Extended Commercial Tenancy Relief Scheme (16 January 2022 to 15 March 2022) – FAQs

**PLEASE NOTE: These FAQs are for the Victorian Government’s extended Commercial Tenancy Relief Scheme, which started on 16 January 2022 and ended on 15 March 2022. For more information, see the** [**Scheme’s regulations**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)**.**

**1. What is the Commercial Tenancy Relief Scheme?**

To be eligible for the Scheme, the tenant’s business must be a small entity with an annual aggregate turnover under $10m that has had a minimum 30 per cent reduction in turnover due to COVID-19. The tenant must also have followed the process under the Scheme for requesting rent relief from their landlord**on or before 15 March 2022**, supplying the required evidence (see questions 17 and 20). They must also keep paying, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover (for more information, see [regulation 24](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)). To access the full eligibility criteria, see question 13.

**Where an agreement can’t be reached, the Victorian Small Business Commission (VSBC) is offering tenants and landlords impartial help, including free help early on and low-cost mediation, to resolve rent relief disputes. These supports for resolving disputes are continuing after 15 March 2022.**

The Scheme is effective retrospectively from 16 January 2022 to 15 March 2022.

**Quick reference to key resources**

[**Table 1**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-1_Comparison-and-turnover-periods.pdf) – comparison and turnover periods

[**Table 2**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-2_Alternative-tests.pdf) – alternative tests

[**Eligibility flowchart**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220208_CTRS-Eligibility-flowchart.png) – initial questions

[**Optional tenant letter template 1**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220209_Tenant-rent-relief-request_optional-letter-template-1.docx) – for a tenant to make a single, complete rent relief request to their landlord

[**Optional tenant letter template 2**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220209_Tenant-rent-relief-request_optional-letter-template-2.docx) – for a tenant to make an initial rent relief request and a further letter for supplying the required evidence to their landlord

[**Optional landlord letter template**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_Landlord-rent-relief-offer-letter-template.docx) – for a landlord to make a rent relief offer to their tenant

[**Binding order application form**](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_VSBC-binding-order-application-form.docx) – for a tenant to use to apply to the VSBC for a binding order

**2. What are the key features of the Scheme?**

The key features include the following:

* Commercial landlords are required to give their eligible tenant rent relief for the period 16 January 2022 to 15 March 2022 that:
	+ is in proportion to (i.e. matches) their tenant’s fall in turnover because of COVID-19
	+ is made up of a minimum 50 per cent rent waiver (the remainder can be made up of a rent deferral).
* KEY REQUIREMENT: In order to get rent relief under the Scheme, eligible tenants must make a compliant request to their landlord in writing, providing the required evidence (see questions 17 and 20) **on or before 15 March 2022**. They must also keep paying, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover (for more information, see [regulation 24](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)).
* Evictions for not paying rent and rent increases are banned until 15 March 2022 where the tenant:
	+ is a small entity
	+ has an annual aggregate turnover under $10m
	+ had a minimum 30 per cent reduction in turnover because of COVID-19 (this includes businesses that have been impacted by the pandemic because of lower demand or fewer customers despite their operations not necessarily being restricted under public health restrictions) and
	+ has followed the process under the Scheme for requesting rent relief from their landlord, as set out in question 17, and has continued to pay, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover.
* Eligibility is assessed by comparing turnover from January 2020 with turnover from January 2022, or turnover from December 2019 with turnover from December 2021 if the tenant stopped trading for a week or more during January 2020 and started trading again before 16 January 2022.
* New alternative tests for comparing turnover are available. If more than one alternative comparison method applies, the tenant can choose which one to use (see question 19).
* Newer businesses that began trading on or after 1 January 2020 will also be protected, with special arrangements in place to calculate their turnover impacts (see question 19).
* **The VSBC is offering tenants and landlords free help early on to resolve disputes over rent relief. Where the matter can’t be resolved this way, the VSBC can arrange a low-cost mediation session with an experienced, impartial mediator who can guide the tenant and landlord in reaching a fair agreement.** **These supports for resolving disputes are continuing after 15 March 2022. For information about the key requirements that must be met before applying to the VSBC, see question 34.**
* Tenants can request a binding order for rent relief from the VSBC if their landlord fails to respond or sufficiently respond to the VSBC or doesn’t engage in mediation in good faith (see question 59).

