



Outgoings

Outgoings are operating costs related to the premises that a commercial lessor reasonably incurs and passes on to their tenants, either as part of, or in addition to rent.

Recovering outgoings

Leases usually include one of three methods for recovering outgoings from tenants:

- **Direct recovery** - lessors pay outgoings costs and invoice tenants.
- **Net lease recovery** - budgeted and charged in advance with year-end adjustment based on actuals.
- **Gross lease recovery** - an estimate of outgoings is included in the rent with no adjustments, regardless of actuals.

Retail vs commercial leases

Outgoings vary greatly between commercial and retail shop leases.

- The *Retail Shop Leases Act 1994 (Qld)* (the RSL Act) includes specific provisions for outgoings for retail shop leases.
- There is no 'standard' definition of outgoings in commercial leases.

Important facts

Lessors cannot charge retail tenants for certain costs listed in the RSL Act e.g., land tax, excess payments under the lessor's insurance policy, or a body corporate sinking fund (however, body corporate fees are recoverable).

- In general, lessors cannot profit from outgoings and should only pass on the costs they incur.

Top tips

- Review your outgoings statement.
- Budget for any foreseeable increases in costs of outgoings.
- Access information on [disputes in a body corporate](#).

Outgoings for retail tenants

A retail shop lease tenant is only responsible for paying outgoings if the lease specifies:

- the outgoings payable,
- how they will be determined and allocated, and
- the process for the lessor to recover them from the tenant.

The RSL Act mandates that lessors can only pass on a tenants share of outgoings based on the proportion of retail space.

Estimates and statements

Under the RSL Act landlords must provide tenants with outgoings estimate when the lease begins, or one month before the relevant period starts (often financial year).

- An audited annual outgoings statement (the statement) is typically provided to the tenant by 30 September every year.
- A registered auditor needs to prepare the statement.

- A tenant may have the option not to pay outgoing costs until the audited statement is received.
- Tenants should seek legal advice before deciding to withhold payments.

Inaccurate estimates

Outgoing costs from suppliers may increase unexpectedly and are usually beyond the control of the landlord.

- Typically, tenants cannot avoid paying outgoing costs if the actual audited amount turns out to be more than the estimate.
- QCAT or the courts may decide whether lessors provided knowingly inaccurate estimates that mislead tenants.

Preparing and reviewing

When preparing or reviewing estimates and statements, consider:

- Are all the items permitted outgoing costs in the lease and (if applicable) the RSL Act?
- Are the costs charged, reasonably incurred?
- Are the figures accurate?
- Are proportions correctly calculated?
- Is each cost itemised and not more than 5% of the total outgoing costs? (Applies only if the cost can be further itemised).
- Is the statement prepared by a registered auditor?

In addition to outgoing costs specified in a lease, Tenants are responsible for any direct costs they sign up for as part of their business which may include internet and telephone costs, self-arranged electricity or water etc.

Negotiating outgoing costs

A tenant agrees to pay outgoing costs under the lease agreement, and generally the costs cannot be re-negotiated.

- Large lump sums for outgoing costs can present cashflow issues for tenants. Negotiating a payment plan may be in the best interests of both parties, to ensure ongoing viability and tenancy of the premises.

If a lease specifies appointing service providers for an outgoing is at the lessor's sole discretion, it is unlikely the tenant can negotiate who carries out the work.

Who decides disputes

A QSBC mediator can mediate a dispute (up to \$750,000 in value) over whether an outgoing was reasonably incurred, but not the amount of an outgoing.

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

Which court hears [financial disputes](#) over outgoing costs in commercial (non-retail shop) leases is dependent on the value in dispute:

- [Up to \\$150,000](#) – Magistrates Court
- [Between \\$150,000 and \\$750,000](#) – District Court
- [More than \\$750,000](#) – Supreme 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.