# QCAT APPEAL SUBMISSIONS

**QCAT Application: APL305-23**

**Applicant:** **Gordon James Craven**

**Respondents:** **Saurav Kataria**
**Ashleigh Kataria**
**S.N.A. Group Pty Ltd**

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 surprise [1] can and does lead to procedural unfairness. The Applicants were taken by complete surprise by Ms. Eliza Black for 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 document [3] 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.

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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 increase [4].

(c) The ASC was not acceptable to the tenants because, amongst other things [5] :

(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 :

- eliza.black@ coronis.com.au; (Eliza Black)
- sunshinecoast.pm3@coronis.com.au; (Pippy Burley)
- info@coronis.com.au.

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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. Black had an opportunity to inform the tenants of the Claims (if they existed), and rectify the situation.

(f) However Ms Black 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. Black 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 :

- eliza.black@coronis.com.au (Eliza Black)
- sunshinecoast.pm3@coronis.com.au (Pippy Burley)

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.

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* 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.

6. The Timeline evidences, that within the initial & reproduced 12 month lease renewals :
   (a) the ASC was intentionally, and not erroneously, included within the renewals;
   (b) and there was never a plan to give the solar rebates to the tenants;
   and the Claims made by Ms. Black for the Respondents at the hearing, are false and nothing other than a disgraceful display of contempt for the Tribunal and the tenants.

7. By Ms. Black making the false Claims, and thereby seeking to distance herself and the Respondents from the ASC by misleading the Tribunal, surely must demonstrate how onerous the ASC was, that the Respondents sought to impose on the tenants.

8. If the ASC had **not** been present in the first 12 month lease offer (or even the second 12 month lease offer), the tenants would have signed that lease (with the initial 5(b)(ii) term re-inserted), as they had no desire to have to move the location of their family home [8], and had given notice of that via document "**C**" by conveying :

> *Our circumstances (as you have previously been made aware of), are that my wife and I are age pensioners, along with two grandchildren with disabilities that require stability, and our daughter (tenant Angela) is their mother and disability carer.*
> *Accordingly we are extremely reluctant to moving our home, because it is not only very expensive to do so, it is time-consuming, emotionally taxing, extremely difficult, stressful, depressing and brings about the problem of access to the current special school catchment area.*

9. The facts of the matter are, that because of the ASC being within the proposed two 12 month lease renewals, which provided for the First Respondent owners with a means to claw back the bargain at 5(b)(ii) above, at the expense of the tenants losing their government rebates, which the First Respondents were not entitled to do, the tenants were within their rights to refuse, and did refuse, to sign either of proposed 12 month renewals, by reason of the renewals being onerous by containing the ASC.

10. However Ms. Black argued to the Adjudicator that the tenants should have taken up a subsequent 6 month tenancy offer* which the Respondents had refused to explain the reasons for the offer being reduced to 6 months by their words :

"**The owners are not required to provide you with a reason for their lease renewal offer**" [9]

10.1 It is submitted that because of :
   (a) the then refusal to provide reasons; and
   (b) along with the reasons as set out at paragraph 13 of the SoC; and
   (c) the 100% rebate per paragraph 5(b)(ii) above costing the tenants $60.00 per week, was not present in the 6 month offer, thus creating unknown consequences;
   the tenants were entitled to reject the 6 month offer as also being onerous, and did so.

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8. Paragraphs 17 and 20 to 21.2 of the SoC.

* Application for leave to introduce supplementary evidence, i.e. the 6 month lease.

9. Paragraphs 12.2 and 15.5 of the SoC.

11. As such, a finding of retaliatory behaviour is appropriate, given :

(a) the serving of a Form 12 Notice to Leave, was because the First Respondents did not get their way of locking the tenants into an onerous agreement; and

(b) it is clearly unconscionable and wrong, to require the vulnerable tenants [10] to enter into an onerous tenancy agreement, and then issue a Form 12 Notice to Leave upon their refusal to do so; and

(c) the issues being set against the backdrop of paragraph 19 of the SoC where various instances of Section 22(1) of the ACL are listed to assist in building a total picture of Unconscionable Conduct; and

(d) the false & misleading Claims made by the Ms. Black for the Respondents, illustrating the level of egregiousness that Ms. Black for the Respondents will stoop to, in attempting to escape the consequences imposing the ASC.

