



**Victorian  
Small Business  
Commission**

# RETAIL LEASING RIGHTS AND RESPONSIBILITIES

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# Retail Leases Act 2003

- The Retail Leases Act 2003 (the Act) was introduced to ensure fairness and transparency in commercial lease agreements of retail premises
- Under the Act, the Victorian Small Business Commission (VSBC) provides dispute resolution services to retail landlords and tenants
- Retail leasing matters must be referred to the VSBC before they can be heard by VCAT.



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# COMMON RETAIL LEASING DISPUTES AND HOW TO AVOID THEM

An overview of your rights and responsibilities

# Money owed by tenant

Limited circumstances where tenants can withhold rent – importance of seeking advice before taking any steps

All retail leasing disputes received by VSBC relating to rental arrears also involve other issues.

Options mediating parties could agree to include:

- Developing a payment plan for outstanding rent
- Negotiating a surrender of lease.

If the landlord terminates the lease due to tenant default, the tenant will likely be liable for:

- Payment of rent until the end of the term of the lease
- Landlord's costs for re-leasing, e.g. advertising.

# Early termination of lease

In the event a landlord fails to provide a copy of the lease, or a disclosure statement; or the disclosure statement is misleading, false or incomplete; the tenant can seek to terminate the lease.

If a premises is damaged and unable to be occupied, either party could seek to terminate the lease if:

- the landlord considers the extent of damage makes its repair impracticable
- The landlord fails to repair the damage within a reasonable timeframe and the tenant requests in writing to terminate the lease.



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# Repairs and maintenance

Landlords are responsible for maintaining:

- Structure, fixtures, plant and equipment
- Appliances, fixtures and fittings related to gas, electricity, water, drainage or other services
- All must be in a condition consistent with the condition of the premises when the lease was entered into.

**A tenant can claim reasonable compensation for loss or damage to the premises** (e.g. water damage caused by a leaking roof) if the landlord doesn't rectify the defect as soon as practicable.



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# Make good at end of lease

Retail tenants are obliged to return the premises to its original condition, which typically involves:

- Removing their fit-out
- Repairing any damage above fair wear and tear

It's important to have a clear and agreed understanding of what that original state is. Both parties should have copies of the original condition report.

If you purchased a business and therefore entered into an existing lease, you still have make good obligations.



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# Lease options and renewals

Retail lease agreements typically include options for tenants to renew their lease. This is negotiated before entering into the lease.

The landlord is obliged to honour the renewal of the lease, per the options available to tenants in the lease (e.g. 3x3).

Landlords must write to remind the tenant of their option to renew the lease, no later than three months before the option is no longer valid. If they fail to correctly do so, the window for tenants to exercise their option is extended.

Tenants must respond in writing to confirm if they're exercising their option to renew the lease.



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# HOW TO SEEK ASSISTANCE

# How we can assist

- Find information about your rights and obligations per the Retail Leases Act on our website: [vsbc.vic.gov.au](http://vsbc.vic.gov.au)
- Retail landlords and tenants can apply for the VSBC's assistance to resolve a dispute.
  - Our Dispute Resolution Officers contact both parties and attempt to resolve the matter. This is a free service.
  - If mediation is necessary, the VSBC appoints an impartial mediator to bring the parties in dispute together to seek an agreement. This costs each party \$300 for a half day and \$600 for a full day.



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