

DISPUTE RESOLUTION PROCEDURES

Under the *Retail Shop Leases Act 1994 (Qld)*

It is not uncommon for disputes to arise from time to time between landlords and tenants in the context of retail shop leasing. While a dispute is ongoing, it can be detrimental to the trading and business operations of both parties. However, while a landlord and tenant may endeavour to resolve such disputes informally and quickly by negotiating between themselves, this is not always possible or practicable.

In an effort to encourage the fast and cost-effective resolution of retail tenancy disputes, the *Retail Shop Leases Act 1994 (Qld)* (“**the Act**”) provides a low cost, streamlined dispute resolution process.

What is a retail tenancy dispute?

The *Act* defines a *retail tenancy dispute* as any dispute under or about a retail shop lease, or about the use or occupation of a leased shop under a retail shop lease, regardless of when the lease was entered into.

Retail shop lease also has a particular meaning under the *Act*. If there is any doubt about whether a lease is a retail shop lease, specific advice should be sought.

What disputes are covered by the scheme?

Generally, retail tenancy disputes are covered by the scheme; even if the retail shop lease specifically includes terms about dispute resolution, requiring or permitting the dispute to be referred to arbitration or any court or tribunal, the process under the *Act* is still available to the parties involved in a retail tenancy dispute [1].

However, some types of retail tenancy disputes may not fall within the jurisdiction for the scheme as set out in the *Act* [2]. These include:

- A dispute which is the subject of arbitration, or the subject of a final or interim award in an arbitration proceeding;
- A dispute which is before or has been decided by a court;
- A dispute where the amount, value or damages in dispute is more than \$750,000;
- A dispute about the amount of rent payable or the amount of a lessor’s outgoings under a retail shop lease (but disputes regarding the procedure for determination of rent or outgoings (including whether outgoings were reasonably or properly incurred), as distinct from the actual amount of rent/outgoings, will fall within the scheme).

What is the process under the Act?

Under the *Act*, the dispute resolution process firstly involves non-compulsory mediation, and if that is unsuccessful, the dispute may then be referred to the Queensland Civil and Administrative Tribunal (**QCAT**) for determination.

1. *Notice of dispute*

To commence the process, a notice of dispute must first be lodged with the QCAT registry. The notice of dispute should set out both the tenant's and landlord's details, details of the shop, the grounds of dispute and remedy sought, and should also include a copy of the lease and other relevant documents.

The prescribed form for this notice can be obtained from the QCAT website.

Once a notice of dispute is lodged, the dispute may not then be referred to arbitration or heard by a court except in certain circumstances [3].

2. *Mediation*

Once the dispute notice is filed, QCAT will convene a mediation and will notify the parties of the time, date and place of the mediation. It should be borne in mind that the mediation is not compulsory and neither party is compelled to attend the mediation.

The purpose of the mediation is for the parties to try to resolve the dispute by negotiation with the assistance of an independent mediator. The mediator cannot make any decision to determine the dispute but will facilitate discussion between the parties in an effort to help them reach an agreement.

Parties must usually conduct the mediation themselves and may not be represented unless the mediator permits an agent to represent a party at the mediation. A corporate party may be represented by an agent approved by the mediator.

If a resolution is reached at mediation, it will be documented in a written mediation agreement, signed by both parties, and a copy retained by the QCAT registry.

3. *Referral to QCAT by mediator, or application to QCAT by a party*

In the event the mediation of a dispute which falls within QCAT's jurisdiction under the *Act* is unsuccessful, either because a party failed to attend, or no agreement could be reached, or the dispute is not otherwise settled within 4 months of lodgement of the notice of dispute, the mediator must refer it to QCAT for determination[4].

Alternatively, a party can apply to QCAT for an order to resolve the dispute [5] if:

- a mediation agreement is reached but not complied with within the time required by the agreement (or if no time is required, within 2 months);
- the mediator considers the dispute does not fall within QCAT's jurisdiction; or
- a court orders a dispute before it be removed to QCAT.

However, a referral or application to QCAT in the above circumstances can only be made provided that the notice of dispute was not lodged more than 1 year after the lease ended. QCAT has wide powers to determine retail tenancy disputes, and may make any orders (including declaratory orders) it considers just. Such orders may include:

- payment of a monetary amount or compensation to a party;

- declaring that a party is not required to make any payment;
- orders giving effect to, or setting aside, a mediation or settlement agreement;
- orders for the determination of market rent.

It is also to be noted that for retail tenancy disputes, as is usually the case with proceedings before QCAT:

- parties are not automatically entitled to legal representation. An application for representation may be made, and will be permitted (or otherwise) within QCAT's discretion; and
- while costs orders may be made by QCAT within its discretion, the usual position is that each party must bear its own costs; and
- a QCAT decision may be appealed, but strict timeframes apply.

Is it best for me?

The dispute resolution scheme under the *Act* is designed for the quick and cost effective resolution of retail tenancy disputes. However, we always recommend you seek specific advice about whether or not the process is applicable and suitable for you and your circumstances.

[1] Section 55 of the Act.

[2] Section 97 and 103 of the Act

[3] Section 94 of the Act

[4] Section 63 of the Act

[5] Section 64 of the Act



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