

## VSBC FAQs

### Rent relief from before 28 July 2021 in response to coronavirus (COVID-19)

#### 1. Is the Victorian Small Business Commission (VSBC) resolving disputes under the Commercial Tenancy Relief Scheme?

The VSBC is no longer resolving disputes under the Commercial Tenancy Relief Scheme (which expired on 28 March 2021), though is still here to help.

We are providing guidance in [how to negotiate in good faith](#) and a [suggested process to follow](#) to help in reaching a fair agreement after 28 March 2021. Where an agreement can't be reached, either the tenant or landlord can apply for free and impartial mediation.

Tenants and landlords can also apply for mediation at no cost to help resolve a rent relief dispute from before 28 March 2021.

Applications can be made via our [application forms web page](#).

Please note we are currently delivering mediation services via videoconference and teleconference.

#### 2. If a tenant is having difficulty paying rent after 28 March 2021 because of coronavirus (COVID-19), how can they negotiate a rent relief agreement with their landlord?

Commercial tenants who are having difficulty paying monthly and/or deferred rent are encouraged to take the following steps:

1. Review your finances and keep paying what rent you can afford.
2. **Contact an accountant, a business advisor or mentor, or a financial counsellor for advice as soon as you can** – the Small Business Mentoring Service provides [access to experienced mentors](#), Partners in Wellbeing provides [access to free qualified financial counsellors](#) who can help in negotiating affordable repayment plans and CPA Australia offers a [helpful tool for finding a certified practising accountant in Victoria](#).
3. Try to reach a new agreement on rent with your landlord that you can both accept by:
  - talking with them about your situation, what rent you can afford to pay and the rent relief you are requesting (how much and for how long)
  - considering providing documents showing your fall in turnover for the leased premises (e.g. extracts from your accounting records, your BASs, bank statements that relate to your account or a statement prepared by a practising accountant) to support your request
  - negotiating in good faith – this means communicating with each other openly, being transparent, having discussions honestly and fairly with the genuine aim of reaching an agreement, and providing sufficient and accurate information within the context of negotiations.
4. Document what is agreed to in writing – you can do this as a variation of the lease but this isn't necessary if you have a written agreement for rent relief.

5. If you can't reach an agreement or get a response from your landlord, you can apply for free and impartial mediation to help resolve your dispute.
6. Look after yourself – if you are feeling stressed, worried or overwhelmed, call the Partners in Wellbeing helpline on 1300 375 330 (Monday to Friday 9am – 10pm, Saturday to Sunday 9am – 5pm) for mental health support and financial counselling at no cost.

If the tenant is at immediate risk of being evicted, we recommend they consider seeking advice from a lawyer on whether they should apply to VCAT for an injunction to prevent their landlord from taking possession of the premises.

### **3. What is rent relief?**

Rent relief is any form of relief provided to a tenant in relation to their obligation under a lease to pay rent. It can take the form of a rent waiver, reduction, remission or deferral.

A rent waiver is where the landlord and tenant agree that the landlord will not collect the rent or part of the rent owed for an agreed period of time. Rent that is waived is never repaid.

A rent remission means the cancellation of a debt or charge, such a landlord agreeing not to seek payment of rent that was owed but has not been paid (rent arrears).

A rent deferral is where the tenant and landlord agree that the tenant will pay the rent or part of the rent owed at a later date over an agreed period of time (i.e. payment is postponed).

### **4. What are some of the documents a tenant can use to show a decline in turnover for the premises they lease?**

Under the Commercial Tenancy Relief Scheme that has now ended, tenants were required to supply one of the following documents.

These might be helpful for tenants to consider supplying to their landlord to support their request for rent relief after 28 March 2021:

- Extracts from the tenant's accounting records
- The tenant's business activity statement(s)
- Bank statements that relate to the tenant's account
- A statement prepared by a practising accountant

### **5. What does negotiating 'in good faith' mean?**

It involves a tenant and landlord communicating with each other and having discussions honestly and fairly with the genuine aim of reaching an agreement that they can both accept.

It also involves behaving in an open and transparent manner and providing sufficient and accurate information within the context of negotiations.

### **6. Is support available to a landlord who has provided rent relief to their tenant?**

Landlords who have provided rent relief in 2020 to an eligible tenant can apply to the State Revenue Office for up to a 50 per cent land tax waiver on each eligible property and a deferral of

the remaining land tax liability until 31 March 2021. If, for reasons outside your control, you couldn't apply before this date, a late application might be accepted.

In addition, land tax relief has been extended to the 2021 land tax year. Landlords who provide rent relief to eligible tenants between 1 January 2021 and 28 March 2021 might be eligible for:

- a land tax discount of 25 per cent on their associated 2021 land tax and
- the ability to defer the remainder of their land tax liability until 30 November 2021.

Owners of a commercial property who run a small to medium business from that property and whose business has been impacted by the pandemic may be eligible to receive a 25 per cent reduction on the property's 2020 and 2021 land tax liability and a deferral of the remaining land tax to 30 November 2021.

For more information, see the State Revenue Office's web page on land tax relief.

### **7. How much will mediation cost for businesses that are already in financial distress?**

There is no cost to commercial tenants or landlords for mediation to help resolve a dispute over rent relief in response to coronavirus (COVID-19). For guidance in applying, see question 1.

### **8. When applying for mediation, what are the meanings of the terms 'applicant' and 'respondent'?**

The 'applicant' is the person, business or company applying for mediation.

The 'respondent' is the person, business or company receiving the application for mediation (i.e. the person, business or company that the applicant is in a dispute with).

