

APPLICANTS -

REDACTED PURSUANT TO
NEGOTIATED SETTLEMENT
WITH THE SECOND RESPONDENT

TENANTS

Gordon Craven - First Tenant
Janet Craven - Second Tenant
Angela Craven - Third Tenant (with 2 Children)

FIRST RESPONDENTS -

LESSORS (Property owners)

Saurav Kataria and Ashleigh Kataria

SECOND RESPONDENT -

LESSORS AGENT

1. At all material times, the Second Respondent has been the Real Estate Agency employed by the First Respondents to rent the property at 8 Musa Place Arona 4551 (the Property).
- 1.1 The First and Second Respondents engage in the trade or commerce activity of renting the Property, and are required to comply with the :
 - Schedule 2 of the Competition and Consumer Act 2010 (Cth) known as Australian Consumer Law (ACL) as adopted by the Fair Trading Act QLD; and
 - Residential Tenancies and Rooming Accommodation Act 2008 (RTRA Act).
2. In May 2021, the Property was offered for lease, whereupon the tenants applied to inspect the Property. On inspection the tenants were impressed by the suitability of the Property along with the existence of 2 large rainwater tanks, and the fact that the tanks were plumbed into the toilets and washing machine outlet in the laundry.
3. Subsequent to the inspections being made, and as the application documents show :
 - (i) on 27 May 2021 the third tenant (Angela) made an application to lease the property for a term of 36 months; and
 - (ii) in joint application, on 3 June 2021 the first and second tenants (Gordon & Janet) made an application to lease the property for a term of 36 months.
4. The 36 month term offer was declined, however on 9 June 2021 the tenants entered a 12 month lease that was instead offered (the First Lease), assuming that there were would be no problems renewing it for at least 36 months, or longer, subject to being good tenants.

PARTICULARS OF LEASE

- A. Commencing 22 June 2021.
- B. Ending 20 June 2022.
- C. Rent \$740.00 per week.
- D. Bond \$2960.00.
- E. Standard Terms and Special Terms as per the Lease Document.
- F. 2 x 10,000 litre rainwater tanks for 3 x toilets, washing machine & garden use.
- G. Oral representations made by Second Respondent during Property inspections.

5. Prior to the First Lease ending, on 17 March 2022 the Second Respondent offered the tenants a second lease for a 12 month period (the Second & Current Lease).

SEE DOCUMENT MARKED “**A**” IN EVIDENCE SCHEDULE

6. On 3 May 2022 the tenants entered the Second Lease (document “**A-1**” in the Evidence Schedule) with the Second Respondent acting as the agent for the First Respondents. This is the current lease ending on 19 June 2023.

PARTICULARS OF LEASE

- A. Commencing 21 June 2022.
 - B. Ending 19 June 2023.
 - C. Rent \$800.00 per week.
 - D. Bond \$3200.00.
 - E. Standard Terms and Special Terms as per the Lease Document, “**A-1**”.
 - F. 2 x 10,000 litre rainwater tanks for 3 x toilets, washing machine & garden use.
 - G. Representations made by Second Respondent during initial Property inspections.
- PLUS
- H. The \$60.00 per week increase in rent was agreed to on the basis of the tenants receiving 100 percent of the Solar Electricity Rebate (**A-1** page 18 marked **Solar**)

7. On 16 March 2023 the Second Respondent offered the tenants a third lease for a 12 month period (the Third Lease).

- 7.1 The Third Lease offer, was accompanied by wording previously not seen, and what the tenants considered to be an intimidating, dictatorial, threatening and take it or leave it correspondence from the Second Respondent on behalf of the First Respondents.

PARTICULARS OF INTIMIDATING WORDING

“Please read your new tenancy agreement and ensure it is signed and returned within 7 days from the date of this offer, as a periodic lease is not an option. Failure to sign the new Tenancy Agreement within the time frame will result in a form 12 Notice to Leave being issued which will require you to vacate on the expiry of your current tenancy agreement.”

SEE DOCUMENTS MARKED “**B**” IN EVIDENCE SCHEDULE

- 7.2 While the tenants had no objection to the \$10.00 increase in the weekly rental, they strongly objected to the intimidating wording AND new Special Condition, namely :

- “**Solar**”

This was seen to be unreasonable and considered to be a form of back door gouging, by the First Respondents taking control of the tenants electricity account so as to have the benefit of the Solar Rebate, while invoicing the tenants for the full amount.

8. The Solar Special Condition is exhibited :

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.

