

QCAT APPEAL SUBMISSIONS

QCAT Application: APL305-23

Applicant: Gordon James Craven

**Respondents: Saurav Kataria
Ashleigh Kataria**

SUBMISSIONS BY THE APPELLANT

Made according to Directions of Member Lember of the Appeal Tribunal on 26/09/2023

GROUND 1

The Applicants (tenants) were taken by surprise by the Respondents introducing False and Misleading Information (FMI) to the Tribunal which was received as evidence.

SUBMISSIONS TO GROUND 1.

1. **At page 2 of the Reasons at lines 14 to 16;** the Adjudicator has erred by stating the following and believing it to be true when it was not true :
The agent has given evidence in relation to the solar being put into the owners 'name as an administrative error. The owners were planning to give the solar rebates to the tenants.
- 1.1 It is well established settled law that surprise¹ can and does lead to procedural unfairness. The Applicants were taken by complete surprise by Ms. [REDACTED] the First and Second Respondents raising without notice, the Claims being :
 - (a) *Administrative Error;* and
 - (b) *The owners were planning to give the solar rebates to the tenants*².
2. Had the Claims been genuine, they should have been :
 - (a) made known to the tenants at the time of being discovered, in order for the tenants to sign a 12 month lease renewal; and/or
 - (b) included in the Response document³ in this subsequent proceeding.
3. In fact, the tenants were not made aware of the Claims until the hearing on 29 August 2023, which made the Response document misleading by omission, and caused the tenants to be substantially disadvantaged in being totally unprepared for the Claims.

1. *Lyons v Building Services Authority & Anor* [2011] QCATA 240 at [13].

2. Page 2 lines 14 to 16 of Reasons for Decision.

3. Document 16. QCAT Response Q1363-23 online portal.

4. A **Timeline** illustrates how the tenants were unaware of the Claims prior to the hearing, simply because they did not exist, and that the Claims have been fabricated for the purpose of misleading the Tribunal, and disadvantage to the tenants by way of surprise.

TIMELINE

5. **Timeline of events showing the Claims to be false :**

- (a) By way of document “**B**” in the Evidence Schedule (annexed to the Statement of Claim (SoC)) and dated 16 March 2023, the Respondents offered the tenants a lease renewal for 12 months within a linked 42 page Electronic Document* version of the lease renewal.

- (b) Hidden (hidden because it was not specifically brought to the attention of the tenants) within that Electronic Document at page 22, that there was an Amended Special Condition (ASC) which is titled “Solar”:

(i) **Solar**

The tenants acknowledge that the electricity account must stay in the owners name. The owners will pay the account in full and the tenants will then be invoiced;

which replaced the previous Solar Special Condition;

(ii) **Solar**

The lessor and tenants agree that the tenants are to receive 100% solar rebate during the term of this tenancy;

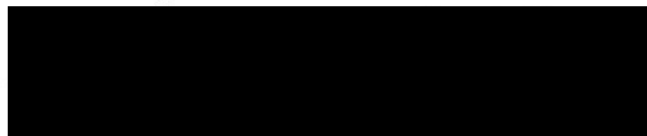
for which the tenants had agreed to a \$60.00 per week rent increase⁴.

- (c) The ASC was not acceptable to the tenants because, amongst other things⁵ :

- (i) it walked back on the previous Solar Special Condition agreement; and
(ii) the tenants would lose their pensioner electricity concession provided by the government, along with the negotiated solar rebate; and
(iii) the First Respondents had no entitlement to transfer the electricity into their name so as to retrieve the solar rebate given to the tenants for a \$60.00 per week increase in rent, and
(iv) a non negotiable demand to sign (per doc. “**B**” Evidence Schedule).

- (d) As per paragraphs 9 of the SoC, the tenants made the Respondents aware of their rejection by way of a complaint letter which is marked “**C**” in the Evidence Schedule being sent the Second Respondent on 20 March 2023 by way of the following email addresses :

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* Application for leave to introduce supplementary evidence, i.e. the 42 page document

4. Particulars H of paragraph 6 of the SoC <AND> page 18 of Exhibit “A-1” in the Evidence Schedule.

5. Paragraphs 7 to 8 of the SoC.

- (e) Upon receipt of the document “C”, Ms [REDACTED] had an opportunity to inform the tenants of the Claims (if they existed), and rectify the situation.
- (f) However Ms [REDACTED] for the Respondents did not do that, and remained silent on the Claims when replying to the tenants by email of 21 March 2023* acknowledging a problem with the document “B” being “*heavy handed and demanding*”.
- (g) By return email of 21 March 2023, the tenants informed Ms. [REDACTED] for the Respondents that : “*The proposed Solar / Electricity changes are the ones we are most concerned about*”.*
- (h) AGAIN the tenants were not informed about the purported Claims.
- (i) Having not received any response from the Respondents regarding the ASC issue, on 23 March 2023 by email to :
- [REDACTED]
 - [REDACTED]
- the tenants served a legal notice titled NOTICE OF INTENTION TO SEEK RTA / QCAT RESOLUTION, on the Respondents, a copy of which is marked “D” in the Evidence Schedule.
- (j) AGAIN the tenants were not informed about the purported Claims.
- (l) Instead of responding to the Solar Issues, on 27 March 2023 the Respondents arrogantly reproduced the ASC in another 12 month lease renewal offer, by way of the document marked “E” in the Evidence Schedule, which also sought to contract away further issues raised in the document “C”.
- (m) *By way of the document marked “F” in the evidence Schedule on 31 March 2023*, the tenants emailed a further more detailed complaint regarding the ASC and other issues.
- (n) AGAIN the tenants were not informed about the purported Claims.
- (o) In Reply ⁶ to the unsigned Response document ⁷, at paragraph 3.2, it was pointed out that there had been no response to the substantive “Solar” issue complained about (thus causing a 12 month lease renewal not to be signed).
- (p) AGAIN the tenants were not informed about the purported Claims, when it is so obvious that informing the tenants of the “Administrative Error” would have resolved the issue, with the 12 month tenancy being signed.

* Application for leave to introduce supplementary evidence, i.e. copies of the emails.

6. Document 17 by the Applicants, QCAT Submissions Q1363-23 online portal.

7. Document 16 by the Respondents, QCAT Response Q1363-23 online portal.