

NORTHERN TERRITORY OF AUSTRALIA
BUSINESS TENANCIES (FAIR DEALINGS) REGULATIONS

Regulations 2004, No. 18

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 2004, No. 18*

Regulations under the *Business Tenancies (Fair Dealings) Act*

I, EDWARD JOSEPH EGAN, the Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Business Tenancies (Fair Dealings) Act*.

Dated 31 May 2004.

E. J. EGAN
Administrator

By His Honour's Command

C. B. BURNS
Minister for Transport and Infrastructure
acting for and on behalf of the
Minister for Justice and Attorney-General

* Notified in the *Northern Territory Government Gazette* on 9 June 2004.

BUSINESS TENANCIES (FAIR DEALINGS) REGULATIONS

PART 1 – PRELIMINARY

1. Citation

These Regulations may be cited as the Business Tenancies (Fair Dealings) Regulations.

2. Commencement

These Regulations come into operation on the commencement of the *Business Tenancies (Fair Dealings) Act*.

PART 2 – FORMS

3. Prescribed forms

A reference in these Regulations to a form by number is a reference to the form of that number in the Schedule.

4. Landlord's disclosure statement

For section 19(2) of the Act, the information or material to be contained in or attached to a landlord's disclosure statement is specified in Form 1, Part A.

5. Tenant's disclosure statement

For section 21(2) of the Act, the information or material to be contained in or attached to a tenant's disclosure statement is specified in Form 1, Part B.

6. Assignor's disclosure statement

For section 56(d) of the Act, the information or material to be contained in or attached to an assignor's disclosure statement is specified in Form 2.

7. Application for determination of retail tenancy claim

For section 86(3) of the Act, the form of an application in respect of a retail tenancy claim is set out in Form 3.

8. Certificate of failure to resolve tenancy claim

For section 104(2) of the Act, the form of the certificate is set out in Form 4.

PART 3 – MISCELLANEOUS

9. Conciliator: qualifications of Commissioner's delegate

For section 89(3) of the Act, the qualifications of a delegate of the Commissioner conducting a conciliation conference are the following:

- (a) competence in alternative dispute resolution;
 - (b) knowledge of the rights, obligations and liabilities conferred or imposed under the Act on parties to a retail shop lease;
 - (c) knowledge of accepted practices concerning the leasing of retail shops.
-

SCHEDULE
PRESCRIBED FORMS

Regulation 3

FORM 1

Regulations 4 and 5

NORTHERN TERRITORY OF AUSTRALIA

Business Tenancies (Fair Dealings) Act

Sections 19(2) and 21(2)

LANDLORD'S AND TENANT'S DISCLOSURE STATEMENTS
RELATING TO RETAIL SHOP LEASE

PART A – LANDLORD'S DISCLOSURE STATEMENT

Note: Complete only the items that are applicable. Where # is indicated, delete the words that are inapplicable.

1. THE LANDLORD

Landlord's name:

Landlord's trading name:

Landlord's address:

Name of landlord's agent:

Address of landlord's agent:

2. THE TENANT

Tenant's name:

Tenant's trading name:

Tenant's address:

3. THE RETAIL SHOP

Address of the retail shop being leased:

Shop number if the retail shop is within a retail shopping centre:

Net lettable area of the retail shop in square metres: *(State whether actual or estimated. If estimated, state whether a survey will be conducted.)*

Finishes, fixtures, fittings, equipment and services to or in the retail shop provided by the landlord:

The tenant #is/is not# required to contribute to the cost of finishes, fixtures, fittings, equipment and services to or in the retail shop provided by the landlord.

#The extent to which the tenant is required to contribute to those costs:

4. THE RETAIL SHOPPING CENTRE ("CENTRE")

Note: *This item must be completed only if the retail shop is located within a retail shopping centre.*

Name of centre:

Address of centre:

Number of retail shops in the centre:

Gross lettable area of the centre: *(State whether actual or estimated. If estimated, state why and state when actual will be available.)*

Number of car park bays at the centre in total:

Number of car park bays at the centre for the tenant's exclusive use:

Core trading hours of the centre:

Hours of access to the retail shop outside the core trading hours of the centre:

The floor plan of the centre is #attached/not attached#.