### **9. Is the information provided by a landlord or tenant during the dispute resolution process protected by confidentiality?**

Yes, a landlord or tenant must not divulge personal information, information relating to business processes or financial information (including information about the business owner's trade), except in relation to disputes under the Commercial Tenancy Relief Scheme (the Scheme) where permitted by the Scheme's regulations.

### **10. Is mediation binding?**

If a landlord and tenant reach agreement at mediation, they can sign binding Terms of Settlement.

If a party to an agreement does not meet their obligations, the other party might be able to take action at the Victorian Civil and Administrative Tribunal (VCAT) to enforce the agreement. For these applications, VCAT requires a copy of the Terms of Settlement and the Victorian Small Business Commission (VSBC) file reference number. A certificate from the VSBC isn't required.

If a tenant breaks an agreement to pay agreed rent relief, they might be at risk of being evicted by the landlord.

### **11. What if a landlord or tenant refuses to take part in mediation?**

Under the Commercial Tenancy Relief Scheme (the Scheme), the Victorian Small Business Commission (VSBC) can issue a certificate that enables the dispute to proceed to the Victorian Civil and Administrative Tribunal (VCAT). VCAT is then able to make a determination on the rent relief dispute.

Where the dispute solely relates to a rent relief request made after 28 March 2021, either the tenant or landlord can go straight to VCAT or a court – they don't require a certificate from the VSBC.

## **12. What can be done if an agreement reached at mediation breaks down?**

The Terms of Settlement agreement (signed at the end of mediation) is a binding document and can be enforced by judicial or tribunal proceedings if necessary, for example, by applying to the Victorian Civil and Administrative Tribunal (VCAT). For these applications, VCAT requires a copy of the Terms of Settlement and the Victorian Small Business Commission (VSBC) file reference number. A certificate from the VSBC isn't required.

## **13. Can a tenant end their lease early?**

A lease is a legally binding agreement. By signing it, the landlord and tenant have agreed that the tenant will lease the retail or commercial premises for the period of time specified in the lease.

Usually a lease can't be broken early by the landlord or tenant, unless the lease allows for this to happen.

Some tenants who are experiencing a downturn in trade might be wanting to end their lease early. We encourage tenants in this situation to communicate with their landlord as early as possible to discuss their position and alternative options, such as rent relief.

[Learn more about ending a lease early.](#)

## **14. Can a tenant be evicted for not paying rent now that the Commercial Tenancy Relief Scheme (the Scheme) has ended?**

A tenant might be at risk of being evicted if they are in breach of their lease. Reasons include:

- damaged property
- unpaid rent before 29 March 2020 and after 28 March 2021
- situations where a tenant does not pay rent that they had agreed to pay under a rent relief agreement
- situations where a tenant was ineligible for rent relief under the Scheme and hasn't negotiated an agreement.

For information on steps we recommend tenants take if they are having difficulty paying rent, see question 2.

## **15. Can a landlord increase rent under a retail lease now that the Commercial Tenancy Relief Scheme (the Scheme) has ended?**

A landlord might be able to increase rent that could not be increased during the Scheme after the Scheme ends. This might depend on what is agreed to in the lease. A landlord is unlikely to be able to retrospectively claim back rent that could not be increased during the relevant period.

**16. If an agreement has been reached to defer rent under the Commercial Tenancy Relief Scheme, when is that rent payable?**

A landlord and tenant must vary the lease or agree that the tenant will pay the deferred rent over the remaining term of the lease or 24 months, whichever is greater. The remaining term includes any negotiated extension to the lease.

If any rent is deferred by variation to the lease or agreement between the landlord and tenant, the landlord can request payment of the deferred after 28 March 2021.

**17. If rent is deferred under the Commercial Tenancy Relief Scheme (the Scheme), is the lease extended?**

If payment of any rent is deferred by variation of a lease or other agreement between a landlord and tenant, the landlord must offer the tenant an extension to their lease equal to the length of time for which rent is deferred.

This extension must be on the same terms and conditions that applied under the lease before the Scheme's regulations were implemented.

**18. Can a landlord hold the security deposit (bond) until rent deferred under the Commercial Tenancy Relief Scheme has been paid?**

Depending on the terms of the lease or other agreement reached between the landlord and tenant, a landlord might be able to hold the security deposit until after the tenant has finished paying the deferred rent.

**19. Can a landlord require the tenant to pay interest or other fees or charges in relation to paying rent deferred under the Commercial Tenancy Relief Scheme?**

A landlord must not require a tenant to pay interest or any other fee or charge in relation to any payment of rent deferred by varying the lease or other agreement.

**20. Are there any tax implications for tenants and landlords who give or receive rent relief in response to coronavirus (COVID-19)?**

Although the mandatory code of conduct for commercial leasing no longer applies, there might be tax implications for tenants and landlords if they give or receive rent relief in response to coronavirus (COVID-19).

What they need to declare, deductions they can claim and their GST obligations will depend on:

- the type of rent relief they've received or given
- if an existing agreement has changed, or a new or additional agreement is created
- their accounting method (if they're a landlord).

To find out more, see the [ATO's website](#).

**21. How can tenants and landlords access the Victorian Small Business Commission's (VSBC) previous FAQs on the Commercial Tenancy Relief Scheme (the Scheme)?**

The VSBC's previous FAQs on the Scheme can be accessed [here](#). Please note that these FAQs are in relation to rent relief and dispute resolution under the Scheme, which ended on 28 March 2021. For information on current supports, see question 1.