- The condition erroneously states that the electricity account “*must stay in the owners name*”, when in fact it always was and still is in the name of Janet Craven.
- The proposal was an open to all sorts of interpretation, where the First Respondents could invoice the tenants whatever they like, and could even charge an administration fee so as to gouge the tenants further.
- Essentially though, it is clear that their intention was to claw back the Solar Rebate belonging to the tenants, as agreed to in the current lease (the Second Lease).
- NOT ONLY was this objectionable, but such a gouging scheme would see the tenants lose their standard government electricity concession for pensioners, and also any further government concessions that may occur.

9. The tenants addressed their concerns regarding the Solar Special Condition by way of the complaint letter marked “**C**” in the evidence schedule being emailed to the Second Respondent on 20 March 2023, which also brought into focus issues of :

- the intimidating and dictatorial wording;
- a burst Rainwater Tank issue not being addressed by the Respondents; and
- a Motorbike Teardrop Camping Trailer owned by the First Respondents and stored by the tenants as a goodwill gesture; and
- alleged unconscionable conduct; and
- the tenants reserving their Legal Rights; and
- a reminder of the Vulnerable Circumstances¹ of the tenants;

and the Respondents were requested to take these matter into consideration by providing a further lease renewal offer.

9.1 Having not received any response, the tenants followed up with the Legal Notice marked “**D**” in the evidence schedule formally reserving Legal Rights, and giving notice that an application to the RTA and QCAT was proposed unless the Respondents provided acceptable resolutions to the issues within a reasonable time.

1. Paragraph 21 below.

10. In response to correspondence “**C**” and “**D**”, the Respondents ignored the concerns of the tenants and retaliated by repeating the intimidating wording as per 7.1 above, by way of on 27 March 2023 emailing document “**E**” in the evidence schedule, which introduced a second version of the Third Lease, which contained additional Special Conditions namely :
- “**Solar**” (same as before)
 - + “**Water Tank**” + “**Camping Trailer**”

Water tank

One water tank included in tenancy for use as required; can be utilised to water lawns and/or gardens.

Camping Trailer

The owners/lessors have their camping trailer stored at the property throughout the tenancy; and not to used or moved by the tenants without prior written consent from the lessor/agent.

11. The tenants again rejected that second version of the Third Lease, because as said previously, while the tenants had no objection to the \$10.00 increase in the weekly rental, they strongly objected to the new Special Conditions, which now sought to evade the Water Tank and Camping Trailer issues raised by the tenants by contracting the issues away via the Third Lease, and offered by the same intimating and dictatorial way.
- 11.1 The tenants conveyed their rejection by way of correspondence dated 31 March 2023, a copy of which, is marked “**F**” in the evidence schedule which contained a more comprehensive response to the **Solar, Rain Water Tank and Camping Motorbike Trailer** issues :
- (i) and an account of how the tenants had to put up with losing quiet enjoyment and reasonable peace, comfort and privacy during the delivery of the motorbike teardrop camping trailer, by the First Respondent Saurav Kataria and his mates; and
 - (ii) the tenants would not submit to the Respondent’s **demands**, while being put under **duress**, however the tenants did seek to negotiate a resolution to the issues ².
12. The end result of evidence marked **B, C, D, E & F** in the evidence schedule, was that on 4 April 2023 the Respondents withdrew their offer of a 12 month lease by way of offering a **6 MONTH LEASE** instead with the “**Solar**” condition removed, and again with the same intimidating and dictatorial wording as per 7.1 above.

SEE DOCUMENT MARKED “**G**” IN EVIDENCE SCHEDULE

2. second last paragraph of evidence document “**F**”

12.1 On 11 April 2023 by emailed letter, the tenants reminded the Respondents of their special needs as to housing that required stability as per 21 below, and requested the Respondents to provide reasons for reduction of a 12 month term to a 6 month term.

SEE DOCUMENT MARKED “**H**” IN EVIDENCE SCHEDULE

12.2 The tenants received an email dated 21 April 2023 from the Second Respondent stating :
“The owners are not required to provide you with a reason for their lease renewal offer.”