Tenancy mix (by category) of the centre:

The tenancy mix of the centre #is/is not# likely to change over the term of the lease.

The landlord #has/has not# obtained planning approval for any renovations, redevelopments or extensions of the Centre. *(If the landlord has obtained planning approval, provide details.)*

5. THE RETAIL SHOP LEASE

Note: *Under the Business Tenancies (Fair Dealings) Act, tenants have the right to a minimum 5 year tenancy. The tenant may waive this right if the tenant obtains a certificate from a legal practitioner in accordance with section 26 of the Act.*

5.1 Term of lease

Term:

Options for further terms:

Actual date, or estimated date if actual date is not known, on which the landlord will hand over the retail shop to the tenant: *(If estimated, state how the actual date is to be determined.)*

Actual date, or estimated date if actual date is not known, on which the lease will commence: *(If estimated, state how the actual date is to be determined.)*

5.2 Permitted use

Permitted use:

The tenant will have exclusive rights to sell the following goods or services:

The tenant may not sell the following goods or services: *(State that the tenant is required to conduct permitted use and nothing else, and set out any express exclusions.)*

5.3 Base rent

The base rent payable by the tenant for the term of the lease is:

Period*	Rent*	Adjustment method on review
	<i>(e.g. year 1 + 5%)</i>	<i>(e.g. year 1 + 5%)</i>

* *Based on estimated commencement date if actual not known.*

The base rent is payable as follows:

Date for rent payments under the lease:

(e.g. By equal monthly instalments in advance on the first day of each month except for the first and last payments, which will be pro rata.)

Date for first payment of rent under the lease:

(e.g. State commencement date or, if a rent free period, state the number of days/weeks or a date after commencement date.)

#The base rent payable by the tenant for the further term/s of the lease is/are:

Period	Rent	Adjustment method on review

5.4 Percentage/Turnover Rent

The tenant #is/is not# required to pay any rent based on turnover.

#The rent based on turnover payable by the tenant is calculated as follows:

(Include the percentage of gross sales, the base from which percentage rent cuts in and whether that base changes.)

5.5 Outgoings for retail shopping centres

Note: This item must be completed only if the retail shop is located within a retail shopping centre and the lease requires the tenant to contribute (in whole or in part) to any outgoings of the centre.

The estimated outgoings for the retail shopping centre for the current outgoings year are set out in the following table. This estimate was prepared at the commencement of the outgoings year. Actual outgoings will be calculated and reconciled with appropriate adjustments made at the end of the outgoings year.

Business Tenancies (Fair Dealings) Regulations

Outgoings category	Estimate per annum
Air conditioning	
Ventilation	
Building intelligence and emergency systems	
Security	
Fire protection	
Insurance	
Electricity	
Water	
Telephones	
Gas and oil	
Lifts and elevators	
Public address and music	
Signs	
Uniforms	
Child minding	
Car parking	
Gardening and landscaping	
Cleaning	
Disposals	
Local government rates and charges	
Repairs and maintenance	
Sewerage and drainage rates and charges	
Administration costs	
Management fees	
Pest control	
Audit fees	
Energy Management Systems	
Other charges to be borne by the tenant	<i>(Specify)</i>

Business Tenancies (Fair Dealings) Regulations

The following formulae are used to apportion outgoing expenses to the tenant:

Core trading hours outgoing	
Outgoings directly assessed on retail shop	
After hours outgoing	
Services (gas, telephone, electricity, water etc.)	<i>(State whether the tenant will be required to pay direct to the supply authority for water, gas, telephone and electricity supplied to and consumed in the retail shop or whether they will be part of outgoing.)</i>
Other	<i>(Specify)</i>

5.6 Outgoings for retail shop not located in a retail shopping centre

Note: This item must be completed only if the retail shop is not located within a retail shopping centre and the lease requires the tenant to contribute (in whole or in part) to any outgoing of the landlord.

