

Covid-19 : Commercial property – Guidance for landlords

The economic impact of the coronavirus lockdown on the commercial sector has seen a flood of requests from tenants to landlords asking to be excused from paying rent and other costs or, in some cases, simply telling landlords that no payments can be made for the time being.

A tenant's negotiating position is on one view enhanced by the Coronavirus (Scotland) Act (CSA) and below is a summary of the current situation for landlords.

What is the new legislation's impact on a landlords' position?

The key point for commercial landlords is that CSA will extend the amount of time a tenant has to settle arrears of rent and service charge whether that's rent or other monies. CSA will provide that a tenant must be allowed 14 weeks to pay before the landlord can terminate the lease (previously the period was 14 *days*).

Whilst CSA will delay termination of leases, it will not release tenants from their obligation to comply with the terms of their lease. So, apart from the new 14-week timescale, no other provisions of a lease will change and all obligations incumbent to pay rent and service charge, to maintain the premises, etc will remain live and enforceable. In short, everything has changed and yet nothing has changed.

How does a landlord handle a tenant request to excuse rent payment?

In our view, how a landlord goes about this could be the difference between reaching an acceptable outcome for both parties and either giving away more than you need to on the one hand or losing what has been a good tenant up until now on the other.

Whilst we don't think that landlords should necessarily feel pressured to show their hand first our experience so far leads us to believe that it is important to engage with your tenant in a way that openly explores whether the tenant can offer proposals that work for both parties and take things forward from there.

And once you strike such an agreement, it's crucial to ensure that it's documented properly. As touched on above, we are already assisting numerous landlords to respond to tenant concession requests (and tenants too). Please contact us if you have received a request and would like to discuss it further.

Is it advisable to take insolvency action against tenants?

Commercial landlords are entitled to refuse to entertain requests from tenants for payment concessions. A lease is a binding contract, after all. However, commercial imperatives - and the 14-week moratorium on evicting non-paying tenants - have encouraged most landlords to engage with tenant requests. At the outset of the lockdown, there were some cases of landlords trying to work around the eviction moratorium by threatening tenants with insolvency proceedings. This was seen

as landlords activating the “nuclear bomb” in their armoury: a tenant would either have to find the money or be wound up.

Aside from the effects such an approach would have on the landlord-tenant relationship, the practical implications of the lockdown do not favour it. The insolvency process requires the involvement of Sheriff Officers and they are not currently serving insolvency notices. This will change with as lockdown restrictions ease, but the legal position will soon also alter making the availability of winding-up almost impossible. It will not be an option if the tenant has been adversely affected due to the lockdown. Consequently, insolvency proceedings will remain an empty threat in most instances.

Throughout the crisis, our advice has been that positive engagement between landlords and tenants is more likely to be in each party’s long-term interests than dispute or avoidance. It is very unlikely that insolvency proceedings, for practical, legal and relationship reasons will represent a better option.

Additional considerations for landlords

In addition to taking advice on your tenant’s request, there are other aspects that you should look into:

Insurance

You should speak to your insurance broker about whether your insurance policy has business-interruption protection that might be called upon just now.

It is also important that you are clear of the insurance implications of your property being unoccupied. You should clarify this with your broker so that you – and your tenant - understand the insurance company’s terms.

Bank covenants

If you have a business loan you should check whether it has any restrictions on reducing tenant payments. You might need your bank’s consent to giving your tenant concessions. We can advise you on this if you are uncertain of the loan terms.

Lindsays is currently helping a large number of landlord clients handle tenant requests constructively. Please contact us if you would like us to do the same.

For further guidance and support, get in touch with your usual contact or:

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