SEE DOCUMENT MARKED “**I**” IN EVIDENCE SCHEDULE

13. Although the “**Solar**” condition was removed, a 6 month term was unacceptable because :

- it was seen as retaliation to the tenants exercising their legal rights;
- it was seen as retaliation for not adopting the “**Solar**” Special Condition;
- other than delivering the 6 month offer, the Respondents refused to negotiate;
- the tenants objected to being **bullied** and put under **duress** to abandon the Rainwater Tank and Camping Trailer issues by the threat of the intimidating wording;
- 6 months did not provide the usual 12 month stability;
- the 6 months term expired 7 days before Christmas 2023;
- it was seen as an intention to again gouge in 6 months time before Christmas;
- the Respondents provided zero legitimate reason for withdrawing the 12 month lease, other than what the tenants believe to be retaliation and/or malice;
- the Respondents refused to provide reasons for reducing 12 months to 6 months;
- the Respondents could have, but refused to, consider a Periodic Tenancy until issues were resolved;
- the tenants believed they were being treating with disrespect and contempt;

and in all the circumstances, the behaviour is alleged to be unconscionable.

14. On 24 April 2023, the Second Respondent signed and served a Form 12 Notice to Leave on the tenants.

SEE DOCUMENT MARKED “**J**” IN EVIDENCE SCHEDULE

PARAGRAPHS 1 to 14 ABOVE and 16 to 24 BELOW
ARE TO UNDERGO RTA CONCILIATION PRIOR TO
A QCAT APPLICATION (the SUBSTANTIVE MATTER)

meanwhile...

THE URGENT APPLICATION IN PARAGRAPHS 15 to 15.7 FOLLOWS :

16. **SECTION 291 RTRA Act**

As per paragraph 15 above, the Respondents had offered a 12 month tenancy agreement twice, which evidences the availability of the Property until June 2024.

16.1 As per 14 and 15.6 above, the Form 12 Notice to Leave “**J**” was served on the tenants.

SECTION 291(2)

16.2 The Form 12 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 paragraph 15.1 above, which have now materialised into this pleading document.

SECTION 291(3)

16.3 While there is evidence of the Property being available until June 2024, and the fact of the Applicants being excellent tenants, the Respondents have chosen retaliation in contravention of section **291(3)** of the RTRA Act, against the tenants by serving the Form 12, simply because the tenants choose to stand up for their rights against intimidating, unreasonable and unconscionable behaviour.

16.4 The Respondents had no legitimate reason to serve a Form 12 Notice to Leave, which is evidenced by a refusal to negotiate or provide reasons for reduction in the tenancy term.

17. Given the circumstances, thoughts of having to relocate our Family Home in a Rental Crisis **ARE HORRENDOUS**, and the Applicants should not be treated as pawns in any uncaring and unjustified activity devised by the Respondents to bully and lie³ to the tenants.

UNCONSCIONABLE CONDUCT - ACL

18. By reason of the facts and circumstances set out above, it is alleged that the Respondents have engaged in Unconscionable Conduct in contravention of section 21 of the ACL.

19. Without limiting the matters to which the Tribunal may have regard, the Applicants submit that the Tribunal should give regard to the following paragraphs of section **22(1)** of ACL.

(a) *the relative strengths of the bargaining positions of the supplier and the customer...*



X The power imbalance is obvious, especially in the current rental crisis and the vulnerability of the tenants as per 21 & 21.2 below in their struggle to have a secure Family Home, and the Respondents making it worse by refusing to negotiate and **dictating** to the tenants.

3. Paragraphs 23 to 23.4 below.

(b) *whether, as a result of conduct engaged in by the supplier, the customer was required to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier...*



- X The Respondents have provided zero legitimate reasons for protection of their interests :
- in reducing the 12 months tenancy offer to 6 months whilst refusing to provide reasons; and
 - to issue the Form 12 Notice to Leave without negotiation.

(d) *whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the customer or a person acting on behalf of the customer by the supplier or a person acting on behalf of the supplier in relation to the supply or possible supply of the goods or services...*



- X
- the intimidating wording, duress and dictatorial behaviour as set out herein;
 - evading the Water Tank and Camping Trailer issues by contracting the issues away;
 - demeanour of Saurav Kataria First Respondent initially revealed by item 3 of evidence document “F”, has continued throughout this saga;

(f) *the extent to which the supplier’s conduct towards the customer was consistent with the supplier’s conduct in similar transactions between the supplier and other like customers...*



- X Inconsistency between the First Lease offer “A” and the Second Lease offer “B” regarding intimidation.

(i) *the extent to which the supplier unreasonably failed to disclose to the customer:*
 (i) *any intended conduct of the supplier that might affect the interests of the customer...*



- X An apparent intention to have the tenants sign up for the initial lease, and then gouge the tenants inline with the current disgraceful activities by lessors in the current rental market.