The estimated outgoing for the current outgoing year for the building in which the retail shop is located are set out in the following table. This estimate was prepared at the commencement of the outgoing year. Actual outgoing will be calculated and reconciled and, where appropriate, adjustments made at the end of the outgoing year.

Outgoing category	Estimate per annum
Air conditioning	
Ventilation	
Building intelligence and emergency systems	
Security	
Fire protection	
Insurance	
Electricity	
Water	
Telephones	
Gas and oil	
Lifts and elevators	
Public address and music	
Signs	
Uniforms	

Business Tenancies (Fair Dealings) Regulations

Child minding	
Car parking	
Gardening and landscaping	
Cleaning	
Disposals	
Local government rates and charges	
Repairs and maintenance	
Sewerage and drainage rates and charges	
Administration costs	
Management fees	
Pest control	
Audit fees	
Energy Management Systems	
Other charges to be borne by the tenant	<i>(Specify)</i>

#The following formulae are used to apportion outgoing expenses to the tenant:

Core building hours outgoing	
Outgoings directly assessed on retail shop	
After hours outgoing	
Services (gas, telephone, electricity, water etc.)	<i>(State whether the tenant will be required to pay direct to the supply authority for water, gas, telephone and electricity supplied to and consumed in the retail shop or whether they will be part of outgoing.)</i>
Other	

5.7 Promotions and marketing

The tenant must pay the following marketing and promotional expenses during the term of the lease:

Expenses items	Estimate per annum
Contribution to promotion/marketing fund	
Centre catalogues	
Tenant advertising	
Other	

5.8 Goods and services tax

The tenant #must/is not required to# pay the landlord the amount of any goods and services tax payable on any supply from the landlord to the tenant under or as a result of the lease.

6. TENANT'S FITOUT AND REFURBISHMENT WORKS

The landlord requires the tenant to perform, at the tenant's expense, the following fitout or refurbishment works (or both):

Before the commencement date of the lease:

During the term of the lease:

7. RELOCATION/DEMOLITION

The lease #does/does not# include a relocation clause.

The lease #does/does not# include a demolition clause.

8. ADDITIONAL REPRESENTATIONS

The following representations were made by the landlord or the landlord's agent to the tenant during negotiations for the lease:

Other than the representations included in this landlord's disclosure statement and the lease, no other representations were made by the landlord or the landlord's agent.

9. DECLARATION BY LANDLORD OR LANDLORD'S AGENT

I acknowledge that this landlord's disclosure statement contains all written representations by the landlord and the landlord's agent in relation to the proposed retail shop lease.

I am satisfied that all agreements are fully reflected in this landlord's disclosure statement.

I have not knowingly withheld information that is likely to have an impact on the tenant's proposed business.

Signed:

#Landlord/Landlord's Agent#

Date:

PART B –TENANT'S DISCLOSURE STATEMENT

Note: *This tenant's disclosure statement must be completed by the tenant and returned to the landlord or the landlord's agent before the lease is entered into by the parties. A lease is entered into on the earliest of the following:*

- (i) the tenant entering into possession of the retail shop;*
- (ii) the tenant commencing to pay rent;*
- (iii) the lease being signed by all parties.*

1. ACKNOWLEDGMENT OF RECEIPT

The tenant acknowledges that a copy of the proposed retail shop lease was received from the landlord or the landlord's agent before the tenant entered into the lease.

The tenant acknowledges that the landlord's disclosure statement was received from the landlord or the landlord's agent:

at least 7 days before entering into the lease.

less than 7 days before entering into the lease and the tenant has obtained a certificate from a legal practitioner in accordance with section 19(6) of the *Business Tenancies (Fair Dealings) Act*.

