

TRADIE LAW FACT SHEET #23

DEALING WITH DISPUTES

TRADIE LAW
POWERED BY Ford Sumner
LAWYERS

Disputes Tribunal

OVERVIEW

From time to time you may need to take formal steps to recover a debt owed to you in the course of trading. For example, you may enter a contract for certain goods or services, but for the company or entity you have entered into agreement with does not or is unable to perform their part of the deal.

There are several steps you can and should take to pursue recovery of debts owed to you. If you have already sent the recipient a letter of demand, but have been unable to recover the debt, you may be able to recover the debt through the Courts or the Disputes tribunal.

1. *When should I apply to the Disputes Tribunal for help?*

- The Disputes Tribunal can hear claims up to \$30,000. If you are owed more than that amount, you will need to apply to the District Court. For more information regarding this, please refer to our 'District Court' factsheet.
- The Disputes Tribunal is cheaper, quicker, and less formal than a Court. Parties to Disputes Tribunal claims are not able to be represented by lawyers, but insurers may be present in some circumstances.
- The Disputes Tribunal can assist you with many disputes, including:
 - goods you have received that don't work properly;
 - determining whether a tradesman has done work properly;
 - disagreements over the amount of money charged for work done;
 - loss caused by misleading advertising;
 - disputed debts;
 - disagreements around the terms of a contract or other business agreements.
- The Disputes Tribunal is not a debt recovery agency. To have jurisdiction there must be a dispute.
- You will need to apply to the Tribunal within six years from when your cause of action accrued. You should seek legal advice if you think you may be out of time for filing a claim.

2. How do I lodge a claim?

- You can lodge a claim with the Disputes Tribunal by applying online through the Disputes Tribunal website, or in writing.
- Like your Letter of Demand, your claim should clearly set out:
 - the factual background to the issue, including the relationship between you and the person you are laying a claim against (“the respondent”);
 - the key legal provisions that you are relying on (for example, the clauses of any contract between you, or the legislative clauses relied on if you are exercising your rights under statutory or common law);
 - your reasons why the recipient is in breach of their legal and/or contractual obligations to you;
 - the quantification of your loss; and
 - any attempts you have made to resolve your dispute with the respondent and why those attempts have been unsuccessful.
- You should file all documents you rely on in support of your claim along with your application. This could include copies of the contract between you and the respondent, and any correspondence you have had with the respondent regarding the claim. If you have sent the respondent a Letter of Demand, and they either have not responded to that letter or have disputed your claim, you can file that Letter and any response received from the respondent along with your application.

3. What does it cost to lodge a claim?

- The Disputes Tribunal charges a small fee for lodging a claim which depends on the amount of debt you are seeking to recover as follows:
 - If the total amount sought is less than \$2,000, the filing fee is \$45.
 - If the total amount sought is between \$2,000 and \$5,000, the filing fee is \$90.
 - If the total amount sought is between \$5,000 and \$30,000, the filing fee is \$180.

4. What happens after I lodge a claim with the Disputes Tribunal?

- Once you have lodged your claim, the Disputes Tribunal will send a copy of your claim and your documents filed in support of your claim to the respondent.
- The Disputes Tribunal will then set a time and date for your claim to be heard. It may allocate the hearing in person, or it may permit parties to attend remotely.
- The respondent may file a response to the claim with the Tribunal in advance of the hearing, or they may show up on the day to defend the claim against them. The respondent is also entitled to file any documents or information in support of their position on the claim.

- If the respondent thinks you are at fault, they could file a counterclaim. The claim and the counterclaim will be heard together in the same hearing, provided the counterclaim is filed in advance of the hearing date.
- The Disputes Tribunal is presided over by a referee. At the hearing, the referee will give both you and the respondent the opportunity to give your side of the story, and to respond to any issues raised by the other party.
- Once the Referee has heard both arguments, they will make a decision on your claim. If the referee agrees with you, they will issue a decision against the respondent. If the Tribunal thinks it appropriate, they may try to assist you and the respondent to negotiate an agreed settlement.
- The referee is not strictly bound by the law or strict legal rights or obligations when making a decision on a claim. It will determine the dispute according to the merits of the arguments, and the justice of the case.
- Decisions of the Disputes Tribunal are binding and you can have them enforced against the respondent if they choose to ignore it.
- Costs are not typically awarded for Disputes Tribunal hearings and both parties will bear their own costs of attending the hearing unless there are exceptional circumstances.

5. What if I disagree with a decision made by the Tribunal?

- Because the Disputes Tribunal is not strictly bound to follow the law, there are limited avenues to seek review of the Tribunal's decision. The two (limited) options available are to apply to the Disputes Tribunal to rehear the claim, or to appeal the Disputes Tribunal's decision to the District Court.
- The Disputes Tribunal will decide whether to submit a claim for a rehearing. You would need to have a very good reason why a rehearing is warranted, such as where important facts only became known to you after the Disputes Tribunal had issued its decision, but where you could not have known those facts before the hearing.
- A rehearing will mean you repeat the hearing process, and the Disputes Tribunal will issue a fresh decision on your claim.
- By contrast, you can lodge an appeal with the District Court where you disagree with the decision of the Tribunal but there are no new facts that have come to light after the hearing. An appeal may only be successful where you can prove that the process followed by the tribunal was unfair and that unfairness prejudicially affected the outcome.
- An appeal is made to the District Court, where it will be determined by a Judge in chambers.
- If the Judge agrees with you, they may:
 - Quash the decision made by the tribunal, and order a rehearing of the claim;
 - or

- Quash the decision made by the tribunal, and transfer the proceedings to the District Court for hearing; or
- Vary the tribunal's decision.

While lawyers cannot represent you are Disputes Tribunal hearings, we can help guide you through the process.

Contact:

E **helpdesk@tradielaw.co.nz**

W **<https://tradielaw.co.nz/tradie-law/contact/>**

One of our team will be in touch to assist you within 24 hours.