

Resolving Retail Tenancies Disputes by Arbitration— The Victorian Experience

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BACKGROUND

Prior to the enactment of the Retail Tenancies Act 1986 by the Victorian Government, disputes between landlords and tenants frequently ended up being litigated in the Courts.

Following a detailed review of disputation in the retail tenancies area and after consultation with members of the Board of the Australian Centre for International Commercial Arbitration and Councillors of The Institute of Arbitrators Australia, the Victorian Government passed legislation which, in summary, provided for—

- most disputes between landlords and tenants to be resolved by arbitration;
- prohibited courts or other tribunals hearing matters capable of being referred to arbitration under the Act; and
- provided for disputes involving rental reviews only to be resolved by valuers.

Arbitrations under the Act must be conducted in accordance with and subject to the provisions of the Commercial Arbitration Act 1984 (the Uniform Act). In addition arbitrators have been given wide powers under the Retail Tenancies Act 1986 to make a declaration as to the rights of the parties to a dispute and grant injunctive relief in any case in which the Supreme Court would have power to make such a declaration or to grant relief.

PROCEDURES

The Act provided for the establishment of a panel of arbitrators and for the appointment of a “prescribed person” to appoint arbitrators. The Panel of Arbitrators which has been established (17 names in all) comprises members of The Institute of Arbitrators Australia and are experienced arbitrators. They include accountants, barristers and solicitors, engineers, valuers, architects and building consultants and builders.

The “prescribed person” for appointing the arbitrators is the Secretary-General for the time being of the Australian Centre for International Commercial Arbitration.

The procedure for appointing the Arbitrator is simple; namely, either party to a dispute issues a Notice of Dispute in the prescribed form to the other party and lodges a copy with the Secretary General of the Australian Centre for International Commercial Arbitration who must then appoint an arbitrator from the panel and advise the parties of the appointment. All disputes are referred to a single arbitrator. The appointed arbitrator normally calls a Preliminary Conference immediately and proceeds with the arbitration.

The Notice of Dispute not only shows details of the parties and the nature of the dispute but provides for the claimant to include details of the relief or award which the arbitrator will be asked to grant or make.

REVIEW OF EXPERIENCE TO DATE

Since the Act became operative in September 1987 in excess of 60 appointments have been made, 60% of which were made at the request of tenants and 40% at the request of landlords.

The subject matter of the disputes has ranged over a wide area, the main problems being failure to pay rent etc. linked with other matters, landlords failing to agree to extending existing leases and landlords withholding consent (without sufficient reasons) to the assignment of leases.

Appointment of the Arbitrator is normally made on the same day as the Notice of Dispute is lodged with the appointing authority and experience has shown that most disputes are resolved in the matter of a few days. The ability of arbitrators to grant injunctive relief and make declarations and the format of the notice of dispute have also contributed to the rapid resolution of disputes.

Experience has shown that this legislation has very much simplified the procedures for settling disputes in the retail tenancies area and has resulted in a speeding up of the resolution of such disputes.

THE FUTURE

The Act will no doubt be used as a model for legislation in other areas and already the Victorian Government has under consideration using dispute resolution procedures in the Retail Tenancies Act in other pending legislation.

Importantly, The Retail Tenancies Act 1986 has put "arbitration" to the test. The system has stood the test well and the arbitrators have carried out their duties in a very responsible and professional manner bringing credit not only to themselves and their profession but also to The Institute of Arbitrators Australia of which they are all members. Parties have the satisfaction of knowing that their disputes have been resolved quickly and in a manner in which the award of the arbitrator is final and binding on all concerned.