

## **COVID-19: Temporary measures introduced in Victoria to protect residential landlords and tenants**

Source: [Victorian Legislation](#) and [Consumer Affairs Victoria](#)

Date: 16 June 2020

### **Abstract:**

New temporary measures have been introduced in Victoria to support landlords and tenants who have been affected by the COVID-19 pandemic.

### **Temporary residential tenancy law changes**

The *COVID-19 Omnibus (Emergency Measures) Act 2020* (VIC), which commenced on 25 April 2020, has temporarily amended the *Residential Tenancies Act 1997* (VIC)(**Act**) to provide as follows:

#### **No rent increases**

A landlord cannot increase the rent payable under a tenancy agreement.

#### **Tenants may apply for a rent reduction/payment plan**

A tenant may apply to the Victoria Civil & Administrative Tribunal (**VCAT**) for an order providing for:

- a rent reduction for a specified period; or
- a payment plan to pay the rent or a reduced amount of rent (and any outstanding arrears of rent) for a specified period.

#### **No breach if a COVID-19 reason**

A tenant or a landlord is not taken to have breached a term of a tenancy agreement if the tenant or the landlord is unable to comply with that term because of a “COVID-19 reason”, being if the person:

- is ill (whether or not the illness is COVID-19);
- is unable to comply with the term because of the person's compliance with a law or a government recommendation in relation to the COVID-19 pandemic;
- is unable to comply with the term without suffering severe hardship; or
- is unable to comply with the term because of any exceptional circumstances in relation to the COVID-19 pandemic.

#### **Reduction in fixed term tenancy agreement**

A party to a fixed term tenancy agreement may apply to VCAT for an order reducing the term of the agreement. To make such an order, VCAT must be satisfied that the severe hardship which the applicant will suffer if the term of the agreement is not reduced will be greater than the severe hardship which the other party will suffer if the term is reduced.

#### **No notices to vacate from landlords or mortgagees**

A landlord or a mortgagee cannot give a notice to vacate to a tenant under Subdivision 4 of Division 1 of Part 6 of the Act, which includes a notice given for non-payment of rent or for a failure to pay a rental bond. Any such notice is of no effect.

### **Notices of intention to vacate from tenants only in specified circumstances**

A tenant can only give a landlord a notice of intention to vacate (under Subdivision 3 of Division 1 of Part 6 of the Act) under certain specified circumstances, e.g. if the tenant is suffering severe hardship or the tenant is moving into public housing.

### **Tenants not liable for compensation or lease break fees**

A tenant is not liable to pay any lease break fee or to compensate a landlord for any loss suffered by the landlord as a result of the early termination of a tenancy agreement by a tenant under certain circumstances, e.g. if the tenant is suffering severe hardship.

### **Termination of tenancy agreements**

A tenancy agreement does not terminate unless it is ordered by VCAT or under other limited circumstances, e.g. termination by agreement, consent or abandonment or on the death of the tenant.

### **Landlords and mortgagees may apply to VCAT for orders to terminate**

A landlord or a mortgagee may apply to VCAT for an order terminating a tenancy agreement; however, VCAT must be satisfied that certain circumstances apply (e.g. a tenant has used the premises for an illegal purpose or a tenant has failed to comply with the tenant's obligations other than because of a COVID-19 reason) and that, in the circumstances, it is "reasonable and proportionate" (as defined) to make the order taking into account the impact on all relevant parties.

### **Landlords and mortgagees may apply to VCAT for possession orders**

A landlord or a mortgagee may also apply to VCAT for a possession order under certain circumstances if VCAT has made an order terminating a tenancy agreement and the tenant has not vacated by the required date. VCAT must be satisfied that, in the circumstances, it is "reasonable and proportionate" (as defined) to make the order taking into account the impact on all relevant parties.

### **No listings on residential tenancy databases**

A landlord cannot list a tenant on a residential tenancy database for the non-payment of rent if the tenant was unable to pay rent because of a COVID-19 reason (as defined above).

### **How long are the changes in effect?**

The above changes apply for a 6-month period, commencing on 29 March 2020 and ending on 29 September 2020.

