

A guide to dispute
resolution under the
*Retail Shop Leases
Act 1994*



Queensland Government
Department of Justice and Attorney-General

Contents

1. Introduction	3
2. The dispute resolution process	3
3. What can you do if you have a dispute?	3
4. Mediation	4
Notification of mediation conference	4
Preparation for mediation	4
Representation at the mediation	7
The mediation conference	7
5. Referrals and applications to QCAT	8
5.1 Failure to reach agreement at mediation conference	8
5.2 Party fails to comply with agreement reached at mediation or transfer of court proceeding	8
6. The QCAT hearing.....	9
6.1 QCAT's constitution for the hearing of retail tenancy disputes.....	9
6.2 QCAT's jurisdiction to hear retail tenancy disputes	9
6.3 Notice of QCAT hearing	9
6.4 Representation at the QCAT hearing	9
6.5 Requiring witness to attend or produce a document or thing	10
6.6 Withdrawing a dispute	10
6.7 Offers to settle a QCAT proceeding	10
6.8 QCAT orders.....	11
6.9 Costs.....	11
6.10 QCAT decisions and enforcement	11
6.11 Appealing a QCAT decision	11
7. Register of retail tenancy disputes	11
8. Need more information?	12
8.1 Contact the QCAT registry	12
8.2 Other sources of information	12

Disclaimer

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1. Introduction

The *Retail Shop Leases Act 1994* (the Act) sets mandatory minimum standards for retail shop leases in Queensland and provides a low cost dispute resolution process for retail tenancy disputes.

This guide provides information to help tenants, landlords, property managers and professional advisors understand the dispute resolution process under the Act.

In addition, it is essential to get advice from qualified professionals in regard to your lease and any potential retail tenancy dispute.

The Department of Justice and Attorney-General's publication *Retail Leasing Guidelines* provides information to help tenants, landlords, property managers and professional advisors understand tenant and landlord rights and responsibilities in regard to retail shop leases. The *Retail Leasing Guidelines* are available from the Department of Justice and Attorney-General website www.justice.qld.gov.au.

2. The dispute resolution process

A retail tenancy dispute is any dispute under or about a retail shop lease, or about the use or occupation of a leased shop under a retail shop lease.

The Act provides a two-step process for resolving retail tenancy disputes:

1. mediation of the dispute, and
2. the hearing of the dispute by the Queensland Civil and Administrative Tribunal (QCAT).

3. What can you do if you have a dispute?

If a tenant and landlord are unable to resolve a retail tenancy dispute, a Form 4 - Notice of dispute - *Retail Shop Leases Act 1994* form may be lodged with the QCAT registry.

The party lodging the dispute is referred to as the applicant and the party against whom the dispute is lodged is the respondent.

It is essential the form is correctly and fully completed, particularly the part which asks for details of the main points of the dispute.

The Form 4 - Notice of dispute is available from the QCAT website or by phoning QCAT and may be lodged in person or by mail.

In person: Queensland Civil and Administrative Tribunal, Level 9, Bank of Queensland Building, 259 Queen Street, Brisbane QLD 4000, or at any local courthouse outside of the Brisbane CBD.

By mail: QCAT, GPO Box 1639, Brisbane QLD 4001.

The Form 4 - Notice of dispute must be lodged with the prescribed application fee, payable to the Department of Justice and Attorney-General. Contact QCAT for details of the current application fee.

4. Mediation

The mediation conference is the first step in the dispute resolution process under the Act. A party to a dispute cannot be compelled to attend a mediation conference. However, the merits of attending a mediation conference cannot be ignored as many disputes are resolved at this stage.

4.1 Notification of mediation conference

Following receipt of the Form 4 - Notice of dispute, the QCAT principal registrar will send a Notice of Mediation to the applicant and respondent providing details of the mediator; the time, date and place of the mediation conference; and a copy of the lodged Form 4 - Notice of dispute.

Both parties will be given at least seven days notice of the mediation conference.

If you are unavailable to attend on the given date, you must notify the QCAT registry in writing as soon as possible advising:

- the reason for your unavailability, and
- alternative dates when you will be available to attend the mediation conference.

If you require an interpreter to attend the mediation conference, you should contact the QCAT registry so that appropriate arrangements can be made.

4.2 Preparation for mediation

The mediation is a private negotiation between the parties to the dispute with the assistance of an independent mediator. The mediator does not decide the dispute but assists the parties to resolve the issues.

Each party should prepare written notes for use at the mediation conference. The questions on the next page will assist you to prepare relevant written notes.

The applicant should be able to clearly explain the precise nature of the dispute. The respondent should be prepared sufficiently to allow a meaningful negotiation.

You should bring a copy of the lease and copies of all other documents, letters, notices and accounts that may be referred to in the mediation conference.

If the claim is for compensation, the claim should be quantified and supported by your calculations or those of your accountant.

How has the problem arisen?

What are the possible ways to resolve the problem?

What is being claimed? For instance – money, rent concession, enforcing conditions of the lease?

What documents, incidents or calculations support your claim?

What are the relevant clauses of the lease and/or sections of the Act?

What do you hope to achieve from this mediation conference?

