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QCAT - The New Tenancy Tribunal in Queensland

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There have been many legislative changes for investors and real estate agents in Queensland in the past two years. Two of the most significant changes are the introduction of the *Residential Tenancies and Rooming Accommodation Act 2008* (QLD) (RTRA Act) on July 1 2009 and the *Queensland Civil and Administrative Tribunal Act 2009* (QLD) (QCAT Act) on 1 December 2009. Whilst the Tenancy Act focuses on the general tenancies relationship between the lessor (agent) and tenant, the QCAT Act is the legislative framework to deal with tenancy disputes that cannot be resolved through self resolution or dispute resolution mechanisms in the RTRA Act.

QCAT replaced the former Small Claims Tribunal on December 1 2009. Whilst the principles of the former Small Claims Tribunal remain similar, there are a number of significant changes. Tenancy disputes that have exhausted self resolution methods such as disputes regarding bonds, terminating tenancies due to rent arrears or monies owing above the bond can be heard in QCAT. QCAT will make a legally enforceable decision based upon the evidence of the parties and what is fair and equitable (this is stated in the QCAT Act).

QCAT has a President (Supreme Court Judge) and a Deputy President (District Court Judge) who are judicial members that oversee the Tribunal. The introduction of QCAT saw 23 former tribunals in Queensland, amalgamate into one Tribunal and is the most significant change to the Queensland Judicial System in over 50 years. QCAT has three divisions;

- 1 Human rights Division;
- 2 Administration and Disciplinary Division; and
- 3 Minor Civil Disputes Division

Tenancy Disputes fall into the minor civil disputes division. The changes for real estate agents, property managers and investors include the following;

- QCAT now hears matters (tenancy applications) up to \$25 000 (used to be \$7500).
- An adjudicator (lawyer who has been appointed by the president of QCAT) may hear the claim and be empowered to make a decision. This will be most common in South East Queensland, whilst in areas outside South East Queensland; a magistrate will hear the application. Regardless of who hears the application, the QCAT laws have to be adhered to

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This advice is best practice advice only. For legal advice, seek the advice from legal professionals.

- There are many news forms that must be used in order to have a matter heard in QCAT. The forms include the QCAT Form 2 – Minor Civil Disputes – Residential Tenancy Disputes and Minor Civil Dispute – Request for compensation – Residential Tenancy Disputes. There are others that parties have to use for certain reasons.
- All hearings are recorded and copies of transcripts can be requested (for a fee).
- Applications must be filed at the registry of the Tribunal closest to the property OR the registry of the Tribunal in Brisbane (259 Queen Street, Brisbane). All magistrates' courts in Queensland (except Brisbane Magistrates Courts) are now open to receiving and hearing QCAT applications.
- Adjudicators and magistrates MUST provide reasons for their decisions, either orally or in writing. It is thought that the majority will provide oral reasons. In saying that, transcripts of the reasons given orally can be ordered at no cost by request of the parties. The decision will advise how the transcripts can be ordered.
- Appeals can be requested; on the basis of a question of law or a question of fact (or a mix of both). There is a fee for making an appeal request. Currently the fees are \$250 for up to \$10000 and \$500 for over \$10000. If the appeal request is not granted, the fee paid is not reimbursed.
- To make applications to tribunal there are fees payable by the applicant.
 - For monies owing up to \$500 or no amount claimed - \$20
 - For more than \$500 but no more than \$1000 – the fee is \$50
 - More than \$1000 but no more than \$10 000 - the fee is \$90
 - For monies over \$10 000 – the fee is \$250

Some procedures are the same as they were under the former Small Claims Model; namely there are two types of QCAT applications, Urgent and Non Urgent Applications. Urgent and Non Urgent applications are defined legally in the RTRA Act. Urgent does not mean urgent in the normal sense of the word. Urgent in brief indicates that the matter can be taken straight to Tribunal without the need for dispute resolution through the Residential Tenancies Authority (RTA). Whilst the main difference for non urgent applications is that for a non urgent matter to be heard, it must have evidence that conciliation through the RTA has been attempted and was not resolved.

For more information about QCAT, ask your property manager and/or visit www.qcat.qld.gov.au.

**Stacey Holt is a Real Estate Educator specialising in Risk Management, Compliance and
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