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.

The Scheme’s regulations can be accessed [here](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf).

**3. What has changed under the extended Scheme?**

Key changes under the extended Scheme include the following:

* The extended Scheme provides protections and supports for eligible tenants for a further two months (until 15 March 2022).
* Eligible businesses that make a compliant rent relief request will be eligible for relief that matches their fall in turnover backdated to 16 January 2022. This means there will be no break in protections and supports between the previous and extended Schemes where the tenant is eligible for the extended Scheme.
* The tenant must be a small entity with a turnover under $10 million (Commonwealth grants don’t count towards turnover but Victorian Government grants do – including grants jointly funded by the Commonwealth and Victorian governments). *NB. under the previous Scheme, the tenant could be a small or medium sized entity with a turnover under $50 million.*
* Eligibility is assessed by comparing turnover from January 2020 with turnover from January 2022, or turnover from December 2019 with turnover from December 2021 if the tenant stopped trading for a week or more during January 2020 and started trading again before 16 January 2022.
* New alternative tests for comparing turnover are available. If more than one alternative comparison method applies, the tenant can choose which one to use (see question 19).
* **Deferred rent repayments will start on 16 March 2022 for both the extended and previous Schemes (see question 44).**

**4. What are the transition arrangements between the previous Scheme and the extended Scheme?**

Many tenants and landlords will have agreements or arrangements in place that were negotiated under the previous Scheme. Tenants should continue to make genuine efforts to pay their rent as previously negotiated.

For information on repaying deferred rent under the previous and extended Schemes see question 44.

**5. Can a landlord and tenant continue with a rent relief agreement that’s already in place from the previous Scheme?**

Yes. A landlord and tenant can continue with a previous rent relief agreement after 15 January 2022 where they both agree to do so. If the landlord and tenant don’t agree to this and the tenant is wanting rent relief after 15 January 2022, then the tenant will need to make another request to their landlord under the extended Scheme (see question 17).

**6. Can a tenant who hasn’t had a rent relief agreement under a previous Commercial Tenancy Relief Scheme request to have one under the extended Scheme?**

Yes. A tenant can request rent relief from their landlord under the extended Scheme without having previously made a request. They first need to check that they meet the eligibility criteria (see question 13) and then follow the steps for requesting rent relief (see question 17).

**7. If a tenant was eligible for the previous Scheme, are they automatically eligible for rent relief under the extended Scheme?**

No. If a tenant is seeking rent relief under the extended Scheme, it is important that they make sure they meet the eligibility criteria under this Scheme (see question 13). If they are eligible, they will then need to make a new request for rent relief to their landlord (see question 17), while continuing to pay, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover (for more information, see [regulation 24](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)).

**8. Does a tenant need to reapply for rent relief after 15 January 2022 if they were eligible under the previous Scheme (i.e. is the tenant still eligible)?**

Unless the landlord and tenant have agreed to continue a rent relief agreement that’s already in place, the tenant will need to make another request to their landlord for relief after 15 January 2022 (see question 17).

**9. Are sole traders eligible to take part in the extended Scheme?**

Yes

**10. Does the extended Scheme apply to commercial licences?**

Yes. For example, where there is no lease but the business has a licence to occupy offices and uses those offices to provide goods and/or services. Commercial licensees and licensors have the same rights and obligations as commercial tenants and landlords under the Scheme.

**11. Does an eligible tenant need to be registered for GST?**

No. While the turnover calculations are based on GST turnover, an eligible tenant does not have to be registered for GST to be eligible, though does need to meet all eligibility criteria as set out in question 13.

**12. What is an ‘eligible lease’?**

An eligible lease is a retail or non-retail commercial lease or licence in effect on 16 January 2022 under which the tenant (which includes licensees) is an eligible tenant under the Scheme.

**13. What is an eligible tenant?**

In most cases, an eligible tenant:

* is a small entity that, as at 16 January 2022, operated a business in Australia and
* satisfies the decline in turnover test as set out at regulation 13 of the Scheme and
* is not an ’excluded’ tenant or certain prescribed class of tenant.

A small entity is defined in regulation 11 as an entity with an annual turnover of less than $10m at the group level during the 2021 financial year or, if having not traded for the full duration of the 2021 financial year, its turnover for the 2022 financial year is likely to be less than $10m.