4.3 Representation at the mediation

Each party to the retail tenancy dispute must generally conduct the party's own case at the mediation conference.

However, a party may be represented by an agent approved by a mediator if the party is a corporation or if the mediator is satisfied an agent should be permitted to represent the party.

To seek the mediator's approval to be represented by an agent, you should complete and lodge the Application for representation at mediation conference – *Retail Shop Leases Act 1994* form with the QCAT registry at least five days before the mediation conference. Each Application for representation will be considered on its merits.

The Application for representation at mediation conference form is available from the QCAT website or by phoning QCAT.

A person who has sufficient interest in the resolution of the retail tenancy dispute may also be permitted to take part in the mediation conference if allowed by the mediator.

4.4 The mediation conference

Mediators are appointed in major regional areas of Queensland and your mediation conference will usually be conducted at a location convenient to both parties.

The mediator opens the discussion and invites the applicant to present an outline of the issues. The mediator will also ask the respondent to do the same.

You will be encouraged to discuss the issues and look for a way for the dispute to be solved. The mediator has no power to issue orders or give directions. The mediator's role is to assist the parties to reach an agreement.

You are not permitted to make an official record of anything said in the mediation conference. However, the mediator may make notes of the mediation conference the mediator considers appropriate.

If an agreement is reached during the mediation conference, the agreement must be put into writing and signed by or for the parties. The original copy of the mediation agreement is retained in the QCAT registry.

5. Referrals and applications to QCAT

5.1 Failure to reach agreement at mediation conference

In some cases mediation will not be successful. If a dispute appears to be within QCAT's jurisdiction, the mediator must refer the dispute to QCAT when an agreement cannot be reached at mediation or one of the parties in dispute fails to attend the mediation conference.

If the mediator is of the opinion that the dispute is not within QCAT's jurisdiction, the mediator will advise the parties that the matter will not be referred to QCAT. If a party disagrees with the mediator about whether a dispute is within QCAT's jurisdiction, the party can apply to QCAT for an order to resolve the retail tenancy dispute using Form 34 - Application for an order to resolve a retail tenancy dispute. The Form 34 - Application for an order to resolve a retail tenancy dispute is available from the QCAT website or by phoning QCAT.

However, the mediator cannot refer the dispute to QCAT and a party cannot apply to QCAT for an order to resolve the dispute in these circumstances if the Form 4 - Notice of dispute was lodged later than 1 year after the end of lease.

Information on QCAT's jurisdiction to hear retail tenancy disputes is set out at item 6.2 below.

5.2 Party fails to comply with agreement reached at mediation or transfer of court proceeding

A party can apply to QCAT for an order to resolve a retail tenancy dispute if an agreement is reached at the mediation conference and the other party fails to abide by the terms of the agreement within the specified time or, if no time is specified, within two months of the agreement being signed. However, an application may only be made to QCAT if the retail shop lease has not ended more than 1 year before the Form 4 - Notice of dispute for the dispute was lodged.

A party may also apply to QCAT for an order to resolve a dispute if a court has ordered that a proceeding started in the court for the dispute be removed to QCAT or another tribunal for resolution.

An application to QCAT must be made using Form 34 - Application for an order to resolve a retail tenancy dispute, available from the QCAT website or by phoning QCAT.

6. The QCAT hearing

6.1 QCAT's constitution for the hearing of retail tenancy disputes

For the hearing of a retail tenancy dispute, QCAT is constituted by three QCAT members-

- (a) a legally qualified member
- (b) a person representing lessors under retail shop leases
- (c) a person representing lessees under retail shop leases.

The lessor and lessee representatives aid in determining the matter and do not provide support to the parties in the dispute.

If the dispute involves an amount, value or damages less than \$25,000, QCAT may be constituted by a legally qualified member of QCAT or a QCAT adjudicator.

6.2 QCAT's jurisdiction to hear retail tenancy disputes

QCAT has jurisdiction to hear retail tenancy disputes, other than retail tenancy disputes that are:

- the subject of arbitration
- have been the subject of an interim or final award in an arbitration proceeding
- is before or has been decided by a court
- about arrears of rent under a retail shop lease
- about the amount of rent payable under a lease
- about the amount of the lessor's outgoings under a lease
- if the amount, value or damages in dispute exceeds the monetary limit of the District Court
- under a retail shop lease for the carrying on of the business of a service station, if the *Trade Practices (Industry Codes—Oilcode) Regulations 2006* (Cwlth) apply to the carrying on of the business under a fuel re-selling agreement within the meaning of those regulations.

6.3 Notice of QCAT hearing

After receipt of an application or referral relating to a retail tenancy dispute, QCAT will give notice of the time and place for the hearing to each party.

If a party does not attend a hearing and QCAT is satisfied the person has been given notice of the hearing, QCAT may hear and decide the dispute in the party's absence.

6.4 Representation at the QCAT hearing

If a party wishes to be represented by someone at the QCAT hearing, the party must apply for QCAT's leave. QCAT may not agree with such a request. The Application for leave to be represented form is available from QCAT's website or by phoning QCAT.