(i) (ii) *any risks to the customer arising from the supplier's intended conduct (being risks that the supplier should have foreseen would not be apparent to the customer)...*



- X The matters at 17 above should have been foreseen given the tenants vulnerability as set out herein, however the Respondents have a couldn’t care less attitude about that.

(j) (i) *the extent to which the supplier was willing to negotiate the terms and conditions of the contract with the customer...*



- X The Respondents effectively refused negotiation and outright refused to provide reasons.

(j) (iii) *the conduct of the supplier and the customer in complying with the terms and conditions of the contract...*



X First Respondents refused to rectify the burst Water Tank repair or replacement and Camping Trailer issues within the period of the current lease, and sought to contract the issues away without negotiation via the Third Lease containing the terms illustrated at paragraph 10 above.

(l) *the extent to which the supplier and the customer acted in good faith...*



X By way of all the intimidating, bullying, incompetent, disrespectful⁴ and dictatorial behaviour towards the tenants as set out herein, the Respondents have acted in bad faith.

ABOUT THE TENANTS / APPLICANTS

20. Had we the tenants known that this was to be the behaviour of the Respondents at the time of entering the First Lease (paragraph 4 above), we would not have done so.

21. In June 2021, subsequent to making the Second Respondent aware that the tenants were seeking a long term Family Home (initial 36 months application @ paragraph 3) along with Vulnerable Circumstances, the Respondents offered a 12 month lease of the Property.

PARTICULARS OF VULNERABLE CIRCUMSTANCES

- A. The First & Second tenants in their seventies, are reliant on the Age Pension;
- B. The First Tenant has Prostate Cancer along with other ailments;
- C. The Third Tenant daughter of the First & Second tenants, is an unemployed sole parent with 2 Dependent Children and reliant on her government pension;
- D. Both Dependent Children, have diagnosed Autism and Intellectual Disabilities;
- E. Both the Dependent Children attend the Special School in Currimundi;
- F. Being on the Autism Spectrum requires stability in all factors of life, which includes a stable Family Home and Schooling;
- G. Having to change Schooling is not an option, which limits the tenants to residing within the Catchment Area of the current Special School in Currimundi;
- H. The tenants are extremely reluctant to moving home, because it is not only very expensive to do so, it is time-consuming, emotionally taxing, extremely difficult, stressful and mentally depressing;
- I. Finding a suitable alternate home within the School Catchment and within a two week period before the end of the current lease, so as to minimise paying a very expensive double rent which cannot be afforded, would appear likely impossible.

4. Initially becoming apparent by the behaviour at item 3 in page 3 of evidence document "F" morphing into the further behaviour as set out herein.

- 21.1 The Rent Ledger shows the rent payments and other service payments have always been paid on time and Property inspections have always been satisfactory.
- 21.2 As per *Australian Productivity Commission | Research Paper | Vulnerable Private Renters*⁵, the Applicants can be classified as Vulnerable Private Renters, because of :
- having low income;
 - tenant Angela being a sole parent;
 - being unemployed (albeit tenant Gordon struggling to become self employed);
 - there being multiple disabilities (as per particulars at 21 above) together with Tenant Gordon having prostate cancer amongst other ailments;
 - all tenants reliant on government payments (Gordon & Janet being age pensioners).

FURTHER VULNERABILITY OF THE TENANTS

22. The distress of having to exercise our rights will be on the record with the Second Respondent, and any future agency will be able to access the agitation caused, just by telephoning the Second Respondent for a reference.
- 22.1 This effectively creates an unofficial rental blacklist through no fault of the tenants, and a situation that would be virtually impossible to reverse. If we the tenants have to find a new Family Home because of the behaviour of the Respondents, the frightening thought of having to live in ones car or in a tent, is quite a scary one.

THE ATTITUDE & COMPETENCE OF THE SECOND RESPONDENT

23. An impediment to achieving a resolution to this saga appears to be incompetence or otherwise a culture of telling lies. An example of that is when a Property Manager Team Leader for the Second Respondent realised that [REDACTED] was to be joined in litigation with the First Respondents, the Second Respondent's Property Manager responded by email :
"we are required to follow the owners instructions inline with our legislation".
- 23.1 When requested to identify the legislation and the part or section being referred to, the Property Manager was unable to do so, and embarked on what appeared to be a bluffing technique, so as to confuse an uninformed tenant by saying that the legislation was the RTRA Act and its Regulations, which of course have no such requirement.
- 23.2 As a tenant who is not uninformed, and as the author of this document, I am disgusted that a so called Property Manager would feed a tenant such irresponsible garbage. One wonders what garbage may have been fed to the First Respondents, which may have caused the current situation to be heading off to QCAT.