For information in relation to the turnover test, the turnover test period and comparison turnover, see [table 2](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-2_Alternative-tests.pdf).

For more information about eligibility, including where the business is a not-for-profit body or a deductible gift recipient, see the [Scheme’s regulations](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf).

It’s important for tenants and landlords to be aware that eligibility is not affected by the tenant reducing opening hours. For more information on tenant rights and protections where they do reduce their hours, see question 47.

An ‘excluded’ tenant includes tenants who use the premises wholly or predominantly for a farming or agricultural activity. It also includes tenants who are a listed corporation or a subsidiary of a listed corporation.

Under the Scheme, certain entities are not eligible tenants. Examples of these are a local governing body, an Australian government agency, a tenant whose financial affairs and property are under external administration (such as tenant who is subject to a trustee in bankruptcy or a liquidator) and a tenant who is affiliated with another entity where the combined turnover of the tenant and the other entity exceeds $10m.

To help in determining eligibility, see the VSBC’s [flowchart](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220208_CTRS-Eligibility-flowchart.png), which walks through the initial questions.

**14. 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 does not become payable by the tenant at a later date.

A rent remission means the cancellation of a debt or charge, such as 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).

**15. For what period does rent relief apply?**

The Scheme is in operation from **16 January 2022 to 15 March 2022**.

Rent relief agreements can be made within this period and can extend beyond the period of the Scheme.

The Scheme is retrospective from 16 January 2022. A tenant can make a request for rent relief back to that date, **as long as they submit their application to their landlord and provide the necessary evidence on or before 15 March 2022**.

**16. What can a tenant do if they can’t keep paying rent because of COVID-19?**

The VSBC recommends the tenant:

* keeps paying, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover
* speak or write to their landlord as soon as they can about their situation, including their fall in turnover
* make a written request to their landlord for rent relief (see question 17)
* follow the process for tenants and landlords under the Scheme, which includes negotiating in good faith, to try to reach a fair agreement on rent relief
* contact their accountant, a business advisor or a business mentor for advice as soon as they can – the Partners in Wellbeing helpline (1300 375 330) offers [free access to financial counselling and business advice](https://www.vsbc.vic.gov.au/responding-to-coronavirus-covid-19/help-to-close-your-small-business/#section2), CPA Australia offers a [helpful tool for finding a certified practising accountant in Victoria](https://www.cpaaustralia.com.au/FindACpa/Locate.mvc/Index) and the Small Business Mentoring Service provides [access to experienced mentors](https://www.sbms.org.au/).

KEY REQUIREMENT: In order to get rent relief under the Scheme, eligible tenants must make a compliant request to their landlord in writing, providing the required evidence (see questions 17 and 20) **on or before 15 March 2022**.

If anything about the Scheme is unclear to a tenant or landlord or if they have concerns, they can [contact the VSBC](http://www.vsbc.vic.gov.au/contact-us/) for guidance. If they can’t reach an agreement, they can [apply to the VSBC](https://www.vsbc.vic.gov.au/application-forms/) for impartial help to resolve their rent dispute through free help early on or low-cost mediation. **These supports for resolving disputes are continuing after 15 March 2022.**

**17. How does a tenant request rent relief?**

When a tenant requests rent relief from their landlord, the request must be in writing **and be made on or before 15 March 2022**. It must be accompanied by:

* a statement from the tenant that they are an eligible tenant
* a statement that the tenant satisfies the decline in turnover test, which includes setting out:
	+ the tenant’s turnover for the turnover test period, including the turnover test period used
	+ the tenant’s comparison turnover, including stating whether the relevant comparison period or a specific alternative turnover method was used (see [table 2)](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-2_Alternative-tests.pdf)
	+ if an alternative comparison turnover method was used, how the comparison turnover was calculated
	+ the tenant’s fall in turnover
	+ the reduction in rent that would satisfy the minimum requirements of an offer of rent relief made by a landlord in accordance with the Scheme and
	+ any other circumstances that the tenant would like the landlord to consider in making an offer of rent relief under the Scheme.
* a statutory declaration made by the tenant or an authorised officer of the tenant stating that the tenant is an eligible tenant and that the information provided by the tenant is true to the best of the tenant’s knowledge and belief.

