

Repairs and maintenance

Disputes regarding repair and maintenance responsibilities in commercial and retail leases are common and often arise due to the challenge of determining whether an issue is related to structural repairs, general maintenance, or disrepair, which makes it difficult to assign responsibility.

General obligations

The lessor is usually obligated to maintain the:

- structure of the building
- building foundations and cracks in the walls (not caused by a customer or staff)
- common areas including carparks
- lifts and support systems

Tenants are responsible for:

- keeping the shop clean and tidy, and
- for repairing any damage caused by their own actions or those of their employees or customers.

Tenants are typically responsible for repairs beyond reasonable wear and tear on the internal features such as:

- repairing their own equipment or fit-out
- caring for the carpets and flooring, glass windows and shop front
- fixing fans and changing lightbulbs

Specific items may be excluded or included in the terms of the lease or may be subject to case law and precedent set by the courts.

Lease obligations

Review your lease or seek legal advice to get a clear understanding of any issues. The lease may differentiate and specify responsibility for:

- general repairs
- maintenance
- structural repairs

A Safe Workplace

Tenants should deal with electrical or structural problems neglected by lessors, if they pose a risk to employee safety, and then seek restitution.

It is crucial for tenants to prioritise fixing such issues because they bear the responsibility of maintaining a safe workplace under legislation.

A clause in a retail lease that goes against provisions of the *RSL Act* is prohibited (under Section 16 of the Act).

Compensation

Section 43 of the *Retail Shop Leases Act 1994* (RSL Act) details the compensation for loss or damage in certain circumstances.

Flood and cyclone help

The Queensland Legal Assistance Forum has published a [fact sheet for flooding on leased premises](#) and a fact sheet for [small business](#) impacted by floods or cyclones.

Regular servicing

The tenant may be obliged under the lease to perform regular servicing on items, such as air conditioning, automatic doors or grease traps. Neglecting these obligations may breach the lease, lead to termination or impact liability for repair costs.

Air Conditioning

Generally, the lessor must ensure the air conditioning system is in good working condition when the tenant takes possession. It is typically the lessor's responsibility to fix or replace the air conditioning system if, despite proper maintenance, it stops working.

Top tips

- Set reminders for scheduled maintenance required in the lease.
- QCAT or a court has jurisdiction for determining the category of the issue and assigning responsibility according to the law or the lease.

Electrical safety and utilities maintenance

It is mandatory a working electrical safety switch is installed in shops.

- The tenant is responsible for its upkeep to maintain a safe environment.
- The tenant is responsible for upkeep to infrastructure for services and utilities (e.g., wiring, wall plugs, taps and pipes in the premises) unless otherwise stated in the lease.

The liability may fall on the lessor if the tenant lacks access to the safety switch and the lessor refuses to address safety concerns.

Leaking Roof

In general, it is the landlord's responsibility to fix any leaks unless the lease explicitly states otherwise, or the tenant caused the leak.

Grease traps

Usually, a lease will state that a:

- tenant is responsible for maintaining the grease traps in continuous working order
- lessor will be responsible for work that amounts to structural maintenance or relates to capital expenditure.

Whether the grease trap is part of your 'leased premises' or on common property may impact who is responsible for the costs.

Mould

It is not always easy to determine the cause of mould (e.g. structural issues in a building or lack of regular cleaning). If the conditions that caused the mould are not fixed, it will return.

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
- Negotiate commercially sensible solutions
- Assess the cost and viability of pursuing legal proceedings to decide the dispute
- 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 landlord related to retail shop leases **if the dispute is not resolved after mediation.**

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.