



Retail leases application

CONSUMER AND COMMERCIAL DIVISION | COMMERCIAL LIST

Complete this form to apply to NCAT's Consumer and Commercial Division for orders under the *Retail Leases Act 1994* to resolve a retail lease dispute.

IMPORTANT INFORMATION:

- Applications must be made **within 3 years** after the liability or obligation. Exceptions apply under section 71B.
- Parties must attempt mediation with the NSW Small Business Commissioner before applying to NCAT (subject to exceptions in section 68).

File Number

Office use only

1. DISPUTE DETAILS

A. HAVE YOU TRIED TO SETTLE THIS DISPUTE THROUGH MEDIATION?

If you have not attempted mediation you should get advice from the NSW Small Business Commissioner

- Yes** Please attach certificate issued by the NSW Small Business Commissioner
- No** If no, contact the NSW Small Business Commissioner

B. PLACE OF DISPUTE

Address of retail shop premises

What is the type of shop?

Is the shop located in a retail shopping centre? (refer to section 3 *Retail Leases Act 1994*) Yes No

C. DATE OF CONTRACT / LEASE SIGNED

D. RELATED FILE NUMBERS

List any previous NCAT file numbers relating to the parties and the current dispute:

2. APPLICANT

A. APPLICANT TYPE

- Lessee Former lessee Lessor Former lessor Mortgagee

B. APPLICANT DETAILS

Full name:

Postal address:

Contact details: Telephone

Mobile

Email address*

* By providing an email address you are agreeing that any NCAT notices, orders and correspondence can be emailed to you. Ensure the email address provided is accurate and the account is checked regularly.

3. RESPONDENT

Provide the respondent's name and their postal address. For multiple respondents attach details on a separate sheet. If the respondent is a company or business please attach a current business name extract or company name extract from ASIC.

A. RESPONDENT TYPE

- Lessee Former lessee Lessor Former lessor Mortgagee

B. RESPONDENT DETAILS

Full name:

Postal address:

Contact details: Telephone Mobile

Email address:

4. ORDER DETAILS

A. WHAT ORDERS DO YOU WANT?

Tick the orders you are seeking. The **maximum amount you can claim is \$750,000** (*if lease entered into on or after 1 July 2017*) or **\$400,000** (*where lease entered into before 1 July 2017*). Refer to the attached information for sections of the Act and types of orders that can be made.

Money orders

- Order to **not** pay the amount of \$
- Order to pay the amount of \$
- Order in respect of security bond \$
- Order to pay compensation for loss or damage \$
- Order to do work or provision of specified services as stated below to the approximate value of \$
Specify the work or services to be supplied, delivered or replaced
- Any other order (please specify) \$

TOTAL VALUE OF CLAIM \$

B. REASONS FOR ASKING FOR ORDERS

Explain why you are lodging this application and asking for Tribunal orders by providing as much information as possible. If the space below is insufficient you can attach additional information to this form.

C. Do you want an order from the Tribunal that this claim can be made more than 3 years but no later than 6 years after the liability or obligation arose? (section 71B)

- Yes No

5. LANGUAGE AND DISABILITY SUPPORT

A. SUPPORT REQUIREMENTS

Indicate whether you have a disability related need or other request for support at the hearing.

B. INTERPRETER

Do you need an interpreter for the hearing? No Yes (*specify language*):