11.1 Consequently it is submitted, that the Appellant is entitled to the compensation, declarations and orders being sought, pursuant to sub-section 426(4) RTRA Act and/or sub-section 246A(4) RTRA Act, as the SoC contained an Urgent Application.

WHO CREATED THE ADMINISTRATIVE ERROR FALSE EVIDENCE and WHY ?

12. ***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.*

12.1 This is not the sort of error that could be accidentally introduced, because it simply did not, and could not, exist until someone expressly created it.

13. It can only be that the so called unexplained *Administrative Error* was created by :

(a) an express creation by the First Respondents, given that Ms. Eliza Black for the Respondents has stated that she only follows instructions of her property owner clients as required by legislation (albeit being unable to name that legislation [11]), and further lied to the Tribunal that she had informed the tenants of the legislation by way of an email causing the Adjudicator to be again misled at : Page 3 lines 28 to 31 of the Reasons [*]; or

(b) a unilateral express creation by Ms. Black without instructions; or

(c) an express creation by agreement between First Respondents and Ms. Black.

13.1 The Timeline shows that the Claims did not exist. If they had existed, surely the tenants would have been informed so that they could sign the 12 month lease [12]. However the Claims were intentionally created for being introduced at the hearing without notice, for the purpose of creating a disadvantage to the tenants and misleading the Tribunal.

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10. Paragraphs 20 to 22.1 of the SoC.

11. Paragraphs 23 to 23.4 of the SoC.

* Application for leave to introduce supplementary evidence, i.e. the email.

12. Paragraph 8 above.

**GROUND 2**

The introduction of the FMI evidence, was calculated to mislead the Tribunal.

SUBMISSIONS TO GROUND 2.

14. Given the facts within the Timeline, and the fact that the ASC was contained within the said two12 month lease offers, thus making them onerous, it cannot be clearer that :
    - the *Administrative Error*; and
    - *the owners intended to give the solar rebates to the tenants*;

    are lies calculated to mislead the Tribunal into thinking the ASC was an innocent Administrative Error being rectified by a 6 month lease, when that was not the case because the 6 month lease was just as onerous, as per paragraphs 10 & 10.1 above.

14.1 It goes without saying, that misleading the Tribunal is contrary to Section 216 of the QCAT Act | Section 18 of the ACL | Article 9(a) of the REIQ Standards of Business Practice | Section 14 of the Real Estate Agency Practice Code of Conduct.

**GROUND 3**

The Tribunal was misled by the FMI evidence, thus causing erroneous findings.

SUBMISSIONS TO GROUND 3.

15. Given there was a primary focus by the Adjudicator on the Solar issues during the hearing and the fact that it was the first issue that the Adjudicator dealt with in her written Reasons, it is clear that the Adjudicator has relied upon the lies by Ms. Black for the Respondents, which has led the Adjudicator into the error of dismissing the Q1363-23 Application.

15.1 Further, the false Claims led the Adjudicator into erroneously thinking that the ASC was not intentional and it was all an honest mistake, when that was not the case. Obviously false Claims can cause an error in deliberations, and the findings of the deliberations are cast in doubt. As such the Appellant trusts the Appeal Tribunal to correct the injustice caused to the tenants.

**GROUND 4**

There was no reliance on FMI evidence within the Response filed in the Registry to the Statement of Claim. As such the Response was misleading by omission, in the circumstances of Ground 1.

SUBMISSIONS TO GROUND 4.

16. This ground has been dealt with at paragraphs 2, 3 and sub-paragraph 5(o) above.

**GROUND 5**

The Adjudicator erred, by giving weight to the FMI evidence that was false and did not exist, in particular the evidence of an “Administrative Error”.

SUBMISSIONS TO GROUND 5.

17. The Adjudicator erred by being too ready, and was seen to be too ready, to adopt the false Claims of Ms. Black, in particular when the tenants made an outcry that Ms. Black was lying about the "Administrative Error", which the Adjudicator ignored [13].

17.1 The false Claims were effective because they were launched by surprise and despite the outcry by the tenants, the Adjudicator erred by not inquiring as to how and when the purported error happened, and why it was not communicated to the tenants.

**GROUND 6**

The Adjudicator erred, by not giving proper weight to the true facts in the Statement of Claim before the Tribunal, evidencing that there could be no "Administrative Error"

SUBMISSIONS TO GROUND 6.

18. The SoC with annexed Evidence Schedule, contained evidence available to the Adjudicator to show that the "Administrative Error" could not have taken place.

