

Ending a commercial (including retail) lease early

We're here for small business

CAN A LEASE END 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 can't be broken early by the landlord or tenant, unless the lease allows for this to happen.

WHAT SHOULD A TENANT DO IF THEY WANT TO END THEIR LEASE EARLY?

Some tenants who are experiencing a downturn in trade or have stopped trading as a result of coronavirus (COVID-19) might be wanting to end their lease early.

We encourage tenants in this situation to communicate with their landlord or agent as early as possible to discuss their position and alternative options such as rent relief.

Tenants who want to end their lease early should first read their lease closely to check and confirm their rights and obligations.



They should then request a meeting with the landlord and/or write to the landlord to ask for their agreement to an early lease exit, explaining their reasons for the request.

Where the landlord and tenant reach an agreement (often called a 'surrender of lease'), it's important for this agreement to be in writing and for it to include anything that the landlord and tenant have agreed to as part of the lease ending early.

If a tenant is unsure about their situation, they should consider whether it's necessary to get legal advice.



WHAT DOES A TENANT NEED TO DO AT THE END OF THEIR LEASE?

When the lease ends, the lease might require the tenant to return the premises to its original condition. This could involve removing a fit-out that was installed, often referred to as 'make good'.

Once the lease has ended, it's recommended that the tenant writes to the landlord to confirm they have completed their obligations under the lease.

WHAT HAPPENS IF A TENANT ENDS THEIR LEASE EARLY?

Ending or breaking a lease early means a tenant might be liable for paying the rent owed from the day they end the lease until the end of the agreed term of the lease.

The tenant might also need to pay the landlord's costs of re-leasing, which could include advertising and other expenses to find a new tenant. In this situation, a landlord has a duty to reduce their loss by actively trying to lease the premises to another tenant.

If a landlord doesn't do this, the tenant might be able to avoid the obligation of paying rent until the end of the lease.

WHAT COULD PREVENT A TENANT FROM GETTING THE SECURITY DEPOSIT (BOND) BACK?

The *Retail Leases Act 2003* requires a landlord to hold a [security deposit](#) in an interest-bearing account and return the deposit together with the interest to the tenant within 30 days of the lease ending.

A landlord's obligation to return the security deposit only applies where a tenant has completed their obligations under the lease.

CHECKLIST

- Have you read your lease in full and made sure you understand your rights and obligations?
- Have you considered getting legal advice?
- Have you put the requests and agreements in writing?

HOW CAN THE VICTORIAN SMALL BUSINESS COMMISSION HELP?

If a commercial or retail tenant has tried to communicate with their landlord about their situation and requested an early lease exit but can't get a response or reach an agreement, they can [apply to the Victorian Small Business Commission \(VSBC\) for mediation to help resolve their retail lease dispute](#).

The VSBC can also help:

- small business tenants and landlords resolve disputes over rent relief
- small business owners:
 - resolve disputes over business matters such as unpaid invoices and undelivered services
 - proactively look after their mental health
 - access resources and support when deciding whether to close their business.

[Find out more.](#)