6. APPLICATION CHECKLIST

- I have attached the certificate of attempted mediation**
Attach the certificate from the NSW Small Business Commissioner issued under section 68 of the *Retail Leases Act 1994*.
- I have attached a recent ASIC company or business name extract**
If the respondent is a company or business, attach a current business name extract or company extract from ASIC which shows the organisation's registered name and address. Extracts can be purchased online from the [ASIC website](#).
- I have attached all documents relevant to this application**
Attach a copy of the Retail Lease Agreement (if available). Include all other relevant information with your application. Attach details of multiple applicants or respondents, or further information about the orders you are seeking. Note: A copy of this application and any attachments will be sent to the respondent.
- I have made a copy of this application for my own records**
Before lodging your application with NCAT you must make a copy of your application for your own records.
- I have attached the application fee**
Refer to the fee schedule on the [NCAT website](#). Credit card payments can be made by submitting a [credit card authority form](#) with your application. Credit card surcharges apply. Cheque or money order payments are to be made out to 'NSW Civil and Administrative Tribunal' or 'NCAT'. Payment can be made in person at any NCAT Registry or Service NSW Service Centre. Concession fee applicants must provide a photocopy of their concession card.
- If you are unable to pay the concession fee or are not eligible, NCAT may consider waiving the fee fully or partially. To request a fee waiver please complete the [fee waiver request form](#).

7. SIGNATURE

Applicant's signature or signature of representative.

Name	Position title (<i>if company</i>)
Signature	Date

Lodge your Application with the fee at your nearest NCAT Registry

For NCAT Consumer and Commercial Division Registry locations visit the [NCAT website](#). For all NCAT enquires telephone 1300 006 228 or visit www.ncat.nsw.gov.au.

Please only submit pages 1-3 of this form with any attachments to support your application.

The information below is a guide to assist you and DOES NOT form part of the application.

GENERAL INFORMATION ABOUT RETAIL LEASES APPLICATIONS

ABOUT NCAT

The NSW Civil and Administrative Tribunal (NCAT) is an independent, specialised and accessible service for the fair and timely resolution of disputes according to law.

NCAT can make orders under the *Retail Leases Act 1994* about disputes or complaints which have not been resolved by mediation.

RETAIL LEASE DISPUTES

A 'retail lease' is a legal agreement between a lessor (landlord) and a lessee (tenant) for the use of the shop where the lessee conducts their business.

NCAT can hear and determine applications lodged by lessees and lessors concerning claims relating to retail tenancy, unconscionable conduct, and misleading or deceptive conduct.

APPLYING TO NCAT

STEP 1: ATTEMPT MEDIATION

Before applying to NCAT you are required to attempt mediation with the NSW Small Business Commissioner. Exceptions are if you are applying for an injunction, if mediation has been unsuccessful or if the Tribunal decides mediation is unlikely to resolve the dispute.

STEP 2: APPLY TO NCAT

To apply to NCAT you will need to fill out the Retail Leases Application. This application must be accompanied by a certificate issued by the NSW Small Business Commissioner under section 68 of the *Retail Leases Act 1994*.

WHAT HAPPENS WHEN I LODGE AN APPLICATION?

A copy of your application and any attached documents will be sent to the other party. You should not include any confidential information you do not want disclosed to the other party.

CAN SOMEONE REPRESENT ME?

NCAT Consumer and Commercial Division hearings are conducted as informally as possible, and parties are encouraged to present their own case.

In retail lease disputes you can present your own case to NCAT or have a lawyer or agent represent you. Schedule 4 cl 7 of the *Civil and Administrative Tribunal Act 2013* provides that a party to proceedings for the purposes of the *Retail Leases Act 1994* is entitled to be represented by a lawyer or agent without requiring the leave of the Tribunal.

EVIDENCE AND SUPPORTING MATERIALS

At the hearing, you will need to provide evidence to support your application.

The type of information and documents you need to provide to NCAT will depend on the orders you are seeking. Refer to the list of orders attached to this form for the information required.

You will be required to provide documents to prove your case, such as:

- Retail shop lease
- Correspondence between parties
- Reports, receipts, photographs etc
- Disclosure statement
- Statements, statutory declarations or affidavits that support your case.

These documents will be provided to the other party. If they are not included with your application, you will have to bring copies to the hearing for the other party.

Do not include any confidential information with your application as copies of your attachments will be provided to the other party.

