

TENANT'S GUIDE TO COMMERCIAL RETAIL LEASING IN QUEENSLAND

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RETAIL TENANCY

In Queensland, all commercial retail leases are regulated by the Retail Shop Leases Act 1994 (the Act). The Act provides minimum standards which must be followed.

There is a potential dispute between retailers and their landlord at one of Queensland's largest shopping centres, with business owners claiming their sales have been devastated as a result of the introduction of paid parking and a number of store closures.

Tenants at the Indooroopilly Shopping Centre in Brisbane say the shopping complex has been turned into a "ghost town" following the closure of some of the big retailers such as Dick Smith, Koko Black and homewares business Earthborn.

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Legal and financial advice reports

Tenants with fewer than 5 retail businesses must get a legal advice report and a financial advice report before signing a lease. These documents must be handed to the landlord before the lease commences. The tenant is required to meet with

a leasing lawyer to receive advice on the terms and conditions of the lease. You can get this advice from Boss Lawyers for a fixed fee.

What disclosure requirements need to be met to finalise a commercial lease?

Landlords – are required to show the tenant a disclosure statement about the lease. This document must provide summary information about the proposed lease. The landlord must give the tenant this statement at least seven days before the commercial lease agreement is finalised. If the landlord fails to do so, the tenant may be allowed to terminate the lease.

Tenants – are also required to provide a disclosure statement. This statement must contain information about the tenant's background in business. This statement also allows you to record details of any representations made by the landlord. If the tenant provides misleading or false information on this statement they might have to pay compensation to the landlord if the landlord suffers loss as a result of these misrepresentations.

Key terms used in a commercial retail lease

Permitted use – this term is important because it specifies what types of business can and cannot be operated at the premises.

Trading Hours – leases will usually have terms which indicate what trading hours will be allowed. These hours can only be within allowable hours under Queensland legislation – which are Monday to Friday 8am to 9pm and Saturday 8am to 5pm.

Rent – if the tenant and landlord cannot agree on the rent for the premises, a specialist rent valuer can be brought in to determine market rent.

Outgoings – outgoings in a commercial lease are the operating costs associated with the premises.

Commercial leases often stipulate that the tenant is required to contribute to these outgoings. This includes insurance, electricity, local authority rates and centre management rates. Under Queensland law, if a tenant is required to pay outgoings the lease must specify:

- how and which particular expenses will be regarded as outgoings;
- how these expenses will be apportioned between the parties; and
- how the landlord will recover these expenses.

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Minimum Lease standards

The Act imposes certain duties on landlords and confers certain entitlements on tenants under a retail shop lease. Where a provision of the retail shop lease is consistent with a provision of the Act, the Act will prevail and the provision in the lease will be void to the extent of the inconsistencies.

With this in mind, the Act regulates certain important elements of the leasing process that create minimum lease standards.

These minimum standards include:

- limits on payments under the lease – a lease must not contain a provision requiring the tenant to make payment other than rent, the tenants outgoings, damages for breach of the term of the lease, satisfaction of an indemnity under the lease or interest on arrears of rent or outgoings;
- rent reviews – rent can only be reviewed on a single basis except for the first year;
- market rent – if rent is reviewed to market, this must be undertaken by a specialist retail valuer who has determined the rent in accordance with the standard set out in the Act. The cost of which will be borne 50/50 by the landlord and tenant;
- outgoings – the lease must specify outgoings payable, how they are determined and apportioned;
- compensation – a tenant may be entitled to compensation against the landlord in limited circumstances;
- option in lease – the landlord must give the tenant written notice reminding it of the latest date for exercise of the option at least two months before that date;
- no option in lease – where a lease does not contain an option, the onus is on the landlord to tell the tenant whether it is prepared to offer an extension of the lease.

When am I entitled to compensation from a landlord in a commercial lease?

Disputes can arise from a disagreement between the landlord and tenant about a retail shop lease.

Under the Act, these disputes are resolved through a 2 step process which involves:

- mediation;
- if the dispute is not resolved at mediation, a hearing by the Queensland Civil and Administrative Tribunal (QCAT).

Pursuant to section 43 of the Act, a landlord can be compelled to pay a tenant reasonable compensation for loss or damage in some circumstances. A tenant might be entitled to compensation if the landlord:

- significantly restricts access to the tenant's shop;
- significantly restricts or alters customer access or flow into the shop;
- causes a substantial disruption to the tenant's business;
- does not quickly rectify or repair building defects or breakdowns in plant or equipment;
- neglects cleaning, maintenance or repainting of the building;
- causes the tenant to leave the shop before the end of the lease so the landlord can refurbish or extend the building;
- makes an untrue statement or misrepresentation which causes the tenant to enter into the lease; and
- fails to make the shop available for trading on the date specified in the lease.

For more information?

Please contact us on +61 7 3188 0200 or mark@bosslawyers.com.au for a no obligation consultation.

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