6.5 Requiring witness to attend or produce a document or thing

If a person is reluctant to either give evidence on your behalf at the hearing or to produce a document or thing to QCAT, you may apply for QCAT to give a written notice requiring the person to attend a hearing to give evidence or to produce the document or thing.

Applications must be used made using the Form 38 - Application for notice requiring witness to attend or produce document or thing and must be accompanied by the applicable fee.

The party requesting the notice must pay an allowance, as conduct money, to the person given the notice, either when the notice is given or within a reasonable period before the person is required to comply with the notice.

If the notice requires a person to attend a hearing to give evidence, the party requesting the notice must also pay the person an attendance allowance within a reasonable period after the person attends the hearing.

See the QCAT website or phone QCAT for up-to-date information about the fees and allowances payable in relation to notices to attend or produce.

6.6 Withdrawing a dispute

An applicant may wish to withdraw an application or referral that has been made to QCAT, for example, if a dispute has been otherwise resolved. An applicant may apply for QCAT's permission to withdraw the application or referral before the matter is heard and decided by QCAT by filing a Form 40 - Application for miscellaneous matters in the tribunal. If an applicant withdraws an application or referral, the applicant cannot make a further application, or request, require or otherwise seek a further referral, relating to the same facts or circumstances without QCAT's leave.

6.7 Offers to settle a QCAT proceeding

At any time before QCAT makes its final decision in the proceeding, either party can make an offer to settle the dispute. The offer must be made in writing. It is important to fully consider the terms of the offer.

An offer to settle a proceeding made before a hearing starts expires on the earlier of the following:

- (a) the day the hearing of the proceeding starts;
- (b) the expiry date stated in the offer.

An offer to settle a proceeding made after a hearing starts expires on the earlier of the following:

- (a) the day QCAT makes its final decision in the proceeding;
- (b) the expiry date stated in the offer.

A party to a proceeding may accept an offer to settle the proceeding by giving written notice of the acceptance, before the offer expires, to the party who made the offer.

If you fail to accept the offer to settle the dispute made by the other party and the QCAT decision in the proceeding is not more favourable to you than the offer, QCAT may order you to pay all reasonable costs of the other party in conducting the proceeding after the offer was made.

6.8 QCAT orders

QCAT may make orders it considers to be just to resolve a retail tenancy dispute, including:

- an order for a party to do, or not to do, anything
- an order requiring a party to pay an amount (including an amount of compensation) to a specified person
- an order that a party is not required to make a payment to a specified person
- an order setting aside a mediation agreement
- an order that an item, or part of an item, of the lessor's outgoings for the retail shopping centre or leased building in which the leased shop is situated was or was not reasonably incurred
- an order that the compensation payable under a lease is reasonable
- an order giving effect to a settlement agreed on by the parties
- an order requiring a party to disclose a document as is required by the Act
- an order, with consent of the parties, to rectify the lease
- an order that a determination of the current market rent made by a valuer be set aside if it does not comply with the Act and that a further determination be made
- an order that a party who engaged in unconscionable conduct either is required to pay an amount or is not required to pay an amount to a specified person.

6.9 Costs

Each party to a dispute is responsible for their own costs. If it is in the interests of justice, QCAT may order that a party pay all or part of the costs of another party. QCAT may also order you to pay part of the costs of the other party **if you fail to accept an offer to settle the dispute made by the other party (See item 6.7).**

6.10 QCAT decisions and enforcement

QCAT will give its final decision in a proceeding in writing to the parties. QCAT must give reasons for its final decision either orally or in writing. If QCAT does not give written reasons for the decision a party may, within 14 days after the decision takes effect, request that QCAT give written reasons for the decision.

If QCAT's decision requires a party to pay you an amount of money you can apply to have your decision enforced through the court that has jurisdiction to order the payment. You can apply to the Supreme Court to have other QCAT decisions enforced.

6.11 Appealing a QCAT decision

QCAT decisions about a retail tenancy dispute may be appealed. Visit the QCAT website or phone QCAT for further information about how to appeal a QCAT decision.

7. Register of retail tenancy disputes

The QCAT principal registrar keeps a register containing details of retail tenancy disputes.

Contact QCAT or visit the QCAT website for information about how to inspect or copy the register, including any fees that may apply.

8. Need more information?

8.1 Contact the QCAT registry

Phone:

1300 753 228 (8.30am - 5.00pm)

Website:

www.qcat.qld.gov.au

Email:

enquiries@qcat.qld.gov.au

Brisbane

QCAT is located at:

Level 9

Bank of Queensland Building

259 Queen Street

Brisbane QLD 4000

Outside of Brisbane

Applications are able to be lodged outside Brisbane at Magistrates Courts. See the white pages for a list of Magistrates Courts.

Registry hours:

8.30am – 4.30pm in Brisbane.

Postal Address:

GPO Box 1639

Brisbane 4001

Fax:

07 3221 9156

8.2 Other sources of information

Retail Shop Leases Act 1994

Retail Shop Leases Regulation 2006

Queensland Civil and Administrative Tribunal Act 2009

www.legislation.qld.gov.au

Queensland Law Society

www.qls.com.au

Information for self representation

www.qpilch.org.au