

# THE RETAIL SHOP LEASES ACT

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In the matter of

**Dispute 77/00**

**ANN MAREE MORPUSS**

- Claimant -

- and -

**MAUREEN GREASLEY**

- Respondent

**DECISION**

Given in Brisbane on 10 May, 2001.

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This matter has been decided by me on written submissions in terms of an order which I made on 8<sup>th</sup> January 2001. It was agreed by the parties that there was no dispute of fact and that the matter could therefore be resolved by a Chairman sitting alone.

By written submission dated 16<sup>th</sup> February 2001, the claimant states the facts alleged by her and then asks the Tribunal to decide three matters. They are:

- (1) *That I be regarded as a shop in a retail shopping centre and therefore not have to pay sinking fund and special levies of a capital nature.*
- (2) *That I not be charged the monthly management fee for the remainder of my lease or until the next review date. Also, the calculation of the five percent as mentioned in the letter from Property Mooloolaba has been calculated incorrectly in that it should be five percent of the initial period of rental of \$39,000 per annum, and not on the reviewed rental of \$49,000.*
- (3) *The cost of \$1,100 for parts for the air-conditioner be divided equally between myself and the landlord.*

Of these, only point (1) is capable of being resolved by me. The other points have not been raised in the Notice of Dispute or at the directions hearing. They involve questions of fact which, if permitted to be raised, would have to be decided by a Tribunal consisting of a Chairman and two other Members. I

therefore deal with point (1) only.

The premises covered by the lease is Lot 14 in BUP 101402. This has apparently been changed to Lot 14 in the Peninsula Apartments CTS 17694. The Peninsula Apartments have a number of shops, one of which is owned by the respondent by community title. The Body Corporate has levied contributions from unit owners, including contributions towards a Sinking Fund.

The unit owned by the respondent is the only unit in Peninsula Apartments owned by her. Shop 14 does not form a "retail shopping centre" as, although there are more than five shops in the centre, the respondent only owns and leases one of them.

The result is that there is no prohibition in the Act prohibiting the respondent claiming all sums which it is obliged to pay to the Body Corporate. Clause 6.3.9 of the lease, which requires the lessee to pay:

*" the full amount of any levies or charges payable by the lessor to the Body Corporate in respect of the premises, include ..... payments to the Sinking Fund."*

is enforceable.

I therefore hold that the claimant is obliged to pay the whole of such levies

imposed by the Body Corporate, including payments into the Sinking Fund.

With regard to points (2) and (3) raised by the applicant, I adjourn them to the Registrar with leave to either party to bring them on, on seven days notice to the other party, and on fixing a suitable date with the Registrar.

P V Loewenthal,

Chairman.