INFORMATION AND ASSISTANCE

NSW SMALL BUSINESS COMMISSIONER

Phone: 1300 795 534

Website: www.smallbusiness.nsw.gov.au

Contact the Office of the NSW Small Business Commissioner for information and assistance **before** lodging the application.

NCAT

Phone: 1300 006 228

Website: www.ncat.nsw.gov.au

Contact NCAT's Consumer and Commercial Division for information and assistance **after** lodging the application.

ORDERS under the *Retail Leases Act 1994*

The orders below are a guide only. There may be other orders that are appropriate or necessary in any particular case. You should refer to the relevant sections of the *Retail Leases Act 1994* for more detailed information.

RETAIL TENANCY CLAIM

Section	Orders	Who can apply?	Information required
72(1)(a)	An order that a party to the proceedings pay money to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Correspondence between parties • Reports, receipts
72(1)(b)	An order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Statements, statutory declarations or affidavits that support your case • Correspondence between parties
72(1)(c)	An order that a party to the proceedings: <ul style="list-style-type: none"> (i) do any specified work or perform any specified service or any obligation arising under this Act or the terms of a lease; (ii) surrender possession of specified premises to another person (iii) assign his or her or its rights under a lease to a specified person (iv) do or perform, or refrain from doing or performing, any specified act, matter or thing 	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Assignor's disclosure statement • Lessor's disclosure statement • Reports, receipts • Statements, statutory declarations or affidavits that support your case • Correspondence between parties
72(1)(f)(ii)	An order declaring that a lessor is not entitled to withhold consent to an assignment of the rights of a lessee	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Assignor's disclosure statement • Lessor's disclosure statement • Bank guarantee information • Copy of outgoings • Correspondence between parties

RECTIFICATION OF LEASE OR DISCLOSURE STATEMENT

Section	Orders	Who can apply?	Information required
72(1)(e)	An order requiring the rectification of the lease or the lessor's disclosure statement	<ul style="list-style-type: none"> • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Lessor's disclosure statement
72(1)(e1)	An order deeming disclosure statement given in compliance with section 11 before lease entered	<ul style="list-style-type: none"> • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Lessor's disclosure statement
72(1)(f)(i)	An order declaring any provision made by a lease to be void	<ul style="list-style-type: none"> • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Correspondence between parties • Lessor's disclosure statement

CLAIM FOR RELIEF

Section	Orders	Who can apply?	Information required
72(1)(d)	An order granting a party to the proceedings relief against forfeiture	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Correspondence between parties

Section	Orders	Who can apply?	Information required
72(1)(f)(iii)	An order declaring the rights and liabilities of the parties under law, whether any consequential relief is or could be claimed or not	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Assignor's disclosure statement • Lessor's disclosure statement • Bank guarantee information • Copy of outgoings • Correspondence between parties

SECURITY BOND

Section	Orders	Who can apply?	Information required
72(1)(f)(iv)	An order declaring that a party is or is not entitled to receive payment of the whole or part of a security bond	<ul style="list-style-type: none"> • Lessor • Lessee 	<ul style="list-style-type: none"> • Retail shop lease • Correspondence between parties • Reports, receipts

UNCONSCIONABLE CONDUCT

Section	Orders	Who can apply?	Information required
72(AA)(1)	<p>(a) An order that a party to the proceedings pay money to a person specified in the order, whether by way of debt, damages or restitution, or refund any money paid by a specified person,</p> <p>(b) An order that a specified amount of money is not due or owing by a party to the proceedings to a specified person, or that a party to the proceedings is not entitled to a refund of any money paid to another party to the proceedings.</p>	<ul style="list-style-type: none"> • Lessor • Lessee • Former lessor • Former lessee • Guarantor • Covenantor 	<ul style="list-style-type: none"> • Retail shop lease • Lessor's disclosure statement • Lessee's disclosure statement • Correspondence between parties • Copy of outgoings • Reports, cash flow statements