**It is very important that the tenant provides the required statutory declaration to the landlord within 14 days of making their rent relief request. If this is not done, then the request for rent relief will lapse and the tenant will not be protected under the Scheme.** A tenant is permitted to make up to 3 requests for rent relief that lapse. Following this, a tenant cannot make a further request for rent relief under the Scheme.

Tenants can use the VSBC’s optional letter templates to guide them in making a rent relief request to their landlord. These include:

* [option 1](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220209_Tenant-rent-relief-request_optional-letter-template-1.docx) – a letter for making a single, complete request
* [option 2](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220209_Tenant-rent-relief-request_optional-letter-template-2.docx) – a letter for making an initial request and a further letter for supplying the required evidence.

**18. How is ‘turnover’ defined under the extended Scheme?**

Turnover is defined as the GST turnover of a small entity and includes:

* the proceeds of sales of goods and/or services (including any turnover from internet sales of goods and/or services)
* commission income
* repair and service income
* rent, leasing and hiring income
* government bounties and subsidies
* interest, royalties and dividends
* other operating income
* payments such as Victorian Government COVID-19 Business Support Fund payments and grants jointly funded by the Commonwealth and Victorian governments that were received by the tenant during the relevant period.

Turnover does not include GST or any financial assistance paid wholly by the Commonwealth in response to COVID-19.

**19. How is the decline in turnover test satisfied?**

A tenant satisfies this test if the turnover for the **turnover test period** (January 2022) falls short of the tenant’s **comparison turnover** for the **relevant comparison period**(January 2020) by 30 per cent or more.

If the tenant closed for a week or more during January 2020 because of an event or circumstances outside their usual operations and started trading again before 16 January 2022, then they can use the:

* turnover test period of December 2021
* relevant comparison period of December 2019.

A tenant can also use an alternative comparison turnover if:

* they started their business on or after 1 January 2020 (for more information see [table 1](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-1_Comparison-and-turnover-periods.pdf))
* there was an acquisition or disposal of their business on or after the start of the relevant comparison period and before the applicable turnover test period that changed their comparison turnover
* there was a restructure of their business on or after the start of the relevant comparison period and before the applicable turnover test period that changed their turnover
* their business has been affected by natural disaster during the relevant comparison period and this event changed their turnover
* they are a sole trader or small partnership without employees who, due to sickness, injury or leave, did not work for all or part of the relevant comparison period and their turnover was affected as a result.

If more than one of these methods applies, the tenant can choose which one to use.

A decline in turnover is calculated by comparing turnover for the comparison periods as shown in [table 2](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_CTRS-Table-2_Alternative-tests.pdf).

To work out actual turnover, tenants need to use a cash or accruals basis, though must use the same method for both periods.

**20. What evidence is required to show a fall in turnover?**

A tenant needs to provide evidence of at least one of the following to their landlord to show a fall in turnover:

* Extracts from the tenant’s accounting records or
* The tenant’s business activity statement(s) that relate to the relevant turnover test period ([providing the G1 information – total sales](https://www.vsbc.vic.gov.au/wp-content/uploads/2020/11/ATO-BAS-statement_GI_evidence-of-turnover_example.pdf) – as highlighted in the ATO’s form) 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

**21. What turnover evidence is not appropriate for a landlord to ask a tenant in connection with an offer of rent relief?**

A landlord should not ask the tenant to provide any financial information other than one of the four forms of financial information required to be provided by the tenant under the Scheme (see question 20). For example, the landlord should not:

* request future cash flow projections
* request balance sheets, profit and loss or year to date financials
* request the tenant’s bank balance
* require the financial information to be verified, examined, assured, audited or provided by a third party such as an accountant
* require an accountant to provide a letter of comfort or similar on the financial information
* request financial information for periods other than the ‘relevant period’ (i.e. the period nominated by the tenant as the period for a reduction in turnover).

**22. What does a landlord need to do to respond to a tenant’s request for rent relief?**

Where the request complies with the Scheme, a landlord must offer rent relief in writing to their eligible tenant within 14 days of the tenant making the written request, unless a different time frame has been agreed to by the landlord and tenant in writing.

An offer of rent relief must relate to up to 100 per cent of the rent payable under the lease during the rent relief period and must, at a minimum, match the fall in the tenant’s turnover. At least 50 per cent of the rent relief offered must be in the form of a rent waiver unless the landlord and tenant reach a different agreement in writing.