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.

18.2 Had the tenants been forewarned of the specious Claims, the Timeline would have been submitted to the hearing on 29 August 2023.

**GROUND 7**

The Adjudicator erred, in not applying the provisions of Australian Consumer Law and other industry standards, by finding that behaviour alleged as unconscionable in the Statement of Claim was not unconscionable, by reason of the behaviour being "normal practice", "common practice" or "business as usual".

SUBMISSIONS TO GROUND 7.

19. The Adjudicator erred, by failing to properly consider that the Unconscionable Conduct provisions of :

- Sections 21 and 22 of the Australian Consumer Law (ACL); and
- Article 9(b) of the REIQ Standards of Business Practice; and
- Section 15 of the Real Estate Agency Practice Code of Conduct;

were relevant to the issues before the Tribunal.

13. The Transcript will show this, when it becomes available.

19.1 The Adjudicator erred, by finding that there was no Unconscionable Conduct, because the behaviour of the Respondents was "normal practice" [14] or "common practice" [15] or "business as usual" [16] within the property rental industry.

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

19.4 The Adjudicator erred by summarily dismissing paragraph 19 of the SoC, and all unconscionable claims within the SoC which illustrated the power imbalance, along with other unconscionable factors, without any proper deliberation or taking into consideration the factors of sub-section 22(1) of the ACL.

19.5 Similarly, the Adjudicator in summarily dismissing paragraph 19 of the SoC, and all unconscionable claims within the SoC, has erred in failing to consider how the vulnerable circumstances of the tenants, as pleaded at paragraphs 20 to 22.1 of the SoC, are relevant to the issues of Unconscionable Conduct.

**GROUND 8**

Once written reasons and transcript are received, many instances of bias will be provided in submissions, which show the Adjudicator favouring the Respondents.

**GROUND 8 HAS BEEN HAMPERED BY THE NON DELIVERY OF THE TRANSCRIPT BY QTranscripts.** The Transcript was ordered on 29 August 2023 the same day as the hearing, being over 6 weeks ago. Several representations were made about delivery of the transcript with the last representing that it would be delivered by Friday 13 October. As of 5.00pm 13 October it has not been delivered and my inquiry to QTranscripts on 13 October remains ignored. A complaint to the Queensland Ombudsman regarding DJAG appears likely.

SUBMISSIONS TO GROUND 8 without the benefit of a transcript.

**20. The Adjudicator was seen to be assisting Ms. Black by :**

As per Ground 7, without any sign of proper due process, the Adjudicator summarily dismissed the claims of unconscionable conduct, by saying words to the effect of, *"I can find no unconscionable conduct here"*.

14. The Transcript will show this when it becomes available.

15. Page 2 line 26 of the Reasons.

16. Page 3 lines 4 to 7 of the Reasons.

**20.1 The Adjudicator was seen to be assisting Ms. Black by stating :**
Words to the effect; *"Had you signed that 12 month lease before the owner became pregnant, you would have been there for 12 months but you still could have been issued with a notice to leave within that 12 months because the owners needed to move back in"*.

20.1.1 This appeared to be clearly wrong, in that the First Respondents had the entitlement to breach a 12 month lease, so the adjudicator was asked to clarify if the owners were entitled to breach a 12 months lease because they needed to move back in, to which the Adjudicator did not respond, and went on to another subject.

20.1.2 Further, the Adjudicator missed the point that, had the 12 month lease been signed, it would mean that the ASC had been accepted.

**20.2 The Adjudicator was seen to be assisting Ms. Black by stating :**
Words to the effect; *"that some agencies issue a Form 12 at the start of the lease"*

20.2.1 It is difficult to see how the giving of Form 12 notice at the start of the lease could be considered retaliatory. As such, it can be seen as creating a loophole in the RTRA Act by defeating the intention and purpose of sections 426, 291 and 246A of that Act.

20.2.2 A Form 12 was not issued to the tenants at the start of their tenancy, as such it was immaterial and not relevant to the issues before the Adjudicator. To even mention it when it wasn't even relevant, is seen to be giving unwarranted argument to assist Ms. Black and discourage the tenants from making their claims.

**20.3 The Adjudicator was seen to be assisting Ms. Black by the following :**
When Ms. Black first provided false evidence about the "Administrative Error", there was an outcry from the tenants that she was lying and that the so called error had not been communicated to the tenants. The Adjudicator ignored the outcry and did nothing about seeking further information from Ms. Black about when and how the error came about and when it was purportedly communicated to the tenants, and if it wasn't communicated, why not.

