



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court: Taumarunui

Case number: CIV-2021-068-000005

APPLICANT **Dennis Smith**
 PO Box 2
 Taumarunui 3946

RESPONDENT **The Royal New Zealand Society for the Prevention of Cruelty to Animals**
 Incorporated
 PO Box 84
 Taumarunui

The Tribunal orders:

1. Dennis Smith is to uplift the two blue bed ends in question from the SPCA Op Shop in Taumarunui before 23 May 2021.
2. If they are not uplifted by him by this date, The Royal New Zealand Society for the Prevention of Cruelty to Animals Incorporated (SPCA) may dispose of them as they wish without further recourse from Mr Smith concerning them.

Reasons:

1. Mr Smith was gifted two single beds by his friend's daughter, Zaney. He received one bed (base and bed ends) but only the base of the second bed. He did not follow up with Zaney for the bed ends. Quite some time later he and Zaney's mother, Etara, saw the bed ends in the SPCA Op Shop.
2. Mr Smith was assured by Etara they were the bed ends for his base and Mr Smith informed the SPCA and asked to be able to take them.
3. Mr Smith was told he could buy them and the parties have differing views on the purchase price he was given. Mr Smith said he was told \$75, Mrs Dalby for SPCA said they had a sale price of \$15 for the pair.
4. Some time later Etara paid \$7.50 to the SPCA for the two bed ends. Mr Smith was informed some days before the hearing that he could uplift the bed ends. Mr Smith decided to continue with the hearing and did not uplift them.
5. Mr Smith's claim is for \$249 for a replacement bed – as written in his claim form.
6. The issue to be decided is whether Mr Smith is entitled to payment of \$249 or the return of the bed ends.

Is Mr Smith entitled to payment of \$249 or the return of the bed ends?

7. The Tribunal's jurisdiction is found at s 10 (1) (c) of the Disputes Tribunal Act – a claim in tort regarding the loss of property or for the return of property.
8. Mr Smith did not know how the bed ends ended up at the SPCA, he said he believed Zaney's tenant probably gave them to the SPCA. Other than Mr Smith telling me, he had no evidence that Zaney gifted the bed ends to him with the base.

9. The SPCA staff were told the same information by Mr Smith and by Etara, but there is no evidence that Zaney and/or the tenant were asked to confirm this to the SPCA staff.
10. Mr Smith reported the matter to the Police. Etara paid \$7.50 to the SPCA for the bed ends on the basis that this gave Mr Smith the right to uplift them.
11. I need to point out that in Mr Smith's report dated 9 December 2020 and the blog dated 21 December 2020, he refers to the item the SPCA refused to give back to him many times as a bed. I confirmed with him twice in the hearing that he had the bed base and the items were in fact 2 bed ends. He agreed.
12. I understand from Mrs Dalby that they are made of a very light weight metal material.
13. I find on balance that Mr Smith is not entitled to payment of \$249 for the following reasons:
 - The SPCA had a reasonable argument for refusing to hand over the bed ends to Mr Smith when he asked for them because there was no evidence supporting his claim that he owned them;
 - There is no evidence from Mr Smith the bed ends have a value of \$249 in the event I had to make a monetary order in place of an order for the return of the goods;
 - The best evidence of their value is the sum of \$7.50 which was the purchase price paid by Etara;
 - Mr Smith's approach that he should receive \$249 for the value of a replacement bed – as he wrote in his claim form – or for bed ends, as he may have intended to mean, is without merit. He has no right to compensation for a bed and the bed ends are his to uplift;
 - An order giving possession and ownership of the bed ends to Mr Smith, is the proper outcome in these circumstances.

Referee: J Savage
Date: 23 April 2021





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 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 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 20 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>.