Landlords can use the VSBC’s [optional letter template](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_Landlord-rent-relief-offer-letter-template.docx) to guide them in making a rent relief offer.

Where the request isn’t compliant, the VSBC encourages the landlord to keep communicating with their tenant. Where the tenant isn’t eligible, the VSBC encourages the tenant and landlord to have good faith negotiations to try to reach a fair agreement on rent relief (see question 24).

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

Where a tenant doesn’t agree with the landlord’s offer, the landlord and tenant must continue to negotiate in good faith with the aim of reaching a fair agreement on rent relief for the rent relief period (see question 24).

**24. What does negotiating ‘in good faith’ mean?**

It involves all parties communicating with each other and having discussions honestly and fairly with the genuine aim of reaching an agreement. It also involves behaving in an open and transparent manner and providing accurate information, and enough of it, to support negotiations.

Under the Scheme, landlords and tenants are required to co-operate and act reasonably in all of their discussions and actions and to negotiate rent relief in good faith with a view to reaching an agreement. They are also required to provide relevant documentation (consistent with the Scheme’s [regulations](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)) in a timely manner. **It is an offence under the Scheme if a landlord or tenant provides false or misleading information.**

In certain circumstances, the VSBC may make a binding order for rent relief if a landlord does not sufficiently respond to the VSBC or does not engage in mediation in good faith (see question 59).

**25. Is a landlord required to provide proportional rent relief to their eligible tenant (i.e. rent relief that matches their tenant’s fall in turnover)?**

Yes. A landlord’s rent relief offer must, at a minimum, be in proportion to the fall in the tenant’s turnover. For example, if the tenant’s turnover has fallen by 40 per cent (using the comparison period in question 19), the required rent relief is at least 40 per cent of the tenant’s current rent.

At least 50 per cent of the rent relief offered must be made up of a rent waiver. The remainder can be made up of a rent deferral.

Landlords are required to pay their eligible tenants proportionate rent relief, even if the lease includes a clause that attempts to exclude the tenant from receiving rent relief. Clauses seeking to do this are void.

**Landlords are not required to provide rent relief to their tenants after 15 March 2022.**

**26. What is the period during which a landlord must provide proportional rent relief to their tenant?**

The landlord must provide proportional rent relief during the rent relief period, which is from 16 January 2022 to 15 March 2022.

**27. Does a landlord’s rent relief offer need to directly equal the tenant’s fall in turnover?**

A landlord’s offer under the Scheme must, at a minimum:

* match the fall in the tenant’s turnover during the turnover test period as set out in question 19
* apply to 16 January 2022 to 15 March 2022, taking into account:
	+ any waiver or reduction of outgoings provided by the landlord to the tenant
	+ any waiver or reduction of outgoings or other expenses for the premises provided by other parties (e.g. water company or council).

**28. What supports are available to a landlord who provides rent relief to their tenant?**

The Commercial Landlord Hardship Fund offers grants to eligible landlords who experience hardship as a result of waiving rent for their tenants under the extended Scheme. Eligible landlords can apply for a grant of up to $2,000 per eligible tenancy. Where landlords are experiencing acute hardship because of waiving rent, the grant may be increased to $3,300 per eligible tenancy. **Applications closed 20 March 2022.**

**29. Can a tenant be deemed to have accepted a landlord’s offer of rent relief without having taken any action?**

Yes. A tenant will be deemed to have accepted the landlord’s offer under the Scheme if after 15 days of receiving it:

* the landlord and tenant haven’t reached agreement on rent relief and
* the tenant hasn’t applied to the VSBC for help to resolve the dispute and
* the landlord’s offer complies with the minimum requirements of the Scheme.

**30. What if rent relief that had previously been negotiated doesn’t match the tenant’s fall in turnover?**

Rent relief agreements already in place will continue as agreed. A tenant can request further rent relief from their landlord that matches their fall in turnover for the period 16 January 2022 to 15 March 2022. **This request must be made on or before 15 March 2022.**

**31. Can a tenant ask for more rent relief after an agreement has been made?**

A tenant can ask for more rent relief if they have reached an agreement for rent relief and their financial circumstances have materially changed.

