



## ***We are a charity landlord, leasing part of the building we own to other small charities. How do we respond to requests for a rent holiday from tenant charities due to the COVID 19 outbreak?***

### **COVID-19 – Property – Advice for Landlords**

***In light of changing situations and government responses, this memorandum is current as at 1 October 2020.***

Where a tenant makes a request for a rent holiday (or another form of rent concession), the tenant's lease should first be reviewed for any relevant provisions regarding the ability to withhold rent or apply for a rent holiday (or another form of rent concession). Some leases contain insurance provisions allowing rent to be suspended in specified circumstances.

It is likely that most leases of commercial premises will contain a "no set-off" provision, which will (depending on the wording of the provision) prohibit a tenant from unilaterally withholding rent payments.

Therefore, without an express agreement in place, a tenant cannot cease making rent payments. There is also no obligation on a landlord to agree to a rent concession, although from a reputational and long-term perspective, landlords may consider it in their interests to come to some form of agreement with their tenants.

If a tenant requests a rent holiday, amongst other issues, the following should be considered as part of a response to or in discussions with the tenant:

- How should a rent holiday (or another form of rent concession) be documented? Ideally it should not be left as a verbal agreement. Many concessions are being documented by way of a formal letter from the landlord (setting out the terms of the concession), which is then counter-signed by the tenant. Documenting the concessionary arrangement properly is important to avoid storing up problems for the future when, as landlord, you wish to revert to the strict lease terms.
- Consideration should be given to ensuring the terms of any rent concession do not conflict with any other terms of the tenant's lease.
- Should rent be deferred? This is where the tenant is allowed not to pay rent for a period but then required to pay by way of additional rent the amount which has been deferred (usually by instalments over a specified period of time);
- Could the rent be changed to monthly payments for a specified period of time if the tenant is currently paying quarterly?
- Could the rent be reduced for a specified period of time?
- Could the rent be abated, so that the tenant is not obliged to pay any rent for an agreed period, with no obligation to pay that rent at a later date?
- Is there a rent deposit which can be drawn down on to alleviate the tenant's cash flow issues (but perhaps on the condition that an agreement is reached in relation to topping up the rent deposit account at a later date)?

- As landlord, do you have your own rent payment obligations to a superior landlord? Without a rent concession of your own, can you afford to allow your own tenants a rent concession? Further, if you are a tenant, your lease may prohibit granting rent concessions without your own landlord's consent.
- Should any rent concession be limited only to pure rent or also include other payments such as service charge or insurance rent?
- Consideration should be given to any potential tax implications entering into a rent concession may have.
- How long should the rent concession last and particularly should it be terminated if the tenant receives support from one of the government's assistance schemes?

The Coronavirus Act 2020 contains provisions to prohibit a landlord taking steps to forfeit a lease of commercial premises for non-payment of rent until 31 December 2020 (in England) and 31 December 2020 (in Wales) (although it is possible these dates will be extended). Some tenants are relying on such provisions to withhold rent payments. However, this Act does not absolve tenants of the obligation to pay rent and landlords retain other remedies for seeking redress against tenants.