



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

District Court

[2019] NZDT 1377

APPLICANT      TS

RESPONDENT    CT Ltd

**The Tribunal hereby orders:**

CT Limited is to pay the sum of \$12,672.20 to TS on or before 15 August 2019; and

CT Limited is to (at its own cost and at a time arranged with Ms S) remove the shed from Ms S's property within four weeks of the above amount being paid, including disconnecting the electrical wiring using a registered electrician, removing all rubbish and leaving the grounds in a tidy condition.

Reasons

1. Ms S purchased a shed/cabin from CT Limited ('CTL') in March 2017. The contract price was \$11,475.00 including delivery to site and assembly. CTL's brochures about their cabins stated [Redacted – weatherproof and watertight].
2. The cabin was assembled on site in early May 2017. Around March 2018 Ms S noticed a black substance under one of the opening windows, and a darker colour in the panel grooves and contacted CTL. From that point, there were numerous communications back and forth about whether the cabin was water tight and whether there was mould in the interior.
3. Ms S wishes to reject the cabin and obtain a refund as well as consequential losses, including third party installation costs and damage to her belongings - her claimed losses exceed \$15,000.00 and she has reduced her claim to \$14,999.00.
4. The issues to determine are:
  - Does the Consumer Guarantees Act 1993 ('CGA') apply?
  - Does the cabin meet the guarantees for goods in the CGA?
  - Is any failure of guarantee a failure of substantial character?
  - What remedy, if any, is available to Ms S?

*Does the Consumer Guarantees Act 1993 ('CGA') apply?*

5. I find that the CGA applies because this type of cabin can be moved by a hiab (it wasn't brought to Ms S's site this way because of access issues to do with the particular site), and that means it fits within the CGA's definition of goods:

*"Goods means personal property of every kind.... and .... does not include a whole building, or part of a whole building, attached to land unless the building is a structure that is easily removable and is not designed for residential accommodation"*

Although one of the possible uses of the cabin as described by CTL is 'sleepout', the others are [redacted] - I do not consider that it has been 'designed' for residential accommodation as it is not a complete portable residence and has no 'residential' features other than that it is a lined room that can be slept in among many other uses.

*Does the cabin meet the guarantees for goods in the CGA?*

6. The Consumer Guarantees Act 1993 ('CGA') provides statutory guarantees to consumers, the relevant guarantees in this case being that goods will correspond with description given and that they will be fit for purpose (sections 28 and 29, CGA).
7. I find that the cabin does not correspond with the description provided by CTL in its marketing with respect to it being 'weather proof and water tight'. CTL disputes that there was mould and/or water ingress into the cabin, querying why there were no issues until a year after assembly of the cabin if it were allowing rain to enter. CTL also pointed out that being 'water tight' does not mean a building will have no moisture or condensation.
8. A considerable amount of evidence was provided by both parties about the communications back and forward between them after the dispute arose. Ms S has also provided a large number of photographs of both the interior of the cabin and also the effect of the issues on her belongings. There remains a dispute about whether the black substance was mould and neither party had it tested. The large body of anecdotal evidence, including the evidence of Ms S's witnesses who observed some of the issues she described over time, is not conclusive on the issue of water tightness of the building.
9. However, Ms S obtained an independent inspection from F NZ and the conclusions contained in the inspection report are compelling. Mr EJ of F NZ Ltd wrote that:
  - *The detailing of the weatherboards does not appear to be weathertight with no scribes or flashings and as such moisture could be held in the walls*
  - *The windows have been constructed in a very basic way, poorly finished with no means of preventing wind driven rain from entering*
  - *Signs of moisture were noted to the ply lining in the small storage area*
  - *In our opinion the cabin would make a good shed but should not be insulated with batts without correct weathertightness of the exterior cladding being achieved (because if these batts get wet they are very difficult to dry out). The cabin should not be installed so close to the exposed ground and used as a workspace or sleepout as the damp environment would not be healthy when occupied for prolonged periods. Stored items are also affected by the dampness and mould was noted to items within the cabin.*

Whether or not there was actually water ingress into the cabin (which is still a point of contention between the parties, it is clear from the above that the cabin has not been constructed in such a way that it can accurately be described as 'weather proof and water tight' as CTL does in its marketing. It is therefore irrelevant whether or not CTL thought Ms S was only intending to use the cabin for storage (which she adamantly denies telling them, saying she told them at the outset that she intended to use it as an art studio/sleepout/workroom. CTL's marketing brochures also state that the cabins are suitable for a wide range of uses included those intended by Ms S (whether she told CTL her intended use or not). Points raised by CTL about the siting of the cabin are also irrelevant given the finding that it is the construction of the cabin that has led to the failure of guarantee, not its location or other environmental factors.

10. It follows that as the cabin is not weather proof and water tight it is also not fit for purpose, so it does not comply with the CGA guarantees and Ms S is entitled to a remedy under the Act.

*Is any failure of guarantee a failure of substantial character?*

11. I find that the fact that the cabin is not weather proof and water tight as described, is a failure of substantial character because of the seriousness of those issues and the effect of that failure being the compromise of the entire functionality of the building.

*What remedy, if any, is available to Ms S?*

12. As the failure of guarantee is a failure of substantial character, Ms S is entitled to reject the cabin and obtain a full refund as well as damages for any reasonably foreseeable further losses resulting from the failure of guarantee. The refund amounts to the full consideration paid (including delivery and assembly) of \$11,475.00.

13. Under section 22(2) I deem that the cabin is unable to be returned by Ms S without significant cost to her because of their size and method of attachment, and therefore CTL is to remove the cabin, and carry out all associated work including electrical disconnection, rubbish removal and site tidy, at its cost.

14. Ms S also claims the \$2620.85 spent on the electrical trenching and wiring required to connect the cabin, as a consequential loss resulting from the failure. However, I am not satisfied that it is a total loss even though Ms S says she does not intend to site another building in the same location in future. There is a potential ongoing benefit to the property in having an external power connection to any future out-building. I allow a \$500 portion of this cost for the wiring of the cabin itself as consequential loss.

15. The \$402.50 cost of the independent building report is also a consequential loss and it was obtained during initial attempts to have CTL address the matter, well before the lodging of the Tribunal proceedings, so is not excluded by section 43 of the Disputes Tribunal Act's bar on award of costs related to proceedings.

16. Storage costs of \$294.70 for Ms S's belongings are also accepted as losses resulting from the failure of guarantee. However, costs relating to the damage to, repair of or loss of value of belongings are not awarded as it is not sufficiently established that any moisture, mould, damage or loss directly resulted from the issues with the building. Although Ms S has provided evidence from the facility where the goods were previously stored to the effect that they were in good condition, it is not clear whether the inadequate construction of the cabin actually resulted in water ingress or whether, for example, the mould on some of her belongings was a result of condensation.

17. All disconnection and removal costs are addressed via the order to have CTL undertake all that work at its own cost.

**Referee: J Perfect**

**Date: 25 July 2019**



## 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 or a mistake was made.

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 outside of time, 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.

### Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the 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, and 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>.