

Protection against eviction for non-payment of rent under the Coronavirus Act 2020

The Coronavirus Act 2020 provides welcome relief for tenants concerned that the coronavirus shutdown will threaten both their ability to cover rental costs for their leased premises, and their own long-term business viability. The Act introduces a moratorium on forfeiture for non-payment of rent by commercial tenants in the forthcoming quarter, with an option for the government to extend that relief beyond 30 June 2020 if needed.

However, the devil is in the detail for both landlords and tenants.

1. **Not all leases will benefit** from these measures. The moratorium provisions (contained in section 82 of the Act) apply only to a "relevant business tenancy", defined as one falling within Part 2 of the Landlord and Tenant Act 1954. This would cover business leases with a term exceeding 6 months (with or without security of tenure), but would not apply to a business lease having a term of 6 months or less (except where that lease contained a right to renew beyond 6 months, or where a period of prior occupation together with the lease term exceeds 12 months).
2. The forfeiture moratorium on "rent" extends not only to annual rent, but also includes **any sum which a tenant is liable to pay under its business tenancy** (including insurance, service charge and interest).

Therefore, unless further legislation is passed, landlords will find themselves both:

- (a) **without the March quarter's rental stream** - where the landlord's interest in the property is charged, a freeze in its rental stream could severely impact its own ability to meet finance repayments; and
 - (b) **suffering shortfalls** in the recovery of insurance and service costs incurred in relation to their premises. Indeed, where shutdown is enforced by government measures (as is the case with most retail premises), landlords could find themselves battling a permanent recovery problem, with tenants arguing that no responsibility for such costs should rest on their shoulders where premises remain closed to them.
3. **Forfeiture for non-payment of** rent (even in respect of rent arrears which accrued before the relevant period, and regardless of whether such arrears result from the impact of COVID-19) **cannot be enforced during the moratorium**.

Crucially, there is no suggestion that rent is being waived (unless expressly waived in writing by the landlord), so the rent liability for the relevant period will still be in place at the end of the relevant period. There is also no restriction on the post-moratorium recovery of interest accruing on those rent arrears.

Bad for tenants, good for landlords?

The moratorium, whilst providing short-term relief for tenants, may just be delaying their pain. Once it expires, tenants will find themselves having to meet their ongoing rental obligations AND pay back the arrears for the shutdown period. Retailers in particular will find this a difficult burden to bear, as an upturn in trade is unlikely to compensate for their interim losses. Landlords will find themselves inundated with tenant requests for rent holidays or reduced rents well beyond the moratorium, and may need to weigh up the consequences of refusal against the prospects of re-letting in the post-Coronavirus market.

In the short term, tenants should seriously consider approaching their landlords to negotiate rent holidays, reduced rents or alternative payment schedules for the March quarter and beyond, as a means of lessening the financial burden once the government relief measures come to an end

4. The Act rules out forfeiture by the court during the relevant period, but makes **no restrictions on the pursuit of other landlord's remedies** for the recovery of rent, such as pursuing an existing guarantor (including any liable under an Authorised Guarantee Agreement), or withdrawal from a rent deposit. In the latter case, drawdown might solve an immediate rental stream issue for the landlord, but could dilute the investment value of the lease if the deposit isn't promptly topped up by the tenant. However, failure to replenish the deposit would usually give rise to a right to forfeit the lease.

A landlord could also consider issuing a statutory demand for rent arrears as the precursor to insolvency proceedings. The threat of insolvency is a significant concern for a tenant with assets, but making good on such a threat could leave the lease in the hands of a liquidator likely to disclaim the lease, thereby undermining the landlord's ability to recover the debt in full.

Other options include issuing court proceedings against the tenant to recover rent or other sums due under the lease, though the process can be expensive and protracted. However, if the landlord wants to give the tenant time to get its financial affairs in order and pay the arrears, thereby preserving the landlord and tenant relationship, court proceedings may be the most appropriate way of taking action to obtain the unpaid rent. Alternatively, Commercial Rent Arrears Recovery (CRAR) allows landlords of commercial premises to take control of and sell tenant's assets on the premises. Before implementing, however, it is worth considering whether the tenant has sufficiently valuable assets to cover its debt, and whether seizure might have a longer-term impact upon the continued viability of the tenant's operation from the premises.

In the short term, the government has the commercial tenant's back, shielding them from "shutdown" eviction. Those tenants in the retail, leisure, hospitality and nursery sectors also have the benefit of a government-backed suspension of business rates for 12 months, and grant funding of £25,000 is available for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000. Whether these measures will be enough to see them through the tide of economic uncertainty will be another story.

As for landlords, their short term pain has no immediate relief. Whilst the government has indicated that it is also actively monitoring the impact on commercial landlords' cash flow, there is no imminent protection for them in terms of their own financial obligations, and those landlords without sufficient cash reserves to satisfy loan repayments may find themselves needing to negotiate payment holidays with their lenders.

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