2. ADDITIONAL REPRESENTATIONS

The tenant has not, in entering into the retail shop lease, relied on any representations made by the landlord or the landlord's agent other than those set out in the lease and at item 8 of the landlord's disclosure statement.

Apart from the representations and statements referred to in the previous paragraph, no other promises, representations, warranties or undertakings have been made or given by the landlord or the landlord's agent in respect of the retail shop, or the business to be carried out at the retail shop or (if applicable) the retail shopping centre or building in which the retail shop is located.

The tenant has #sought/not sought# independent advice in respect of the commercial terms contained in the landlord's disclosure statement and the obligations contained in the proposed retail shop lease.

The tenant believes that the tenant will be able to fulfil the obligations contained in the lease, including the payment of the proposed rent, outgoings and other amounts, based on the tenant's own business projections for the business.

Signed: Date:

#Tenant/On behalf of tenant#

.....
Full name of person signing (*please print*)

.....
Position of person signing

FORM 2

Regulation 6

NORTHERN TERRITORY OF AUSTRALIA

Business Tenancies (Fair Dealings) Act

Section 56(d)

ASSIGNOR'S DISCLOSURE STATEMENT

1. The assignor has provided the assignee with the most recent landlord's disclosure statement in respect of the retail shop lease together with details of any changes (of which the assignor is aware) to the information contained in the disclosure statement since the statement was given.
2. The assignee has been advised that there are no outstanding notices in respect of the retail shop lease.
3. The assignee has been advised that there are no outstanding notices from any authority in respect of the retail shop.
4. The assignee has been advised that there *#are/are not#* any encumbrances on the retail shop lease.
5. The assignee has been advised that there *#are/are not#* any encumbrances on, or outside ownership of, any of the fixtures and fittings within the retail shop.
6. The landlord *#has/has not#* conferred any rent concessions or other benefits on the assignor during the term of the lease. *#The concessions and benefits conferred on the assignor are:*

Signed: Date:
#Assignor/On behalf of assignor#

.....
 Full name of person signing (*please print*) Position of person signing

Signed: Date:
#Assignee/On behalf of assignee#

.....
 Full name of person signing (*please print*) Position of person signing

Note: # Delete if inapplicable.

FORM 3

Regulation 7

NORTHERN TERRITORY OF AUSTRALIA

Business Tenancies (Fair Dealings) Act

Section 86(3)

**APPLICATION TO COMMISSIONER OF BUSINESS TENANCIES
FOR DETERMINATION OF RETAIL TENANCY CLAIM**

Note: Before completing this form, please read the notes at the foot of the form.

To: Commissioner of Business Tenancies
1st Floor Minerals House
66 The Esplanade Darwin
or Box 1722 Darwin 0801
Phone: 8999 1999
Toll free: 1800 019 319
Fax: 8999 6260
Email: consumer@nt.gov.au

1. DETAILS OF RETAIL SHOP LEASE

(Complete applicable items.)

Tenant's name on retail shop lease:

Business or trading name of tenant:

Tenant's ACN:

Tenant's ABN:

Tenant's postal address:

Landlord's name:

Business or trading name of landlord:

Landlord's postal address:

Street address of the retail shop, including the shop number and (if applicable) the shopping centre name:

Type of use of the retail shop:

Date of commencement of the current retail shop lease or lease extension:

2. DETAILS OF APPLICANT (the person making this application)

(Complete applicable items. If there is more than one applicant, provide the name and address of the second and each subsequent applicant, and of each applicant's representative, using copies of the attachment to this form.)

Applicant's status: Landlord
(tick as applicable) Tenant
 Assignee
 Other (*describe*)

2.1 Details if applicant is a company

Company name:

Company's ACN:

Company's ABN:

Name of person to contact for applicant:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

2.2 Details if applicant is not a company

Name:

ABN:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

2.3 Details of applicant's representative (e.g. legal practitioner)

(Refer to section 111 of the Act for details about other persons who may represent a party.)