5. <https://www.pc.gov.au/research/completed/renters/private-renters.pdf> @ Page 42

23.3 Not only is this behaviour offensive to the tenants, it is arguably in contravention of the Misleading or Deceptive provisions (section 18) of the ACL as adopted by the Fair Trading Act (QLD).

23.4 FURTHER, the amount of times that the Property Manager provided incorrect identification details for the Second Respondent when requested to do so, is astounding. An example of this is the identification in document “J” i.e. [REDACTED] which cannot be found in any ASIC search for companies and registered businesses.

24. **RELIEF** Pursuant to :

- 246A of the RTRA Act in relation to paragraphs 15 to 15.7 (the urgent matter); AND in the remaining substantive paragraphs 1 to 14 and 16 to 23.4;
- sections 21, 22(1), 243 of the ACL as adopted by the Fair Trading Act (QLD); and
- sections 60, 169, 291, 426, 429 of the RTRA Act;

the Applicants seek the following orders :

- (i) the Form 12 Notice to Leave be set aside; OR
 - (a) set aside until the substantive matter is conciliated and dealt with; OR
 - (b) set aside until the outcome of any Appeal that may be made;
- (ii) Declaration the First & Second Respondents engaged in Unconscionable Conduct;
- (iii) Declaration the First Respondent has breached the current Tenancy Agreement by refusing to repair or replace a burst Rain Water Tank;
- (iv) Declaration/s that the First & Second Respondents have contravened sections 246A and/or 292(2) and/or 292(3) of the RTRA Act;
- (v) the Respondents to provide a 12 month lease to the Applicants upon the same terms as the current lease, with a \$10.00 per week increase in rent;
- (vi) the Respondents to provide a further 12 month option to that lease;
- (vii) the Electricity Account to remain in the name of Janet Craven;
- (viii) the First Respondents remove the Motorbike Teardrop Trailer / Camper trailer from the Property unless there is compensation to the tenants for its future storage;
- (ix) the burst Rainwater Tank to be repaired or replaced, otherwise the tenants be compensated for a partial loss of rainwater facility;
- (x) protecting the Applicants from being unfairly listed on any tenancy database or any unfair gossip or defamatory allegations by the Second respondent.

ALTERNATIVELY to (v) and (vi)

- (xi) An order that the Applicants be provided a periodic tenancy at the Property upon the same terms as the current lease until they are able to find something suitable, and if something suitable is found the Respondents pay for the tenant's removal expenses and expenses incurred for a 2 week rent overlap period.

25. **DUTY OF CARE**

The First and Second Respondents owe the Applicants a Duty of Care, and there is substantial Authority along with High Court Authority, of this being the case.

25.1 Given the vulnerable circumstances at paragraphs 21 to 21.2 above, it is foreseeable in the current rental situation across Australia, that the Applicants could experience substantial difficulty should they have to find suitable and affordable alternative accomodation.

25.2 The said Duty of Care extends to ensuring that any termination of the tenancy at the hand of the Respondents, is made with due care so as to ensure that the Applicants are able to find suitable and affordable accomodation when departing from the Property.

25.3 **FURTHER or ALTERNATE RELIEF**

The Tribunal is requested to make a Declaration that the First and Second Respondents owe the Applicants a Duty of Care in the event of being required to relocate to a new home.

SIGNED:  Gordon Craven - First Tenant

DATE: 16 May 2023 DATE: of Amendment: 28 May 2023

FOR SERVICE TO :

- FIRST RESPONDENTS :
Saurav Kataria and Ashleigh Kataria
(Google & Citec searches because Property Manager refused to provide details)
~~Unit 3/21 Grace Street NUNDAH QLD 4021~~ AMENDED
Unit 3/12 Grace Street NUNDAH QLD 4012
saurav.kataria@airservicesaustralia.com

• SECOND RESPONDENT :

**DETAILS AND EVIDENCE REDACTED
PURSUANT TO NEGOTIATED SETTLEMENT
WITH THE SECOND RESPONDENT
FOR A FIVE FIGURE AMOUNT**

Damages were not requested at this time as they had not occurred
but they have been requested in the APL305-23 Appeal

**PLEASE READ TOGETHER WITH
THE EVIDENCE SCHEDULE BELOW**