

## Introduction

Current events around Coronavirus are putting considerable strain on corporate occupiers of leasehold premises, particularly in the retail and leisure sector. We set out below our opinion on options available relating to commercial leases and information gathered from speaking with others in the industry.

We would advise that tenants must check their individual leases, as all leases are different, but the below is the “usual” position under leases generally. We would also caution that we don’t know how landlords, or the Courts will react to any action taken by tenants so this briefing is simply an opinion and not advice. Before taking any action, a tenant should seek formal advice from their lawyers and professional advisors who can also review any side letters/agreements for you that landlords may require.

## Recommendations

There are many different forms of lease arrangement and it is important that appropriate professional advice is obtained on specific elements of individual leases.

We would advise that refusing to pay the lease rents would entitle the landlord to either forfeit (terminate) the lease, issue a petition to wind up the tenant company, instruct bailiffs to collect goods of the value of the lease rents or make claim for losses/payment in the Courts. This could involve the tenant losing its lease(s), being wind up or incurring costs in legal proceedings. On that basis, simply writing to the landlord with a refusal to pay the rents for the foreseeable future is not recommended. It also possible that failure to pay rent or any other material breach of the lease could lead to the landlord opposing the renewal of a lease under the Landlord and Tenant Act 1954.

Practically, this may raise the question whether, in the current environment, landlords will forfeit leases and be left with voids they can’t fill, at least in the short term. However, there is no guarantee and it would depend on each lease, property and landlord. Already this week we have seen landlords threaten to forfeit when faced with a refusal from their tenants to pay the rent.

## So, what can tenants do to ease the burden?

- Some clients are making it clear they will pay the March quarter rent bill but only one month at a time in advance. This may be some form of mitigation if a landlord objects to the proposal, as the tenant hasn’t refused to pay the rent and has already put forward a payment plan, but again advice is required in each case. If the landlord does not agree, it would retain its rights to enforce the recovery of any shortfall.
- Speaking with the landlord to discuss the issues and any potential solutions should be the first port of call. Tenants could ask the landlord for:
  - monthly rental payment rather than quarterly;
  - a moratorium on rental payments for 3-6 months;
  - if the landlord objects to a moratorium, the tenant could suggest that those rental payments are then spread over the following 6 months once all has returned to normal;
  - A reduction in rent; or

- That the rent is permanently or temporarily converted to a turnover only basis.

There is however no obligation on Landlords to accede to any requests and they in turn will have their own financial difficulties. Landlords and tenants must recognise that to co-operate with each other at this time would make the most commercial sense. In fact, market intelligence seems to be that most retail and restaurant companies are asking for at least one of the above from their landlords. It should be added that any agreement should be accurately recorded to avoid misunderstanding.

## **Other Matters**

### **Insurance**

Tenants should also check their insurance policies as to whether losses due to viruses are covered. Companies may well have the following insurances which they may wish to check.

- General Liability insurance;
- Business Interruption policy (either a standalone or part of a General Liability Policy attached as an endorsement);
- Crisis management insurance; and
- Mitigation insurance.

### **Termination**

If you don't have a lease event such as a break date or lease expiry you will not be able to terminate your lease. A lease cannot be said to be "frustrated" as a result of the outbreak of Covid19, and so at an end in these circumstances and it is highly unlikely a lease contains a force majeure clause permitting termination.

### **Communal and Common Parts**

If a landlord closes a centre or any common parts you will need to check the lease as to the landlord's obligations and any potential claims but certainly in this case your service charge payments should be reduced or suspended but again tenants will need to check their leases.

### **Conclusions**

The fundamental recommendation to be taken from this paper is one of maintaining a line of communication between Landlord and Tenant. There is a strong understanding of the hardship being experienced and that should transfer to proactive agreements for the benefits of all parties.

**Prepared by Falmouth BID with information from Keystone Law and RTP Surveyors**