The landlord and tenant must follow the same processes set out in the Scheme for requesting and offering rent relief.

**32. Can rent be increased during the protection period (including after an agreement has been reached) if the tenant’s situation improves?**

A landlord must not increase the rent payable at any time from 16 January 2022 to 15 March 2022 (the protection period), unless the landlord and tenant agree in writing that the regulation preventing a rent increase does not apply to their lease. This restriction does not apply to a retail lease where the lease allows rent to be determined by the tenant’s volume of trade.

Any provision in the eligible lease that does increase or may have the effect of increasing the rent during the protection period is void and can never be claimed by the landlord.

**33. What if a tenant refuses to negotiate or keep paying rent?**

The landlord can [apply to the VSBC](https://www.vsbc.vic.gov.au/application-forms/) for impartial help, which can include free help early on and low-cost mediation (see question 34). **These supports for resolving disputes are continuing after 15 March 2022.**

For information on whether a tenant is in breach of their lease for not paying rent, see question 41. For information on whether a tenant can be evicted for not paying rent, see question 51.

**34. How can a landlord and tenant resolve a dispute?**

Either the landlord or tenant can apply to the VSBC for impartial help, **including after the Scheme ends on 15 March 2022**. The VSBC can provide free help early on, often just over the phone. If the matter can’t be resolved this way, the VSBC can promptly progress it to low-cost mediation.

Mediation doesn’t involve making orders or handing down a decision for or against a party. It involves an experienced and independent professional – the mediator – guiding the tenant and landlord in having good faith negotiations with the aim of reaching a fair agreement. Whether an agreement is reached is up to the parties.

Mediation costs $195 per party, per session.

KEY REQUIREMENT: Before a tenant applies for mediation under the Scheme, they:

1. must have made a compliant rent relief request to their landlord, supplying the required evidence (see questions 17 and 20) **on or before 15 March 2022**
2. must attach their written request and evidence when applying for mediation.

Landlords can apply for mediation in situations where their tenant has stopped paying rent and an agreement can’t be reached.

Access our application forms [here](https://www.vsbc.vic.gov.au/application-forms/).

**35. What supports are available to a tenant who is not under an eligible lease?**

Where a tenant isn’t under an eligible lease, the landlord and tenant can use the Scheme to guide their negotiations though the rent relief requirements cannot be mandated.

Where a fair agreement can’t be reached, either the tenant or landlord can [apply to the VSBC](https://www.vsbc.vic.gov.au/application-forms/) for impartial help. This includes free help early on, often just over the phone. If the matter can’t be resolved this way, the VSBC can promptly progress it to low-cost mediation, where an experienced and independent professional – the mediator – guides the landlord and tenant in having good faith negotiations and reaching an agreement they can both accept.

Mediation costs $195 per party, per session.

**36. Is the Victorian Small Business Commission currently providing mediation sessions?**

Yes. Either the tenant or landlord can apply for low-cost mediation. Mediation costs $195 per party, per session. For information about the key requirements that must be met before applying to the VSBC under the Scheme and a link to apply, see question 34.

**37. How much does mediation cost?**

Mediation costs $195 per party, per session. For information about the key requirements that must be met before applying to the VSBC under the Scheme and a link to apply, see question 34.

**38. If a tenant or landlord currently has a rent relief matter with the VSBC and they're wanting help to resolve another dispute over rent relief, do they need to apply to the VSBC again?**

If the initial dispute hasn’t yet been resolved, the tenant or landlord doesn’t need to fill in another application form. Instead, they should contact the VSBC team member who has been helping them so they can provide details of their new dispute and find out what else they might need to provide.

**39. 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 any personal, commercial, business or financial information obtained in the course of any dealings between them in connection with the Scheme, except where specifically permitted.

**40. Is mediation binding?**

If a landlord and tenant reach agreement at mediation, they can choose to sign binding Terms of Settlement. If a party to an agreement does not meet their obligations, the other party may be able to take action at the [Victorian Civil and Administrative Tribunal (VCAT)](https://www.vcat.vic.gov.au/) to enforce the agreement. For example, if a tenant breaks an agreement to pay agreed rent relief, they may be at risk of being evicted.

