

Business tenants – what to do now if your Landlord demands rent?

Due to the situation with the coronavirus and the Government's order to shut down cafes, bars, pubs and other businesses which are deemed non-essential, many business tenants are now in a situation where they are unable to trade and are facing demands of rent from their Landlord.

What can be done in this situation?

The first thing to do is to review your lease to ascertain whether you remain liable for rent during this period. In most cases, tenants will be liable for the rent and must also pay interest in the event of late payment. In certain circumstances though, tenants may have a clause which, for example, allows for rent suspension in circumstances where the tenant is prevented from occupying a property as a result of an uninsured risk. Also, rent may not be payable or may be reduced in turnover rent leases.

If a tenant does remain liable for the rent, it is important to remember that the Landlord may also have difficulties in the current climate. The best option is therefore try and reach a compromise which will be workable for both parties. It is in everyone's interests for a business to remain trading.

Possible options are as follows:-

- **Negotiate temporary rent concessions**
- **Agree a realistic schedule for repayment of any arrears**
- **Ascertain whether a Landlord's funder will agree to a temporary repayment break**
- **Is there any government assistance available?**
- **Will a tenant's business interruption insurance pay out to cover rental payments?**

In some cases, a Landlord may serve a statutory demand which is a formal demand for payment and a precursor to winding up proceedings (for a company) or bankruptcy proceedings (for an individual).

If it is possible to dispute the rent (after reviewing the lease), then the business tenant can make an application to set aside the statutory demand which must be done within 18 days of service of the demand.

If there is no dispute but the tenant is not in a position to pay, the tenant should again look at the options set out above to see if a resolution can be reached with the Landlord.

Where a tenant is a company, the tenant may be able to take advantage of a new restructuring tool which was announced by the Insolvency Service on 28th March 2020 but is not yet in force. This is likely to include a moratorium for 90 days for companies affected by the current situation to give them breathing space from creditors.

The situation for tenants who are individuals is less clear at present. The Inland Revenue are currently adjourning bankruptcy petitions for 90 days and the Courts are treating other petitions similarly unless a petitioner requests a hearing to prosecute the petition. It may therefore be possible to obtain an adjournment for 90 days to enable time to pay once the current situation has cleared.

To obtain advice on reviewing a lease or to discuss options, please call Nina Rajani on 020 7481 6387

To obtain advice on dealing with a statutory demand, please call Alice Lithgow on 020 7481 6396