

Essential Safety Measures Advisory Opinion

Frequently Asked Questions

The VSBC has prepared a number of FAQs in respect of the advisory opinion issued by VCAT on 1 May 2015. Please contact the VSBC on 13 VSBC (13 8722) if you have any additional queries about the advisory opinion.

Q. Does the advisory opinion apply prospectively or retrospectively?

A. The advisory opinion is a statement of the law as it stands and is not limited in terms of a time frame. Parties to a lease may wish or need to obtain their own legal advice to determine how the advisory opinion applies to their specific situation.

Q. Who should pay for an ESM item if a tenant has damaged the item in question?

A. The advisory opinion indicates the landlord must pay for an ESM item however in a situation where the tenant has damaged the item the landlord may be able to seek compensation from the tenant.

Q. Who should pay for an ESM compliance/inspection report?

A. The advisory opinion indicates the landlord must pay for an ESM item which includes a compliance/inspection report.

Q. Who pays for fire-extinguishers?

A. A landlord must pay for an ESM item covered by the *Building Regulations*. Fire-extinguishers are included in the *Building Regulations* as an ESM. A landlord may need to obtain their own legal advice having regard to their own situation.

Q. What happens if a landlord does not follow the advisory opinion?

A. A landlord potentially affected by the advisory opinion may wish to consider obtaining their own legal advice concerning the application of the opinion to their specific situation. Ignoring the advisory opinion may result in the tenant lodging an application with the VSBC for dispute resolution. If the VSBC is unable to resolve the matter, the tenant may then lodge an application with VCAT for determination. Alternatively, under the *Building Act* a tenant may recover from the landlord costs the tenant incurs in complying with the ESM obligations where the landlord has not done so. This can include setting off the costs incurred against rent payable.