LC knowingly parked on private land, a clear sign was in place about towing or clamping and for these reasons I find LC has accepted the risk of being clamped or towed and the associated release fee.

Did LC remove and damage the clamp?

10. RT Ltd alleges LC removed the clamp and in doing so caused irreparable damage to the clamp. RT Ltd provided photos of the vehicle with the clamp attached and the damaged clamp later on the ground alongside where LC's vehicle had been parked. RT Ltd states that LC has provided the Tribunal with different versions of events; one where he hopped in his car, driven away and then saw a clamping notice on his windscreen; and, one where he returned to the car and saw the notice on the windscreen. RT Ltd states that if the clamp had been removed by some unknown person LC had to walk around or over the clamp on the ground to get in to the driver's door. NU, for RT Ltd, states the clamps must be removed with force and it is unbelievable that a complete stranger would come along and remove the clamp from LC's vehicle.
11. LC states he walked out of the alleyway with his partner and child, got in the car and saw the notice on the windscreen. He states he did not see the clamp because he was not expecting to see a clamp. He states he stopped and then saw the clamp on the ground. He reiterated he did not see the clamp and did not remove it. He states he came back later and took photos of the clamp on the ground.
12. The photos show the position of the clamp on the ground. LC's evidence regarding what he saw when he came back to his car, and his sequence of events is inconsistent. I find it highly unusual that LC would drive away and come back to take photos of the clamp on the ground. I find it very unlikely that a random stranger would forcibly remove the clamp from LC's vehicle. For these reasons, I find it is most likely that either LC removed the clamp himself or he was responsible for arranging the removal of the clamp and in the process of doing so caused damage to the clamp.

Is RT Ltd entitled to claim debt collection fees and an administration fee?

13. A contract is formed when two parties agree to exchange something of value. Both parties must agree the essential terms of the contract.
14. NU, for RT Ltd, states that the notice includes that those parking accept his company's terms and conditions as on the company website.
15. LC states he did not see the sign.
16. The placement of a notice is insufficient to create a contract that is binding on both parties. Further, there must be an offer and consideration to form a contract. On the face of it, RT Ltd has made an offer but there is no consideration. For these reasons I find there is no contract and RT Ltd is not entitled to claim debt collections fees or administration costs.

Is the amount claimed reasonable?

17. RT Ltd claims \$1414.45 comprising clamp release fee, replacement clamp, debt collection fees and administration costs.
18. I have found above RT Ltd is not entitled to claim debt collection fees and administration costs.
19. RT Ltd is entitled to claim the \$250.00 clamp release fee because this amount is clearly stated in the notice on the wall.
20. RT Ltd claims \$500.00 for the damaged clamp. Copies of advertisements were provided and show costs of \$456.32 plus \$5.00 delivery. NU told the Tribunal he definitely paid \$500.00 but he could not locate the invoice because the documents were stored. NU also told the Tribunal the clamps RT Ltd purchases are not the same as advertised locally and the ones RT Ltd purchases are brought in from overseas. LC states he has seen clamps advertised at CP for \$65.00, CT for \$85.00 and questions the prices provided by RT Ltd. I accept the clamps are likely not the same as at CP and CT and the photos show the damaged clamp is identical to the advertisements provided by RT Ltd. Because RT Ltd has not provided a copy of the original invoice I find the amount of \$461.32 is reasonable.
21. In sum, LC is liable for the amount of \$711.32 being \$250.00 and \$461.32.

Referee: C Murphy
Date: 27 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 of 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/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>.