

Applicant	Gordon James Craven
Respondent	Saurav Kataria and Ashleigh Kataria
Agent	Redacted due to Negotiated Settlement with Real Estate Respondent
QCAT	APL305-23

The following information is details in application by Gordon James Craven for the appeal relating to the tenancy at 8 Musa Place, Arona to further extend on what was lodged for the original QCAT hearing.

RESPONSE TO SOLAR

The lease in place with dates 21/6/22 – 19/6/23 had the solar term and condition with tenants receiving 100% of the sola rebate (ANNEXURE A).

The initial lease offer/renewal was emailed through the [REDACTED] system to the applicant on 16/3/23 at 10.18am requesting to be returned within seven (7) days (ANNEXURE B); as outlined on the enclosed email confirmed Special Conditions ‘Outside Dog’ and ‘Solar’ also with three options being Review and Sign Lease, Request Change, Do Not Renew.

We confirm that when a new lease offer is made from an owner/lessor; they are able to offer new terms that vary from the lease agreement in place – changes made from the owners/lessors can include the rent per week being different; special terms being different and any other details they wish to alter. It is then the decision of the lease holders the lease agreement is offered to, to agree to the owners offer or not.

In this situation we confirm that a standard solar special term noted on the tenancy agreement offer from the owners/lessors was included; this administration error was in no way made to disadvantage the lease holders including the application – the claims being made by the applicant is strongly refuted.

Emailed received from the applicant on 20/3/23 at 8.19am questioning various items on the lease renewal offer from the owners sent from the [REDACTED] system (ANNEXURE C). This was forwarded to the owners on 21/3/23 at 10.45am (ANNEXURE D).

Notified through agent portal system that lessors/respondents agreed to lease renewal offer instructions special terms including outside side, water tank and camping trailer – the solar special term was removed (no longer requesting for electricity to stay in the owners name) and issued to the tenants including the applicant on 4/4/23 at 5.10pm with email to the lease holders including the applicant on 4/4/23 at 5.09pm (ANNEXURE E).

Email from applicant requesting to be sent as PDF version to [REDACTED] on 4/4/23 at 5.35pm (ANNEXURE F); lease offer from owners to tenants emailed confirming details and lease as PDF to all three lease holders (Gordon Craven, Janet Craven and Angela Craven) on 6/4/23 at 1.50pm (ANNEXURE G).

As outlined above the Solar term inserted through the [REDACTED] system for lease offer in the initial lease; the Solar term is standard wording from the agent’s system being used at the time. The owners amended offer to the lease holders including the applicant on 4/4/23 had the solar term removed

which did not require them to change their original arrangement with having the electricity account moved out of the account holders name to no longer receive the Government Rebate they were receiving.

The lease holders including the applicant's claim that the solar term was hidden is false; they were aware of the solar term noted on the email wording and the lease issued on 16/3/23 (ANNEXURE B); and then when the amended lease offer from the owners/lessor's issued to the lease holders on 4/4/23 the special terms outlined in the email and the lease had the solar term removed (ANNEXURE F); the applicants claim's of hiding this is false and evidence supplied within this response confirming.

The applicants claim that the owners/lessor or agent provided false and misleading information in a way to alter the above process that occurred is strongly refuted. At no time was an email sent to the lease holders directly from the agent demanding that this solar term was to be enforced; including the that the electricity arrangement be changed; and the administration error was corrected with the term removed from the lease renewal offer to the tenants as per the owners/lessors instructions within nineteen (19) days of the original offer from the lessor/owner on 16/3/23; the nineteen (19) day turnaround from the owners/lessors response to the lease holder including the applicants enquiry on the lease offered to them on 16/3/23.

Please note that the lease in place had expiration date of 19/6/2023; the amended lease offer on 4/4/23 was 76 days before the current lease was to expire.

RESPONSE TO 426(4) Disputes about lessors' notices

The applicant proceeded with their right to dispute the Form 12 Notice to Leave issued by the agent as per the owner's instructions on 21/4/23 at 3.43pm (ANNEXURE G) with grounds of End of Fixed Term agreement (ANNEXURE H).

The applicants claim that the Form 12 Notice to Leave was issued with tenancy being terminated due to the lessor's action is refuted; as the lease offer issued on 4/4/23 in the email text (ANNEXURE E) states to be signed within seven (7) days being 11/4/23; but the lease holders including the applicant weren't issued with Form 12 Notice to Leave until 24/4/23 being 20 days after the lease issued on 4/4/23.

The lease holders including the applicant were sent email through the agent's automated portal sent out automated email reminder's to the applicant of the lease offer on 11/4/23 at 9.35am with three options being Review and Sign Lease, Request Change, Do Not Renew (ANNEXURE I), 15/4/23 at 9.44am with three options being Review and Sign Lease, Request Change, Do Not Renew (ANNEXURE J), 20/4/23 at 9.36am with three options being Review and Sign Lease, Request Change, Do Not Renew (ANNEXURE K) and 24/4/23 at 9.36am with three options being Review and Sign Lease, Request Change, Do Not Renew (ANNEXURE L).