### **Residential tenancies dispute resolution scheme**

The *Residential Tenancies (COVID-19 Emergency Measures) Regulations 2020* (VIC)(**Regulations**), which were released on 13 May 2020, have also established a residential tenancies dispute resolution (**RTDR**) scheme to try and quickly resolve payment-related disputes through mediation or binding orders made by dispute resolution officers.

### **Mandatory assessment by CAV**

From 13 May 2020, a residential landlord or tenant who has any dispute must, before making an application to VCAT, have its application firstly assessed by Consumer Affairs Victoria (**CAV**). CAV will assess the application and determine if the dispute should be resolved through the RTDR Scheme or referred to VCAT for determination.

CAV will assess the application and do the following:

- If it is a **payment related matter** (as defined, e.g. an application by a tenant to reduce the rent payable or for a payment plan) – refer it to the Chief Dispute Resolution Officer who will either conduct mediation or determine the dispute by making a binding dispute resolution order.

- If it is a **non-payment related matter** or the Chief Dispute Resolution Officer does not accept it for dispute resolution (or later decides that it is no longer suitable) or the dispute has not been resolved by dispute resolution – refer it to VCAT.

A **payment related application** does not include:

- an application relating to the payment of a bond; or
- an application for an order to terminate a tenancy agreement for a tenant's failure to pay rent if the tenant is able to pay the rent without suffering severe hardship.

See [rental dispute initial assessment](#) on the CAV website.

## How long are the Regulations in effect?

The Regulations expire on 26 September 2020.

## Other useful resources:

The following websites provide helpful information and precedents for landlords and tenants:

### Consumer Affairs Victoria

#### Tenants

CAV recommends that a tenant adopts the following steps if seeking a rent reduction:

- Work out how much rent you can afford to pay (**NOTE:** as a guide, paying more than 30% of a tenant's gross income on rent would be considered to be rental hardship).
- Negotiate, in good faith, a rent reduction with the landlord.
- If an agreement is reached, [register](#) the agreement with CAV. CAV provides a [template temporary rent reduction agreement](#). If agreement cannot be reached, seek the assistance of CAV.
- If CAV cannot assist the parties in reaching an agreement, CAV will refer the matter for mediation. If agreement is reached, the agreement (prepared by the mediator) will be registered with CAV. See also the [guide to conciliations at the Residential Tenancies Dispute Service](#).
- If the dispute is not resolved at mediation, the Chief Dispute Resolution Officer may make a binding dispute resolution order or, if this is not appropriate, refer the dispute to VCAT.

See the [guide to the process for rent reduction – tenants](#).

#### Landlords

CAV recommends that a landlord adopts the following steps if seeking a rent reduction:

- Find out what your tenant can afford to pay (you can request supporting evidence), what rent reduction you can afford to accept and what supports are available to you if agree to a reduction, e.g. insurance cover, mortgage relief or land tax relief.
- Negotiate, in good faith, an agreement which works for both parties.
- If an agreement is reached, [register](#) the agreement with CAV. CAV provides a [template temporary rent reduction agreement](#). If agreement cannot be reached, seek the assistance of CAV.
- If CAV cannot assist the parties in reaching an agreement, CAV will refer the matter for mediation. If agreement is reached, the agreement (prepared by the mediator) will be registered with CAV. See also the [guide to conciliations at the Residential Tenancies Dispute Service](#).
- If the dispute is not resolved at mediation, the Chief Dispute Resolution Officer may make a binding dispute resolution order or, if this is not appropriate, refer the dispute to VCAT.

See the [guide to the process for rent reduction – landlords](#).

## **Housing Victoria**

Tenants suffering rental hardship as a consequence of the COVID-10 pandemic may be eligible for rent relief grants from the Victorian government. See [Housing Vic](#).

Tenants may also be eligible for [rent assistance](#) from the Commonwealth Government.

## **Tenants Victoria**

See:

- [Coronavirus \(COVID-19\) guide for renters](#)
- [VCAT hearings and COVID-19](#)
- [template letter to the real estate agent requesting rent reduction](#)
- [template letter to the landlord requesting rent reduction](#)

## **VCAT**

See [changes to the law about renting a home during COVID-19](#)