

## Restricted Charges in Retail Leases

The *Retail Shop Leases Act 1994* (QLD) (RSL Act) restricts some payments under a retail shop lease. Restrictions are outlined below with corresponding sections of the RSL Act. The sections may not be exhaustive or a direct match, other laws or sections may apply. This is for general guidance only.

### Lease Preparation Costs

Lessees (tenants) cannot be charged for the lessor's legal or other expenses related to the preparation of the retail shop lease. However, tenants may be liable to pay an invoice for the lessor's lease preparation costs if tenants withdraw from the lease after asking it to be prepared. **(Section 48)**

### Prohibition of Key Money

In general, key money refers to benefits on top of the rent or outgoings that the lessor requests from a tenant to grant them the lease. Key money may be called a non-refundable deposit and is different from [bond](#), which is always refundable.

The RSL Act prohibits lessors from requiring tenants to pay key money as a condition of entering, renewing, or extending a retail shop lease agreement. **Penalties apply** and key money can be recovered as a debt. **(Section 39)**

### Costs for Granting Option

When a tenant exercises an option to renew the lease, the RSL Act states the tenant is not responsible for any legal or other expenses the lessor incurs in granting it. **(Section 48)**

### Mortgagee Consent

The RSL Act prohibits lessors from passing on their legal or other expenses to tenants regarding obtaining the lessor's mortgagee consent to a retail lease. **(Section 48)**

### Outgoings

Under **Section 37** of the RSL Act tenants are not liable to pay an amount to lessors as outgoings unless the lease specifies:

- the outgoings that are payable by the tenant;
- how the outgoings will be determined and apportioned to the tenant; and
- how the outgoings may be recovered by the lessor from the tenant

### Not Included as Outgoings

The RSL Act restricts the ability of lessors to recover from tenants:

- Land tax
- Costs of a capital nature
- Insurance premiums for loss of profits
- Excess for a claim on lessor's insurance policy for the building
- Lessor's contributions to merchants' associations and centre promotion funds
- Payment of interest or charges on amounts borrowed by the lessor
- Contributions to a depreciation or sinking fund (subject to **section 40**)

In general, lessors cannot profit from outgoings and should only pass on the costs they incur. **(Sections 7 & 24)**

## Services Not Provided

The lessor cannot charge the tenant for services that are not available or are not provided to the tenant. **(Sections 7 & 38)**

## Maintenance Amounts into Sinking Fund Capped

Total payments under a retail shop lease made by all tenants into a sinking fund (maintenance amounts) must not exceed 5% of the lessor's estimated outgoings for the year.

The lessor must also not seek or accept payments of maintenance amounts from a tenant if the balance in the sinking fund would exceed \$100,000 upon payment. **(Section 40)**

## Repairs or Maintenance

Disputes over repair and maintenance costs in retail leases are common due to the challenge of determining if the costs are capital costs or maintenance costs. Read the [Repairs and Maintenance](#) fact sheet for more information.

## Permitted Charges

A retail lease may contain clauses requiring the tenant to pay for: **(Sections 24, 39 & 48)**

- Up to one month's rent in advance
- A repayable bond (no maximum amount)
- Shop fit out costs paid by the lessor
- Survey and registration fees associated with registering the lease
- Interest on arrears of rent or outgoings
- Damages for breach of a term of the lease
- Costs reasonably incurred by the lessor in consenting to an assignment of the lease
- Legal costs for consenting to a sublease or lease variation requested by the tenant

## GST Payable in the Lease

Nothing in the RSL Act prevents a lessor from requiring a tenant to pay GST payable for a supply made under the lease. **(Section 24A)**

GST on rent and outgoings may be payable by the tenant if the lessor is registered for GST. GST charges cannot be added on top of pre-existing GST. Read '[ATO GST Determination 2000/10](#)' for more detailed information and examples from the Australian Tax Office.

## Resolving Disputes

Consider the following steps:

- Look at the terms in the lease
- Seek legal advice from a lawyer experienced in commercial property law
- Communicate issues in writing including details of the restricted charge
- Assess the cost and viability of pursuing legal proceedings to decide the dispute
- Negotiate commercially sensible solutions
- Make an [application for mediation](#) with the QSBC. A QSBC mediator can mediate a dispute up to \$750,000 in value.

QCAT considers disputes between a tenant and lessor related to retail shop leases, **if the dispute is not resolved at a QSBC mediation.**

'Key Money' may be recovered as a debt.

Where your debt dispute will be heard depends on the amount in dispute:

- [Up to \\$25,000](#) – QCAT
- [Up to \\$150,000](#) – Magistrates Court

## More Information

Contact the QSBC by submitting an [online enquiry](#) or calling 1300 312 344.

*This information provides general guidance only. It does not constitute legal advice. We recommend you seek independent legal advice which considers your individual circumstances and applicable laws.*