Support for tenants and landlords in response to COVID-19 – FAQs

**PLEASE NOTE: These FAQs refer to 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. How is the Victorian Small Business Commission (VSBC) supporting commercial tenants and landlords in response to COVID-19?**

Commercial tenants are no longer entitled to rent relief now that the Victorian Government’s extended Commercial Tenancy Relief Scheme has ended. Tenants and landlords still have access to the VSBC’s support.

This includes:

* guidance in having fair negotiations and a recommended process to follow
* [access to impartial help](https://www.vsbc.vic.gov.au/application-forms/) to resolve a dispute – including providing free assistance early on and if the matter can’t be resolved this way, arranging for low-cost mediation.

If a tenant requested rent relief before 15 March 2022 and met the Scheme’s requirements, either the tenant or landlord can still apply for the VSBC’s help to resolve their dispute under the Scheme.

**2. If a tenant is having difficulty paying rent after 15 March 2022, what steps can they take?**

1. Review their finances and **contact their accountant, a business advisor or a financial counsellor for advice as soon as they can** – Partners in Wellbeing (1300 375 330) offers [access to free qualified financial counsellors](https://www.vsbc.vic.gov.au/responding-to-coronavirus-covid-19/help-to-close-your-small-business/#section2) who can help in negotiating affordable repayment plans and CPA Australia offers a [helpful tool for finding a certified practising accountant in Victoria](https://www.cpaaustralia.com.au/FindACpa/Locate.mvc/Index).
2. Talk with their landlord about their situation and what rent they can afford.
3. If the tenant can’t reach an agreement with their landlord, they can [apply for impartial help](https://www.vsbc.vic.gov.au/application-forms/) to resolve their dispute.
4. If the tenant is feeling stressed or concerned about their business, the VSBC encourages them to call Partners in Wellbeing (1300 375 330). In addition to financial counselling, the helpline offers free access to trained wellbeing coaches and business advisors.

If the tenant is at immediate risk of being evicted, the VSBC recommends they consider seeking advice from a lawyer on whether they should [apply to VCAT for an injunction](https://www.vcat.vic.gov.au/the-vcat-process/types-of-hearings/injunctions) to prevent their landlord from taking possession of the premises.

**3. 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 they can both accept.

It also involves behaving in an open and transparent manner and providing accurate information – and enough of it – to support negotiations.

**4. Are landlords required to provide rent relief to tenants?**

With the extended Commercial Tenancy Relief Scheme having ended, landlords are no longer required to provide rent relief to their tenants where the tenant makes a request after 15 March 2022.

If a tenant requested rent relief on or before 15 March 2022 and met the Scheme’s requirements, then the landlord must make a rent relief offer that is, at a minimum, in proportion to the fall in the tenant’s turnover.

**5. Can a tenant ask for relief on rent that is due before 15 March 2022?**

Yes, though if the tenant makes their request after this date, their landlord is not required to provide rent relief because the extended Commercial Tenancy Relief Scheme ended on 15 March 2022. Agreements made before 15 March 2022 still apply.

**6. What if a tenant and landlord can’t reach a fair agreement or get a response from the other party?**

The VSBC encourages tenants and landlords in this situation to use the VSBC’s dispute resolution services to try to reach agreement. Either the tenant or the landlord can [apply](https://www.vsbc.vic.gov.au/application-forms/) to us for help.

Help includes assistance early on, often just over the phone. Where the dispute can’t be resolved this way, the VSBC can progress the matter to impartial online mediation.

At mediation, an experienced professional – the mediator – will guide both parties in good faith negotiations with the aim of reaching a fair agreement. Mediation doesn’t involve making orders or handing down a decision for or against a party that has to be accepted. Whether an agreement is reached is up to the tenant and the landlord.

**7. How much will mediation cost?**

Mediation costs $195 per party, per session. Either party can [apply](https://www.vsbc.vic.gov.au/application-forms/) to us online.

**8. If a tenant or landlord has already submitted an application to the VSBC for help to resolve a dispute over rent relief and is wanting to request further help from the VSBC, do they need to apply twice?**

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.

**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 any personal, business or financial information gained in the course of any dealings between them during the dispute resolution process, except in relation to disputes under the extended Commercial Tenancy Relief Scheme where specifically permitted by the [Scheme’s regulations](https://www.vsbc.vic.gov.au/wp-content/uploads/2022/02/CTRS-Regulations-2022.pdf).

**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 doesn’t meet their obligations, the other party might be able to take action at the [Victorian Civil and Administrative Tribunal (VCAT)](https://www.vcat.vic.gov.au/) to enforce the agreement. For these applications, VCAT requires a copy of the Terms of Settlement and the VSBC file reference number. A certificate from the VSBC isn’t needed.

**11. 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 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](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.

**12. Can a tenant be evicted for not paying rent now that the extended Commercial Tenancy Relief Scheme has ended?**

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

* damaged property
* unpaid rent before 16 January 2022 and after 15 March 2022
* situations where a tenant doesn’t 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 didn’t negotiate an agreement.

For steps the VSBC recommends tenants take if they are having difficulty paying rent, see question 2.

**13. What can a tenant do if they have received an eviction notice?**

The tenant should contact the VSBC in relation to their individual situation.

If the 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 eviction. If they can’t agree, either party can apply to us for impartial mediation. At mediation, parties will be supported in negotiating leasing arrangements.

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

**14. Can a landlord increase rent under a retail lease now that the extended Commercial Tenancy Relief Scheme has ended?**

If an eligible lease containing annual rent reviews or rent increases provided for an increase in rent or a review of the rent during the Scheme, that review or increase is voided and can never be claimed by the landlord.

In this situation, the landlord:

* cannot claim back rent that was lost due to the freeze on rent increases during the Scheme
* following the end of the Scheme, will need to wait until the next rent review or increase date listed in the lease to review or increase the rent.

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

There might be tax implications. What tenants and landlords need to declare, deductions they can claim and their GST obligations will depend on:

* the type of rent relief received or given
* if an existing agreement has changed, or a new or additional agreement is made.

For more information, see the [ATO website](https://www.ato.gov.au/General/Property/Property-used-in-running-a-business/Commercial-rent-or-lease-payment-changes/).

**16. What if a landlord refuses to negotiate through the VSBC or the dispute can’t be resolved at mediation?**

If the dispute involves a rent relief request made after 15 March 2022 and includes retail leasing matters, the VSBC can issue a certificate so the dispute can go to [VCAT](https://www.vcat.vic.gov.au/).

If the dispute happened after 15 March 2022 and is solely about rent, the VSBC might not have jurisdiction to issue a certificate. **We encourage tenants in this situation to contact their accountant, a business advisor or a financial counsellor for advice as soon as they can – Partners in Wellbeing (1300 375 330) offers**[**access to free qualified financial counsellors**](https://www.vsbc.vic.gov.au/responding-to-coronavirus-covid-19/help-to-close-your-small-business/#section2)**who can help in negotiating affordable repayment plans and CPA Australia offers a**[**helpful tool for finding a certified practising accountant in Victoria**](https://www.cpaaustralia.com.au/FindACpa/Locate.mvc/Index)**.**

If the tenant made a rent relief request on or before 15 March 2022 that met the extended Commercial Tenancy Relief Scheme’s requirements, the VSBC can make a binding order for rent relief if the landlord doesn’t respond or sufficiently respond to a VSBC dispute notice or doesn’t mediate in good faith. For these matters, the VSBC can also issue a certificate so the dispute can go to VCAT.