As noted in the applicants claim they wanted 12 month lease; however the owners had offered the 6 month lease and the lease holders including the applicant did not sign to accept the owners offer; therefore the Form 12 Notice to Leave was issued with grounds 'End of Fixed Term Agreement'. This action is standard within the industry; and as the applicant was advised by the QCAT adjudicator other agents issue the Form 12 Notice to Leave with the lease renewal agreement at the same time.

The applicant is unable to provide section of legislation (Residential Tenancies and Rooming Accommodation Act 2008, Residential Tenancies and Rooming Accommodation Regulation 2009); that

states the lessor's/owner's are required to provide as reason and these requests from the tenants were notified to the owner (ANNEXURE G).

RESPONSE TO 246A Retaliatory action taken against tenant

As per the owner's original statement supplied for QCAT hearing (ANNEXURE M); after the owner's were trying to fall pregnant through IVF they had discovered they were pregnant in April therefore the change and offer of a 6 month lease to the tenants was due to their change of situation; and intending on moving into the property at end of the renewal term being in December 2023.

As the appointed agent for the lessor under Property Occupations Act 2014 – Property Occupations Form 6; Appointment and Reappointment of a property agent, residential letting agent or property auctioneer. The agent is required to follow the owner's instructions as per term:

11.22 The Agent must act in accordance with the Clients instructions unless such instructions are contrary to the Conduct Standards prescribed in the Regulations to the Act.

RESPONSE TO 216 False or misleading information – Queensland Civil and Administrative Tribunal Act 2009

The applicants claims that the information provided being misleading is strongly refuted; as outlined above the lease holders response including the applicant when the lease offer from the owners was issued on 16/3/23, the Solar clause was remove in it's entirety when the owners/lessors offered the amended lease. The solar clause in the initial lease was a special term noted on the electric lease agreement through the agent's program/system being an administration error which was then removed. This oversight was on the owners/lessor and agent; then corrected as outlined above.

The applicants claim based on breach of this term is strongly refuted based on the evidence and details supplied in this submission and response. An administration error as outlined above.

Property Agents and Motor Dealers (Real Estate Practice Code of Conduct) Regulation 2001;

14 Fraudulent or misleading conduct A real estate agent must not engage in conduct that is fraudulent or misleading in the conduct of a real estate agency practice.6

In no time did the owner/lessor or agent make steps to mislead the lease holders including the applicant and the agent did not have actions relating to misleading conduct; an administration error made was corrected once the lease holders query around this was notified to the owners/lessors. The administration error was corrected and special term removed from the amended lease offer from the owners/lessor.

18.1 The Timeline as per sub-paragraphs 5(a) to 5(p) above, referring to the relevant parts of the SoC, sets out an easy to follow list of events exposing the “Administrative Error” and the “The owners were planning to give the solar rebates to the tenants” Claims, to be fabrications. It is logical and common sense, that if the Claims had been true, they would have been brought to the attention of the tenants prior to the 29 August hearing, by way of the opportunities as per the Timeline, and the Response.

The above claim by the applicant is untrue; as outlined above and on ANNEXURE E; the lease holders including the applicant was notified that the solar clause was removed from the lease offer on 4/4/23;

the solar special term was not being enforced. The agent confirmed at the QCAT Hearing on 29/8/23 when questioned on this that it was an administration error with it being included initially.

The applicant had advised that they did not want to a six (6) month lease; they wanted a twelve (12) month lease. As per the owners statement enclosed and with original submission; due to their change of circumstances they amended the lease term to six (6) months.

Response to 19.2 By reason of 19.1, the Adjudicator seemingly had an erroneous belief that :
(a) behaviour that is “normal practice”, “common practice”, and “business as usual”, within the property rental industry, is excused from the provisions set out at 19 above; or
(b) that the RTRA Act overrode the provisions set out at 19 above

This claim by the applicant is untrue; the Form 12 Notice to Leave was issued to the tenants within the guidelines of the legislation; in particular as follows –

Residential Tenancies and Rooming Accommodation Act 2008, Subdivision 2 Notices to leave premises given by lessor:

291 Notice to leave for end of fixed term agreement

As per the email from the agent’s portal system the lease holders including the applicant were aware that the Form 12 Notice to Leave would issued for failure to sign the lease agreement offered by the owners/lessors. As outlined above they were given seven (7) days from the day of issue on 4/4/23; however the Form 12 Notice to Leave was issued on 24/4/2023 (ANNEXURE H); this was twenty (20) days after the amended lease was issued and as per the owners/lessor instructions (ANNEXURE G).

The Form 12 Notice to Leave being issued in line to terminate tenancy is based on standard practice in altering ways by an agent/agencies procedures; which can be confirmed through articles and information on the REIQ website.

Response to applicants Affidavit of service dated 3.10.23 by Gordon Crave, the applicant

As per the submission from the applicant; the details of [REDACTED]; supplied on 11.5.23 as request by the applicant:

ABN: 86 113 271 766

Enclosed and marked ANNEXURE N; free search of the business showing [REDACTED]

ACN: 113 271 766

Enclosed and marked ANNEXURE N; free search to confirm [REDACTED]