

On another day of unprecedented measures to curb the spread of the coronavirus disease 2019 (COVID-19), the government moved to provide protection for commercial tenants against the risk of lease termination as the March quarter date (25 March) approaches.

The government has announced a moratorium on the forfeiture of commercial leases by landlords for non-payment of rent for an initial period of three months to 30 June 2020, with the option to extend further if necessary.

In addition to the business measures that will be introduced in the Coronavirus Bill, the government has reassured all commercial tenants in England, Wales and Northern Ireland that they will receive protection from eviction if they cannot pay their rent due to COVID-19. The Bill is currently going through parliament, expected to be enacted imminently, bringing into effect the moratorium on forfeiture from the 25 March 2020. This latest intervention extends the temporary restriction on the eviction of residential tenants to commercial tenants.

In summary, no business will be forced out of their premises if they miss a payment in the next three months (currently).

This means that commercial tenants who fail to pay some or all of the rent due in the next three months will not face the risk of immediate termination of their leases, at least up to 30 June 2020.

Usually, when a commercial tenant defaults on payment of its rent, a landlord is entitled to take immediate steps to terminate the lease through forfeiture. There is usually no requirement for the landlord to obtain a court order before doing so and it may simply change the locks on the premises to recover possession. The tenant (or sub-tenants), may have the right to relief for forfeiture by application to court; however, such relief is typically only granted where the amount of the rent arrears outstanding forfeited for is paid in full.

In the face of the COVID-19 pandemic, many tenants, in particular those in the hardest hit sectors, such as retail, have moved quickly to seek to agree to "rent holidays", deferring payment of rent for the March quarter, reducing rent payments or moving to monthly rental payments in order to manage cash flow.

The government's announcement will obviously be welcomed by commercial tenants, particularly facing increased uncertainty of the government's forced closure of shops and non-essential premises. However, a word of caution: tenants currently will still be liable for the rent after the moratorium period has expired, therefore, maintaining an active dialogue with landlords is key.

For landlords, however, the inability to terminate leases will heighten concerns of a sharp fall in short-term rental income as tenants suspend payment, putting pressure on landlords' own cash flows and potentially the overall value of their property portfolios.

Landlords will be considering their options and it is notable that the government announcement makes no provision for a freeze on other enforcement options, including the ability to commence court proceedings to recover monies owed or Commercial Rent Arrears Recovery (CRAR).

In light of the government's decision, we expect to see more tenants moving to suspend payment of rent at least for the next three months and it will be interesting to see what, if any, steps landlords take in response in order to seek to preserve rental income during this period.

It remains to be seen whether the government's move will lead to a greater trend of co-operation between landlords and tenants in these turbulent economic times, for example, through the agreement of temporary reductions in rent or a move to monthly payment arrangements in order to "share the pain" for what it will be hoped is as short a period as possible.

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