

What Are Your Alternatives?

If You Don't Settle the Dispute Yourself

Background Information

The Retail Leases Act provides for mediation to be the **preferred** means for resolving disputes about retail shop leases.

Unless you have a certificate from the Registrar of Retail Tenancy Disputes certifying that mediation has failed the Act provides that your retail dispute may not "go" to court or the Commercial Tribunal.

To make a considered choice about what to do if you don't settle your dispute yourself it is suggested you consider the following:

What system would best meet your **needs**?

- Going to Court.
- Going to the Commercial Tribunal.
- Mediation

The Legal Options: Courts and the Commercial Tribunal.

Before you proceed take the time to identify your **real needs** and to assess whether they are achievable with your resources and time constraints.

Question which only you can answer

(Perhaps you could discuss these with someone whose opinion you value):

- What do you **want** from the "other side"?
- If you can't get that will you settle for anything else? Think carefully.
- Will not getting what, or all of what you want, stop you from negotiating a resolution?
- Do you want "them" to acknowledge that their actions have hurt you? How do you want them to do this?
- What if they will not?
- Do you have the money or time to "make" them do anything?

When you can answer these questions you could ask your solicitor whether the court system will meet these **needs**. Also ask her or him:

- How you can satisfy these needs at court (or the Tribunal).
- What part will you be allowed to play in the court?
- What will you be permitted to say and how are you able to "speak your mind"?

- Would the "other side" be likely to object to you saying that?

Would this system be appropriate for you bearing in mind your needs or would you be frustrated by the procedure and rules of evidence which dictate how courts need to operate?

Your solicitor cannot read your mind.

- Tell him or her whether just getting an award of money is all you want. For instance, do you need to express to someone how badly the other party treated you?
- Discuss your emotional **needs**. Ask whether they can be satisfied by going to court.
- Get an estimate of the amount you would pay if the matter went to court **and** ask how much of the total you are likely to get back from the other side if you win. You don't usually get all of your costs refunded.
- Ask how long it might take to get into court or the Tribunal.
- Also inquire about how you enforce any order the court makes, the cost of doing this and the chances of the Court giving time for the other party to pay or pay by instalments.
- Ask what grounds there are for appeal and where that appeal would be heard.
- Do you think the other side would appeal in an effort to freeze you out because they have "money". How can you stop that happening?

Bearing all the above in mind would you be able to conduct the case yourself? Would that be advisable especially if the other party engages a legal representative?

If you win,

- Will that guarantee the dispute ends there?
- Will other aspects of the dispute remain unresolved?
- Will the decision make dealing with the other person worse?
- Will you be back in court with the same complaint or a similar complaint soon?

Mediation at the Retail Tenancy Disputes Unit.

If you explore the legal option in the manner suggested above and you identify your **needs** you will be able to fully appreciate mediation's unique ability to resolve your dispute and provide you with a quality agreement.

Mediation offers you the opportunity to:

- Put your case and tell how events have affected **you**, physically and emotionally.
- To do so in an atmosphere which is designed to have the other party listen and understand you and for you to listen and understand the other point of view.
- To then discuss your problems and negotiate resolutions (see below).

Mediation is:

- inexpensive.
- readily available.
- provided by mediators selected for their knowledge of retail leasing and because of their professional abilities and understanding of commercial matters. Retail Tenancy mediators are amongst the most experienced and credentialed mediators in Australia.

The mediation process, often with assistance from the mediators, provides an opportunity to develop and consider options and look at alternatives which might assist in resolving the dispute along lines acceptable to both parties. The court system does not provide for that to happen often or as spontaneously as it does in mediation

Mediators are impartial and will not take sides or judge you. You are invited to terminate the session and complain to the Registrar if you believe your mediator is biased towards the other party.

Mediation is also confidential. The Retail Leases Act provides that "...any statement...made in... mediation is not admissible...in....legal proceeding".

Your solicitor is welcome at the mediation but if he/she doesn't accompany you, you will be encouraged to ring or contact your solicitor for advice if you feel that is appropriate anytime during the mediation session.

Do you have difficulty with English or do you have any other needs or concerns about using mediation? If so ring the Mediation Officer or myself. You are under no obligation if you do.

Mediation is not expensive and it generally does not make relationships worse. This is a very important consideration if you intend having further dealings with the other party.

Your chances of getting an agreement you want to own is approximately 80% at a Retail Tenancy Mediation. 90-95% of such agreements have been honoured in the spirit of those agreements by past customers and you can attempt to reach agreement at no risk to any of your legal rights.

CONTACT:

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