

## Mediation

### A Comprehensive Overview

#### What is Mediation?

A leading author describes mediation as, "...a process where participants [to a dispute] are assisted by a mediator to systematically isolate disputed issues,...develop options, consider alternatives and reach a...settlement that will accommodate their **needs**". (Folberg and Taylor)

Retail Tenancy Mediators have been selected for their knowledge of retail leasing and because of their professional abilities and understanding of commercial matters.

In short, mediation is an efficient and effective method of economically resolving disputes, usually within a few hours.

#### Is Mediation For You?

Although many of our clients have been absolutely sure the other person would not,

- talk to them.
- be reasonable
- pay or
- mediate

almost **80%** of them left with agreements they were pleased to "own". They are now convinced that mediation is an effective means of resolving retail tenancy disputes.

#### Preliminary Mediation Conferences

Preliminary Mediation Conferences are designed to explain mediation, the part mediators play and to identify the need for information which may be required at the mediation itself. These sessions usually take one hour.

A mediation proper generally takes three to four hours and can be provided quickly at substantially less cost than going to court

#### What Happens at a Mediation

The Mediator will work with you to explore the merits of different ways of resolving each issue and help you identify the best methods of presenting your ideas to the other side to allow for the serious consideration of your point of view.

## **What If You Think The Other Party Has All The Power**

Mediators are also adept at dealing with such matters and are routinely able to get the "powerful" to negotiate willingly after demonstrating that their **needs** and interests will be better met by the mediation process rather than through the alternatives available to them.

## **Is Mediation Confidential?**

Mediation **is** confidential. The Retail Leases Act says "...any statement... made ...in... mediation is not admissible ...in legal proceeding".

Your solicitor will be able to explain all the confidentiality aspects of mediation to you including the need for everyone attending a mediation to sign a Confidentiality Agreement binding them to the provisions of the Act.

## **Matching Mediators and Parties**

The Unit always considers the dispute and disputants when appointing mediators.

Because it is important that parties are able to negotiate and mediate equally with the other party the Unit will always consider parties special needs and requests for interpreters for those who feel disadvantaged because of their language skills.

## **Mediated Agreements**

As mentioned earlier 80% of Retail Tenancy meditations end in agreements which the parties have developed.

The results speak for themselves. Compared with a reported **32%** compliance rate with orders made by courts, (without further frustrating and costly intervention), **90-95%** of mediated agreements are honoured in the spirit of those agreements.

Generally the "loser" feels resentful when a court case does not turn out as expected and they have to live with an agreement imposed by that court.

Mediated agreements are developed by the parties who work through their differences together and end with a document they both expect to work.

Mediators play an important role in assisting parties "test" all aspects of these agreement so the agreements serve the parties in the manner intended.

You **can not** be compelled to agree to any thing. All agreements are voluntary but when signed they are enforceable by either party.

## **Solicitors and Costs**

Your solicitor is welcome at the mediation but if your solicitor doesn't accompany you it is generally helpful to obtain legal advice before hand.

It is usually worthwhile asking the Unit whether the other party is going to be legally represented.

At any time during the mediation you may ask for time-out to get legal or other professional advice, especially before you enter into any agreement.

## **CONTACT:**

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