

Responding to coronavirus (COVID-19): advice for commercial landlords

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LEASING ADVICE

To ease financial hardship faced by commercial tenants and landlords as a result of coronavirus, the Victorian Government introduced the [Commercial Tenancy Relief Scheme \(the Scheme\)](#). The Scheme has been further extended to 28 March 2021.

IMPORTANT CHANGES THAT APPLY UNTIL 28 MARCH 2021

1. Commercial tenants seeking rent relief between 1 January 2021 and 28 March 2021 will need to apply to their landlord in writing with evidence of their eligibility as soon as possible, as a landlord is only required to provide rent relief from the date of application.
2. If a tenant has already made a request and is seeking further rent relief for this extended period, then they will need to make another request to their landlord supplying the required evidence.
3. Rent relief must, at a minimum, be in proportion to an eligible tenant's fall in turnover.

What does negotiating in good faith mean?

Under the Scheme, landlords and tenants are required to:

- co-operate and act reasonably in all of their

discussions and actions

- negotiate rent relief in good faith with a view to reaching an agreement
- provide relevant documentation (consistent with the [regulations for the Scheme](#)) in a timely manner.

What steps should a landlord take if their tenant won't negotiate or keep paying rent?

They can [apply to the Victorian Small Business Commission \(VSBC\)](#) for help to resolve the rent relief dispute. Help includes assistance early on, often just over the phone, and where disputes can't be resolved this way, access to free mediation.

At mediation, an experienced and independent mediator will guide the tenant and landlord in fair negotiations with the aim of reaching an outcome they can both accept.

Is a tenant in breach of their lease if they don't pay rent for the period 29 March 2020 to 28 March 2021?

No, providing the [process for requesting rent relief](#) has been followed or the tenant pays the amount of rent in line with any lease variation or other agreement that provides rent relief either directly or indirectly (e.g. where the landlord has agreed to provide a service for the tenant).

Can a tenant be evicted for not paying rent or outgoings during this period?

If a tenant has followed the process for requesting rent relief and is paying the amount of rent and outgoings agreed to with the landlord, the landlord must not:

- evict or attempt to evict a tenant or
- re-enter or otherwise recover the premises or attempt to do so.

If the landlord breaches either of the above, they can be fined, so should first call the VSBC for help on 13 8722.

SCENARIO: A RESTAURANT IN MELBOURNE'S CBD

Impact

Because of restrictions to trade in response to coronavirus and surrounding businesses closing, the business owner has experienced a 40 per cent drop in turnover.

Access to JobKeeper

The business owner (the commercial tenant) is eligible for and is accessing JobKeeper payments.

Access to rent relief

The tenant writes to their landlord on 1 January 2021 requesting rent relief **but doesn't supply the necessary documents**. On 15 January 2021, the tenant then supplies the following required information to their landlord:

- A statement confirming their business is a small to medium sized enterprise
- A statement confirming their lease is an eligible lease under the Commercial Tenancy Relief Scheme
- Evidence that they are taking part in JobKeeper
- Their business activity statement for the last quarter compared to the same period in 2019 (as one of the four types of evidence a tenant must choose from to show their fall in turnover)

The tenant's current rent is \$4,000 per month. The tenant asks their landlord for rent relief that's in proportion to their fall in turnover (40 per cent).

The landlord responds to the tenant's request within the required 14 days. The tenant and landlord agree to \$1,600 rent relief per month – matching the tenant's 40 per cent drop in turnover – for the period 15 January 2021 to 28 March 2021 (i.e. **from the date the tenant supplied all of the required information**).

The rent relief is made up of \$800 in rent being waived each month (the minimum 50 per cent of rent relief that must be made up of a waiver) and \$800 in rent being deferred each month until 28 March 2020.

The landlord and tenant agree on a payment schedule for the deferred rent (\$2,000) to be paid over 24 months.

The tenant's lease was going to end on 31 March 2021. Under the [regulations for the Scheme](#), a landlord must offer their tenant an extension of their lease equal to the length of time that the rent is deferred. As the rent is deferred for two and a half months, the landlord offers the tenant a two and a half month extension. The tenant accepts the offer.

MORE INFORMATION

- [Steps for landlords under the Scheme](#)
- [Responses to frequently asked questions](#) on how to respond to a rent relief request, whether rent can be increased, requirements when it comes to deferred rent, outgoings, security deposits and provision of services and more
- [Applying for land tax relief](#) through the State Revenue Office

For more advice, contact the VSBC on 13 8722 or at enquiries@vsbc.vic.gov.au.