

## Victorian Small Business Commission form that may be sent under the Commercial Tenancy Relief Scheme

Initial form: where a tenant has applied for help to resolve a dispute

Dear **[INSERT RECIPIENT'S NAME]**

In relation to leased premises at: **[INSERT ADDRESS OF PREMISES]**

The Victorian Small Business Commission (VSBC) provides an impartial alternative dispute resolution service to help landlords and tenants resolve disputes under the Commercial Tenancy Relief Scheme (the Scheme). The Victorian Government introduced the Scheme to alleviate financial hardship faced by commercial tenants and landlords as a result of coronavirus (COVID-19). The Scheme has been further extended to enable tenants to seek rent relief up until 28 March 2021.

We have received the attached application and documents from the tenant (of the above premises) relating to their request to the landlord for rent relief. From the information provided, I understand that the landlord and tenant have been unable to agree on rent relief.

**If the tenant's application for rent relief complies with the Scheme, I ask the landlord to please respond in writing to this email and the application within 10 business days of the date of this email (INSERT DATE), using the response form at the end of this email. This response should include an offer of rent relief to the tenant that is in proportion to (i.e. matches) the tenant's fall in turnover. At least 50 per cent of the rent relief must be in the form of a rent waiver, unless the tenant and landlord otherwise agree in writing. The remainder can be made up of a rent deferral or other indirect rent relief.**

When providing the response, the landlord should consider the rights and obligations of tenants and landlords as set out in the regulations for the Scheme, the process to be followed for rent relief and responses to frequently asked questions, which can be found on our website (by [clicking here](#)). I will provide the response to the tenant.

If the Scheme doesn't apply in this situation, we urge the landlord and tenant to follow the leasing principles set out in the Mandatory Code of Conduct SME Commercial Leasing Principles During COVID-19 (which can be accessed by [clicking here](#)). The following information is also relevant.

**[DELETE THIS PARAGRAPH IF THE LEASE IS ELIGIBLE]**

### **The importance of responding to this email**

If the landlord doesn't respond to this email in the terms requested or, in the opinion of the VSBC, the landlord is not negotiating in mediation in good faith, the VSBC may issue a certificate that mediation (or another appropriate form of alternate dispute resolution) is unlikely to resolve the dispute. The tenant may then take this certificate to the Victorian Civil and Administrative Tribunal (VCAT) or request a binding order from the VSBC.

The VSBC has the power to make a binding order that determines the rent relief a landlord must provide to their tenant. The binding order may waive and/or defer the tenant's rent for a specified period of time up until the end of the regulations on 28 March 2021.

There are a number of criteria that must be satisfied before the VSBC will make a binding order. These include a landlord failing to respond to a dispute notice from the VSBC in the terms

requested or, in the opinion of the VSBC, where the landlord has not engaged in mediation in good faith. The following points should be noted:

1. The dispute notice is made up of this email, the tenant's application and any accompanying documents.
2. Mediation is not limited to formal mediation procedures. It extends to assistance we provide early on, including this email and all further communication between the VSBC and the parties to try to resolve the dispute before a formal mediation session is needed.

## Mediation

Where an agreement can't be reached early on, the next likely step is arranging a mediation session as soon as possible. At mediation, an experienced and independent professional (the mediator) guides both parties in fair and confidential negotiations with the aim of reaching an outcome they can both accept. Mediation is a quick, effective and low-cost alternative to going to VCAT or a court. At the moment, our sessions are being held by video or phone.

Because the VSBC doesn't provide legal or other professional advice, you should consider gaining this advice from a suitably qualified and experienced person (e.g. a lawyer, accountant or other relevant professional). Legal or other professional advice may be helpful and important before and during your mediation session. For more information, access our guide to mediation by [clicking here](#).

## Further questions

If you have any questions or would like to discuss this matter, please contact me via my details below. I look forward to helping the landlord and tenant to quickly resolve this matter.

Yours sincerely

## Form: for a landlord's response to this dispute notice

**VSBC file reference number:** [INSERT NUMBER]

Dear XX [INSERT THE VSBC DISPUTE RESOLUTION OFFICER'S NAME]

I refer to the dispute notice sent to me concerning rent relief.

My response to the dispute notice is as follows:

[INCLUDE THE DETAILS OF THE RESPONSE, WHICH CAN BE SET OUT AS SHOWN IN THE FOLLOWING EXAMPLE:]

The tenant has provided evidence that there has been a [XX] per cent reduction in turnover. As such, I am offering [XX] per cent rent relief for the period [INSERT DATE, MONTH AND YEAR] to [INSERT DATE, MONTH AND YEAR]. [XX] per cent of this rent is in the form of a rent waiver, amounting to \$[XX] per [month/week] and [XX] per cent in the form of a rent deferral amounting to \$[XX] per [month/week]. The deferred rent is to be repaid over [XX] months at the amount of \$[XX] per month, starting on [INSERT DATE – MUST BE AFTER 28 MARCH 2021].

If you would like to discuss this matter, please contact me.

Yours sincerely

[INSERT NAME]