



(Disputes Tribunals Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court: Hamilton

Case number: CIV-2017-019-000368

APPLICANT **Martin Llewellyn Dillon**
56 Challinor Street
Pukete
Hamilton 3200

RESPONDENT **PB Technologies (Downtown) Limited**
587 Great South Road
Manukau
Auckland 2104

The Tribunal hereby orders:

PB Technologies (Downtown) Ltd is to pay \$1,658.10 to Martin Llewellyn Dillon on or before 5.00pm on 25 May 2017.

Reasons

1. Mr Dillon purchased a Microsoft Surface Pro 2 tablet ('tablet') from PB Technologies (Downtown) Ltd ('PB Technologies') on 19 October 2014. In around early January 2017 the tablet would not turn on. Mr Dillon took it into the Hamilton PB Technologies store in Hamilton on 21 January 2017 for repair.
2. The tablet was not repaired. PB Technologies advised Mr Dillon that the tablet was outside of its two year warranty and made a number of offers to provide a replacement tablet at various prices dependent on the model chosen.
3. Mr Dillon has rejected the tablet and claims \$1,658.10, consisting of \$1,419.10 for the tablet and keyboard/cover and \$239.00 for the word processing software.
4. The issues to be determined are:
 - a) was the tablet of acceptable quality in that it was durable?
 - b) If not did Mr Dillon provide PB Technologies with an opportunity to remedy or was the failure substantial?
 - c) Is Mr Dillon entitled to reject the tablet and obtain a refund for the purchase cost of the tablet, keyboard/cover and software?
 - d) What effect does the 2 year warranty have on the provisions of the Consumer Guarantees Act?

Was the tablet of acceptable quality in that it was durable?

5. The Consumer Guarantees Act 1993 ('CGA') provides guarantees that goods supplied to consumers will be of acceptable quality. The definition in the CGA of "acceptable quality" includes that the goods supplied are durable. In determining whether goods are of acceptable quality, and in this case durable, the CGA provides that consideration must be given to the expectation of a reasonable consumer having regard to the relevant circumstances of sale, including the nature of the goods, the price and any representations made about the goods.
6. PB Technologies says that the tablet was two generations prior to the latest model at the time it failed.
7. However I am persuaded that a reasonable consumer would expect the tablet to have lasted more than 2 years 3 months particularly given the price of the tablet, the statement made by Microsoft in

marketing the Pro 2 that it is "the tablet that will replace your laptop", and that 'Avz' from the Microsoft website chat room supports that such a tablet should last more than 3-4 years. I am satisfied from Mr Dillon's evidence that he took reasonable care of the tablet and that he did not use it or treat it in any way that has caused the failure of durability.

Did Mr Dillon provide PB Technologies with an opportunity to remedy or was the failure substantial?

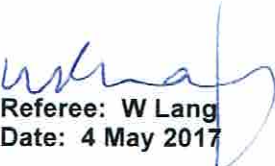
8. Where a supplier fails to comply with guarantees, the CGA specifies the consumer's right of redress. It provides that where the failure can be remedied the consumer must require the supplier to remedy the failure. If the supplier fails to remedy the failure in reasonable time the consumer can either have the failure fixed elsewhere and claim the cost from the supplier, or reject the goods.
9. If the failure is of 'substantial character' the consumer may reject goods. 'Substantial character' is defined as including where the goods would not have been acquired by a reasonable consumer fully acquainted with the failure.
10. PB Technologies has acknowledged that the motherboard in the tablet failed and that replacement parts are not available. That means that the tablet is not able to be fixed and the failure is substantial. A reasonable consumer spending just over \$1,400.00 for a high end quality tablet such as this tablet, would not expect it to fail and not be able to repaired within the time this tablet has failed.

Is Mr Dillon entitled to reject the tablet and obtain a refund for the purchase cost of the tablet, keyboard/cover and software?

11. When a consumer exercises their right to reject goods the consumer can choose to have either a refund of any money paid or goods of the same type and of similar value (section 23 of the CGA). A consumer may also obtain any loss or damage that has resulted from the failure of the goods which was reasonably foreseeable as liable to result from the failure (section 18(4), CGA).
12. Mr Dillon is entitled to reject the tablet as the failure was substantial. He has chosen to obtain a refund of the purchase price. Accordingly he is entitled to a refund of \$1,419.10 as claimed for the tablet and keyboard/cover.
13. Mr Dillon purchased Microsoft Word (Office Home and Student) when he purchased his tablet. PB Technologies representative, Mr Yip, accepted that while Microsoft may give Mr Dillon access to the software by giving him a new product key, it is not guaranteed. Therefore I am satisfied that it is more likely that it is reasonably foreseeable that Mr Dillon has lost the ability to access the software he purchased and installed on the tablet. Accordingly I find he is also entitled to a refund of the cost of the software (\$239.00).

What effect does the 2 year warranty have on the provisions of the Consumer Guarantees Act?

14. The provisions of the Consumer Guarantees Act cannot be contracted out of, except in certain circumstances which must involve all parties to the agreement being in trade (section 43, CGA). As a result a supplier can provide a warranty to the consumer for the goods, but the terms of the warranty cannot restrict, affect or reduce the guarantees implied by the CGA.
15. In this instance PB Technologies has acted in reliance on a two year guarantee being provided for the tablet, and that the failure occurred beyond that period. However, regardless of the warranty the provisions of the CGA apply as found above.


Referee: W Lang
Date: 4 May 2017





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>.