20.3.1 **The gravamen is…** if the so called error had been communicated to the tenants :

- a 12 month lease would have been signed; and
- the tenants would not have moved out of the tenancy into another tenancy; and
- there would have been no QCAT proceedings; and
- the First Respondent owners have lost an excellent tenant, and as the property appears to not being re-leased, they have lost the $810.00 per week rent.

**20.4 The Adjudicator was seen to be assisting Ms. Black by the following :**
Paragraphs 23 to 23.3 of the SoC is critical of Ms. Black for making the following statement :
*"we are required to follow the owners instructions inline with our legislation"*
and the inability to identify the legislation she was referring to.

20.4. When this came up at the hearing, before Ms. Black could speak, the Adjudicator answered *"Property Occupation Act"* on behalf of Ms. Black, who came back with more lies per 13(a) above, which the Adjudicator appeared to believe.

## SUPPLEMENTARY GROUND 10

SECTION 291 OF THE RTRA ACT

21. The Adjudicator erred in failing to consider or deliberate on paragraph 16.2 of the Statement of Claim, in that the Form 12 Notice to Leave was served pursuant to section 291(1) of the RTRA Act while the provisions of section 291(2) prohibits this to happen in the circumstances of the Respondents having been served with :
    (a) document "**C**" in the Evidence Schedule, a Notice of Reservation of Legal Rights;
    (b) document "**D**" in the Evidence Schedule, a Legal Notice of intention to seek RTA / QCAT resolution.
    (c) document "**F**" in the Evidence Schedule, a re-assertion of the Legal Notice.

21.1 As such, there had been no entitlement to give a Form 12 Notice to Leave to the tenants, and accordingly the Tribunal may make an order pursuant to sub-section 426(2) of the RTRA Act.

21.2 The said Form 12 Notice to Leave was responsible for the second 12 month tenancy [17] being terminated and not being renewed, thus causing the tenants to lose the stability of a 12 month tenancy.

21.3 Consequently it is submitted, that the Appellant is entitled to the compensation pursuant to sub-section 426(4) of the RTRA Act.

21.4 At sub-paragraph 24(xi) of the SoC compensation is sought for the tenant's removal expenses and expenses incurred for a 2 week rent overlap period, and it is submitted that this to be the appropriate relief pursuant to 426(4) of the RTRA Act.

21.5 As per document 34 on the QCAT Q1363-23 portal :
QCAT Q1363-23 SUBMISSIONS TO HEARING ON 29/08/2023
The amount of compensation is quantified at paragraph 8 to 8.4 being $2832.60 along with the declarations requested.

17. Paragraph 6 of the SoC.

**PLEASE NOTE -** The relief claimed in the SoC is at paragraph 24. At sub-paragraph 24(iv) there is a typographical error where "*292(2) and/or 292(3)"* should be 291(2) and/or 291(3).

**SUPPLEMENTARY GROUND 11**

THE EXTORTION ANALOGY

22. The behaviour regarding lease renewal by way of the wording within documents "**B**" and "**E**" of the Evidence Schedule (with Ms. Black admitting it to be heavy handed and demanding), which was seen by the tenants to be a non negotiable DEMAND to sign a 12 month lease renewal within 7 days if they wanted to keep their tenancy; and

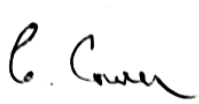
22.1 with the proposed lease renewal containing an unconscionable special term hidden within 42 pages of legalese, that gained the owners an unfair BENEFIT (having the electricity account being transferred into the owners name so they could benefit from the Solar Rebate that they had sold to the tenants for $60.00 per week), that the owners were not entitled to; and

22.2 along with a THREAT to issue a Form 12 Notice to Leave if the lease is not signed;

22.3 is seen to have all the elements of Extortion as defined by section 415 of the Queensland Criminal Code (QLD).

22.4 While it is not argued that this behaviour is criminal extortion, the Appellant certainly believes it to be unconscionable.

SIGNED :



Gordon Craven - Appellant

DATE : 16 October 2023

Filed in the Tribunal by email and Express Post.

Served on First Respondents: saurav.kataria@airservicesaustralia.com
AND eliza.black@coronis.com.au for the Respondents.

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