

Commercial rent relief in Victoria: what landlords need to know

COMMERCIAL TENANCY RELIEF SCHEME

To ease the pressure on Victoria's small and medium-sized businesses, the Victorian Government has reintroduced the [Commercial Tenancy Relief Scheme \(the Scheme\)](#).

The Scheme will help businesses with an annual turnover of less than \$50m that have had a drop in turnover of more than 30 per cent during the coronavirus pandemic.

RENT RELIEF – THE FACTS

1. In order to get relief under the Scheme, the tenant **must** make a compliant request to their landlord in writing, supplying the required evidence (see [question 13 of our FAQs](#)).

2. The rent relief offer **must** relate to all of the tenant's payable rent for the rent relief period and match their fall in turnover, taking into account any waiver or reduction of outgoings. Landlords can use the Victorian Small Business Commission's letter template to make their offer (see [questions 20 and 25](#)).

3. Rent relief can only be backdated to 28 July 2021 if the tenant sent their request and evidence by 30 September 2021. If sent after this date up until 15 January 2022, the landlord is only required to offer rent relief from the date they applied.

Do landlords and tenants need to negotiate rent relief after the landlord makes an offer?

Where a tenant doesn't agree with the offer, the landlord and tenant **must** keep negotiating in good faith. This involves:

- co-operating and acting reasonably in all their discussions and actions
- negotiating with the aim to reaching a fair agreement
- providing documents consistent with the [Scheme's regulations](#) in a timely manner.

It's an offence under the Scheme if a landlord or tenant provides false or misleading information.

If a landlord doesn't engage in mediation in good faith, the VSBC may make a binding order that sets out the rent relief they must provide.

What turnover evidence isn't appropriate for a landlord to ask a tenant to provide in relation to rent relief?

It's not appropriate to request anything other than the four forms recognised by the Scheme, which are:

- extracts from the tenant's accounting records or
- the tenant's BASs for the relevant turnover test period or
- statements issued by an authorised deposit-taking institution (e.g. a bank) that relate to the tenant's account or
- a statement prepared by a practising accountant.

What supports are available to a landlord who waives rent for their tenant?

Eligible landlords will be provided with [land tax relief](#) of up to 25 per cent and can defer any remaining 2020 and 2021 land tax until 31 May 2022.

Landlords experiencing hardship because of waiving rent under the Scheme can apply for a grant of up to \$6,000 as part of the [Commercial Landlord Hardship Fund 3](#). Where landlords are experiencing acute hardship, the grant may be increased to \$10,000.

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

The tenant must pay the proportionate rent they need to pay under the Scheme.

The landlord can [apply to the VSBC for help](#) to resolve the dispute early on. Where a dispute can't be resolved this way, the VSBC can promptly progress the matter to free mediation.

At mediation, an experienced and impartial mediator will guide the tenant and landlord in negotiations with the aim of reaching a fair agreement.

Can a landlord increase their tenant's rent during the Scheme (including after reaching a rent relief agreement)?

A landlord *cannot* increase the tenant's rent during the Scheme (28 July 2021 to 15 January 2022) regardless of whether:

- the tenant's situation improves (e.g. turnover increases)
- there is a provision in the tenant's lease that increases the rent or may have the effect of increasing the rent – this provision is void during the Scheme and cannot be reclaimed.

The exception is where the landlord and tenant agree in writing that the regulation preventing a rent increase doesn't apply to their lease. This exception doesn't apply to retail leases that allow the rent to be determined by the tenant's volume of trade.

Is a tenant in breach of their lease if they don't pay rent from 28 July 2021 to 15 January 2022?

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 rent relief agreement either directly or indirectly (e.g. where the landlord agreed to provide a service for the tenant).

Key requirement: If a tenant requested rent relief by 30 September 2021 and started trading before 1 April 2021, they must provide the required evidence to their landlord for the [mandatory reassessment](#) by 31 October 2021. If they don't, the waiver component of their rent relief agreement will no longer apply from that date onwards (i.e. the tenant will need to go back to paying their full rent under the original agreement, with any agreed rent deferral continuing).

Can a landlord evict a tenant for not paying rent or outgoings during the Scheme?

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 \$3,634.80, so should first call the VSBC for help on 13 8722.



SCENARIO: A RESTAURANT IN MELBOURNE'S SOUTH EAST

Towards the end of February 2021, small business owner Ella had negotiated rent relief with her landlord Zhen under the Scheme for 1 January to 28 March 2021. They agreed to 50 per cent rent relief – half to be waived and the other half deferred for paying over 24 months, starting April 2021.

For periods during May, June and July 2021, Ella had to close her restaurant as Melbourne was in lockdown. Her restaurant closed again on 5 August and remained closed for the rest of the month under the lockdown restrictions. Ella has relied on a lot less income from takeaway only during these lockdowns and has had difficulty paying her monthly and deferred rent.

Using the turnover test period of June, July and August 2021 compared to the same period in 2019, the restaurant experienced a 40 per cent drop in turnover.

Ella called her landlord Zhen to discuss her situation and made a written request for proportionate rent relief under the Scheme. She used the VSBC's optional letter template 1, supplying one of the required forms of evidence (her BASs).

Zhen's response was that he was also struggling and needed Ella's rent payments to resume so he could pay the mortgage on the property and meet his other financial obligations. Communication soon broke down.

Applying for help

Ella applied for free mediation with the VSBC under the Scheme to help resolve the matter.

The VSBC helped early on, quickly getting in touch with Zhen to try to re-open communication and facilitate a discussion. Ella and Zhen started communicating again

about their position and concerns but couldn't reach an agreement.

The VSBC quickly progressed the matter to mediation, where an independent mediator helped them to negotiate fairly and explore options for resolving their dispute.

Reaching an agreement

Through mediation, Ella and Zhen reached an agreement:

Monthly rent: \$6,000

Rent relief: 40 per cent rent relief from 28 July to 31 October 2021. This equals \$2,400 per month. Half of this amount would be waived (\$1,200) and half would be deferred (\$1,200), with repayments of deferred rent to start from November 2021 and be spread over 24 months.

Payments of Ella's deferred rent from the previous agreement that's still owing would restart on 15 January 2022 in the same instalments and frequency as was agreed.

MORE INFORMATION

- The [process for landlords and tenants](#) under the Scheme and supports where the tenant isn't eligible
- [FAQs](#) on requirements concerning deferred rent, outgoings, security deposits, providing services and more
- [Translated guidance](#) in Vietnamese, Arabic and Simplified Chinese
- Rights and responsibilities when it comes to [ending a lease early](#)

Questions? Contact the VSBC on 13 8722 or at enquiries@vsbc.vic.gov.au.