**41. Is a tenant in breach of their lease if they don’t pay rent during the relevant period?**

No, providing the tenant has followed the process under the Scheme for requesting rent relief and is paying 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). Before an agreement on rent relief has been reached, the tenant must keep paying, as a minimum, their monthly rent reduced by the same percentage as their fall in turnover (for more information, see [regulation 24](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf)).

**42. Under what circumstances can a landlord evict a tenant under the Scheme?**

A landlord cannot evict a tenant who is eligible under the Scheme if the tenant can’t pay rent because of a fall in turnover due to COVID-19, provided:

* the lease was in effect on or before 16 January 2022 and
* the tenant has made a written rent relief request to their landlord in line with the Scheme’s regulations (see question 17) **on or before 15 March 2022**.

A landlord also cannot evict a tenant under an eligible lease where the tenant is unable to trade as a result of:

* sickness or injury affecting the tenant, its officers or employees
* natural disaster affecting the tenant.

The ban on eviction does not cover circumstances that fall outside the Scheme. For example, evictions relating to:

* damage to the property
* unpaid rent before 16 January 2022
* situations where a tenant doesn’t pay rent that they had agreed to pay under a rent relief agreement.

The ban on eviction does not cover tenants who are not eligible under this Scheme.

**43. What will happen to tenants that have already received an eviction notice?**

These tenants should contact the VSBC to discuss their situation.

If a tenant has been issued a Notice to Vacate or eviction notice and they want to remain at the premises, they should immediately contact their landlord to see if they can come to an agreement to avoid being evicted. If they are unable to resolve the matter, they should apply to the VSBC for low-cost and impartial mediation. At mediation, parties will be supported in negotiating leasing arrangements. Mediation costs $195 per party, per session. **This support for resolving disputes is continuing after 15 March 2022.**

The VSBC can be contacted on 13 8722 or by [submitting an application form online](https://www.vsbc.vic.gov.au/application-forms/).

**44. If an agreement is reached to defer rent, 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 must not request payment of the deferred rent until 16 March 2022.

Where a compliant request for rent relief has been made under the extended Scheme and where there is also an agreement already in place under the previous Scheme, the deferred rent repayments under the previous Scheme are frozen until 15 March 2022.

**This means that from 16 March 2022, the tenant must begin repaying the remaining rent deferred under the previous Scheme (in the same instalments and frequency as was previously agreed to) in addition to rent deferred under the extended Scheme.**

The VSBC encourages tenants who think they might have difficulty paying deferred rent after the Scheme ends to contact their accountant, a business advisor or a business mentor for advice as soon as they can. The Partners in Wellbeing helpline (1300 375 330) offers [free access to financial counselling and business advice](https://www.vsbc.vic.gov.au/responding-to-coronavirus-covid-19/help-to-close-your-small-business/#section2), CPA Australia offers a [helpful tool for finding a certified practising accountant in Victoria](https://www.cpaaustralia.com.au/FindACpa/Locate.mvc/Index) and the Small Business Mentoring Service provides [access to experienced mentors](https://www.sbms.org.au/).

**45. If rent is deferred, is the lease extended?**

If payment of any rent is deferred by a rent relief agreement, the landlord must offer the tenant an extension to their lease equal to the length of time rent is deferred. This extension must be on the same terms and conditions that applied under the lease before 16 January 2022, unless the landlord and tenant reach a different agreement in writing.

**46. 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 cannot be broken early by the landlord or tenant, unless the lease allows for this or if both agree to this happening.

Some tenants who are experiencing a downturn in trade might want to [end their lease early](https://www.vsbc.vic.gov.au/responding-to-coronavirus-covid-19/commercial-including-retail-tenants-and-landlords/ending-a-retail-lease-early/). The VSBC encourages tenants in this situation to communicate with their landlord as early as possible to discuss their position and alternative options, such as rent relief.

**47. Can a tenant reduce opening hours or close their business even though they could keep trading in another way e.g. takeaway or click and collect? What can the landlord do if this happens?**

Yes. An eligible tenant is not in breach of their lease if they reduce opening hours or if they close their business and stop carrying out business at the premises during the protection period.

If this occurs, a landlord must not:

* evict or try to evict the tenant.
* re-enter or try to re-enter the premises
* have recourse to (i.e. call on the tenant for) any security relating to the non-payment of rent under the lease, or try to do so.

If a tenant meets all other eligibility criteria they do not need to demonstrate a fall in turnover for this protection.

