

# Retail leases

NCAT's Consumer and Commercial Division deals with retail tenancy claims against a party or a former party to a current or former retail shop lease.

## What is a retail lease?

A retail lease is an agreement between a landlord and a tenant for the use of a premises where the tenant operates a retail shop. The definition of a 'retail lease' and list of 'retail shop' businesses can be found in the *Retail Leases Act 1994*.

## Retail lease dispute types

Under the *Retail Leases Act 1994* NCAT has jurisdiction to deal with retail tenancy claims, and claims about unconscionable conduct and misleading or deceptive conduct up to the value of \$400,000.

### Retail tenancy claims

A retail tenancy claim includes claims for possession of the premises, for payment of money, repairs to be done to a property, to make amendments to the lease, appointments of a specialist retail valuer and a number of other claims.

### Unconscionable conduct claims

A claim about unconscionable, misleading or deceptive conduct is where you consider that the other party has caused you financial loss during a retail lease transaction by highly unethical conduct. Refer to section 62B of the *Retail Leases Act 1994* for the full definition of 'unconscionable conduct'.

If you are unsure whether NCAT can deal with your retail tenancy matter, contact the NSW Small Business Commissioner or LawAccess NSW for assistance.

## Attempt mediation first

Before applying to NCAT you must attempt mediation organised by the NSW Small Business Commissioner. Mediation is a process where an independent person assists the parties to come to an agreement.

Exceptions to this mediation requirement are if you are applying for urgent interim orders or for the appointment of a specialist retail valuer.

If you are unable to reach an agreement in mediation, you will receive a certificate from the NSW Small Business Commissioner under section 68 of the *Retail Leases Act 1994* confirming that mediation was attempted but not successful. You must have this certificate before you can lodge an application with NCAT.

Visit the NSW Small Business Commissioner website at [www.smallbusiness.nsw.gov.au](http://www.smallbusiness.nsw.gov.au) or call **1300 795 534** to apply for mediation.

## Applying to NCAT

To apply to NCAT you will need to complete the Retail Leases Application for an Original Decision. This application must be lodged with the certificate issued by the NSW Small Business Commissioner. If you do not attach this certificate to the application form, your application cannot be accepted.

When lodging your application you must also include the application fee. Visit [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) for the current fee schedule.

### Time limits

The following time limits apply to retail lease applications:

- Retail tenancy claims may not be lodged more than 3 years after the liability or obligation that is the subject of the claim arose.
- Unconscionable conduct claims may not be lodged more than 3 years after the alleged unconscionable conduct occurred.
- NCAT may order that the claim may be lodged more than 3 years but no later than 6 years after the liability or obligation that is subject of the claim arose or after the alleged unconscionable conduct occurred.



## Urgent applications

If your matter is urgent, such as if you have been locked out, you may request an Interim Order in addition to your Application for an Original Decision. An additional application fee must also be paid.

You will need to provide reasons why you are seeking the interim order. NCAT will determine the request within 7 days. NCAT must be satisfied on reasonable grounds that urgent considerations justify the making of the order.

If an interim order is made, it remains in force until the Application for an Original Decision is determined. Once the request for an interim order is determined, the Application for an Original Decision will then be listed for hearing.

## Determining the application

NCAT resolves disputes in a quick, inexpensive and relatively informal way. The person who hears your case is called a Tribunal Member. During the hearing both parties will take turns to tell their side of the story and present any supporting evidence. The Tribunal Member may ask questions of the parties.

### Can someone represent me?

Yes, but NCAT hearings are conducted as informally as possible, and parties are encouraged to present their own case at the hearing.

A lawyer or an agent can also represent you at the hearing. Schedule 4 clause 7(b) of the *Civil and Administrative Tribunal Act 2013* provides that a party to proceedings for the purposes of the *Retail Leases Act 1994* is entitled to be represented by a lawyer or agent without requiring the leave of the Tribunal.

### When will I know the outcome?

After the hearing is completed, the Tribunal Member will, in most cases, give you an oral decision with reasons. Written orders are also issued and given to you at the end of the hearing or sent to you by email or post. In some hearings, the Tribunal Member may not make a decision on the day. The orders and reasons for the decision will be sent to you at a later date. This is known as a 'reserved decision'.

If NCAT's decision requires a party to pay you an amount of money, you can request a certified money order for enforcement purposes. Visit the NCAT website [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) for information on enforcement options.

## For more information

### LawAccess NSW

**Phone:** 1300 888 529

**Website:** [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au)

For free legal information and referrals to other services that provide legal advice and assistance.

### NSW Small Business Commissioner

**Phone:** 1300 795 534

**Website:** [www.smallbusiness.nsw.gov.au](http://www.smallbusiness.nsw.gov.au)

For information about mediation **before** lodging the NCAT Retail Leases Application.

### NCAT Consumer and Commercial Division

**Phone:** 1300 006 228 (select option 1)

**Website:** [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)

For information and assistance about NCAT processes or procedures **after** lodging the Retail Leases Application.

## Contact NCAT

**1300 006 228 | [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au)**

For more information and assistance visit the NCAT website [www.ncat.nsw.gov.au](http://www.ncat.nsw.gov.au) or contact NCAT on **1300 006 228**.