Name:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

3. DETAILS OF RESPONDENT (the other party to the dispute)

(Complete applicable items. If there is more than one respondent, provide the name and address of the second and each subsequent respondent, and of each respondent's representative, using copies of the attachment to this form.)

Respondent's status: Landlord
(tick as applicable) Tenant
 Assignee
 Other (*describe*)

3.1 Details if respondent is a company

Company name:
Company's ACN:
Company's ABN:
Name of person to contact for respondent:
Postal address, including suburb/city/town, State and postcode:

Phone (b/h):
Email address:

3.2 Details if respondent is not a company

Name:
ABN:
Postal address, including suburb/city/town, State and postcode:

Phone (b/h):
Email address:

3.3 Details of respondent's representative (if known)

(Refer to section 111 of the Act for details about persons who may represent a party.)

Name:
Postal address, including suburb/city/town, State and postcode:

Phone (b/h):
Email address:

4. DETAILS OF DISPUTE

(Give a brief summary nature of the dispute, briefly setting out the facts relevant to the claim. THE SUMMARY AND FACTS WILL BE FORWARDED TO THE RESPONDENT. LODGMENT OF THIS FORM INDICATES YOUR AGREEMENT TO THIS. If you wish to provide additional documents relevant to this matter, e.g. the lease, attach them to this form or forward them separately under cover of a letter to the Commissioner of Business Tenancies, clearly identifying the dispute.)

Total monetary claim: \$.....

Remedy sought:
(Specify briefly.)

SIGNATURE OF APPLICANT:

Date:/...../.....

Application fee: At this time no application fee has been prescribed under section 87(1) of the *Business Tenancies (Fair Dealings) Act*.

Lodged with the Commissioner on
Date

Notes

Before completing this application, please consider discussing this matter with a legal practitioner or contacting the Office of Consumer and Business Affairs on 8999 1999.

This form is to be used to apply to the Commissioner of Business Tenancies for a determination of a retail tenancy claim. Information relating to the definition of a retail tenancy claim and to the dispute resolution and mediation process can be found in the booklet "A Guide to Dispute Resolution for Retail Tenancy Claims" and under the Retail Tenancy Matters section of the Consumer and Business Affairs website (www.caba.nt.gov.au).

If you have any questions relating to the dispute resolution process, please contact the Office of Consumer and Business Affairs for assistance.

ATTACHMENT TO FORM 3

(To be used if there is more than one applicant or respondent, to provide the name and address of the second and each subsequent applicant or respondent, and of each representative.)

Details relating to:

Second / Third / Fourth / Fifth *(circle applicable applicant or respondent number)*

Applicant / Respondent *(circle applicable)*

Details if applicant/respondent is a company

Company name:

Company's ACN:

Company's ABN:

Name of person to contact for applicant:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

Details if applicant/respondent is not a company

Name:

ABN:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

Details of applicant's/respondent's representative (if known)

(Refer to section 111 of the Act for details about persons who may represent a party.)

Name:

Postal address, including suburb/city/town, State and postcode:

Phone (b/h):

Email address:

FORM 4

Regulation 8

NORTHERN TERRITORY OF AUSTRALIA

Business Tenancies (Fair Dealings) Act

Section 104(2)

**CERTIFICATE OF FAILURE TO RESOLVE
RETAIL TENANCY CLAIM**

I, _____, the Commissioner of Business Tenancies,
issue this certificate to the following parties to an application for determination of
a retail tenancy claim:

Applicant/s name/s and status:

Respondent/s name/s and status:

The application was lodged on:

The following conferences were held in an attempt to resolve the claim:

I am satisfied that the parties have failed to resolve the claim and are unlikely to
do so, and the claim is within a court's jurisdiction referred to in section 105 of
the *Business Tenancies (Fair Dealings) Act*.

The details of the claim are as follows:

Name of tenant:

Trading name of tenant:

Name of landlord:

Trading name of landlord:

Details of retail shop:

Brief description of the dispute:

Total monetary claim:

Signed:

Commissioner of Business Tenancies