**48. What are outgoings?**

Outgoings are costs relating to the premises that a tenant may need to pay (e.g. water rates or council rates).

It’s the landlord’s responsibility to provide the tenant with various documents outlining outgoings (estimates and actual) and who is responsible for paying these costs at various points over the term of the lease.

**49. Is a landlord required to reduce or refund outgoings?**

If a third party (e.g. a water company or council) reduces any outgoings charged, the landlord is required to pass on this reduction to the tenant (i.e. the tenant pays their share of the reduced outgoings). If the tenant has already paid the landlord their share of the original outgoings, the landlord must reimburse the excess amount as soon as possible.

**50. Is a landlord required to waive recovery of outgoings?**

A landlord must consider waiving recovery of any outgoings or other expenses payable by the tenant under the lease for any part of the protection period that the tenant is unable to operate their business at the premises.

**51. Can a tenant be evicted for not paying rent or outgoings during the protection period?**

If a tenant has followed the process for requesting rent relief (see question 17) 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
* re-enter or otherwise recover the premises or attempt to do so.

If the landlord breaches either of the above requirements, they can be fined $3,634.80.

**52. Can a landlord stop providing services at the premises?**

If a tenant is unable to operate their business at the premises for any length of time during the protection period, the landlord can stop providing, or reduce the provision of, any service at the premises, provided this is reasonable in the circumstances or is in response to any reasonable request of the tenant.

**53. Can a landlord hold the security deposit (bond) until deferred rent 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.

**54. Can a landlord require the tenant to pay interest or other fees or charges in relation to paying deferred rent?**

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 a rent relief agreement.

**55. 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 (e.g. by applying to [VCAT](https://www.vcat.vic.gov.au/)).

**56. If mediation fails, what can a landlord or tenant do next?**

If mediation fails to resolve a dispute over rent relief, the VSBC can issue a certificate stating that mediation has failed. The landlord or tenant may then be able to file an application with [VCAT](https://www.vcat.vic.gov.au/) to ask for a rent relief order.

**57. If a dispute can’t be resolved at mediation, can it be determined by VCAT or a court?**

Where possible, the landlord and tenant should try to resolve their dispute and avoid a legal proceeding. However, if a dispute about a lease can’t be resolved at mediation, a landlord or tenant can apply to [VCAT](https://www.vcat.vic.gov.au/) or a court to make a decision. A lease dispute (other than an application for an order in the nature of an injunction) can only be the subject of a proceeding in VCAT or a court if the VSBC has certified in writing that mediation failed or is unlikely to resolve the dispute.

**58. What if a landlord refuses to negotiate?**

The tenant can apply to the VSBC for impartial assistance to help resolve their rent relief dispute (see question 34), **including after the Scheme ends on 15 March 2022**.

Under the Scheme, the VSBC can make a binding order for rent relief if the landlord does not respond or sufficiently respond to a dispute notice from the VSBC or does not mediate in good faith, where the VSBC is satisfied the decision to do so is fair and reasonable in all circumstances.

The VSBC can also issue a certificate that enables the dispute to proceed to [VCAT](https://www.vcat.vic.gov.au/). VCAT is then able to make a determination on the rent relief dispute.

**59. What is a binding order and when can it be made?**

A binding order is an order that the VSBC can make under the Scheme in certain circumstances that sets the amount of rent relief a landlord must give the tenant.

The VSBC must make a binding order for rent relief where:

* the VSBC has issued a certificate stating mediation has failed or is unlikely to resolve the dispute and the landlord has failed to respond or sufficiently respond to a dispute notice or the landlord has not engaged in mediation in good faith and
* the dispute relates to a tenant’s written rent relief request that complies with the Scheme’s requirements (see question 17)
* the tenant under an eligible lease has applied to the VSBC for a binding order and
* the landlord or tenant has not started action at VCAT or a court in relation to the dispute and
* the VSBC is satisfied that it is fair and reasonable to do so in all the circumstances.

A binding order may require the landlord to:

* waive part, or all, of the rent for the rent relief period and/or
* defer payment of part of the rent for the rent relief period.

The order might also direct the method of payment of any deferred rent.

A tenant can apply for a binding order using the [VSBC’s application form](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/220202_VSBC-binding-order-application-form.docx).