

On 22 April 2020, the Slovak parliament approved an amendment to Act No. 62/2020 Coll., introducing a temporary suspension of the landlord's right to terminate a lease. Although this measure is often referred to as a three-month rent suspension, the amendment brought *de facto* only a temporary suspension of the landlord's right to terminate a lease due to the tenant's default with the timely payment of rent. The measure was effective as of 25 April 2020.

The landlord now cannot unilaterally terminate real estate leases, including residential and non-residential leases, due to the tenant's default with the timely payment of rent and payment for usual lease-related services, if:

- The default rent is due between 1 April 2020 and the end of June 2020
- The reason for the default is related to the COVID-19 pandemic

The landlord's right to unilaterally terminate the real estate lease is suspended until the end of December 2020.

### Who Does the Measure Apply to?

The temporary suspension of the landlord's right to terminate the lease will not automatically apply to all tenants who are in default with their rent payments. It applies only to tenants who are in an unfavourable situation caused by the COVID-19 pandemic, which temporarily makes it difficult for them to pay the rent. Although all defaults must be sufficiently proven by the tenant, it is not yet clear how that will work. We believe that one of the possible solutions could be the proof of loss of the tenant's income, or proof of a decrease in the tenant's revenues compared to previous periods. If the tenant fails to prove the default, the landlord will be entitled to unilaterally terminate the lease.

### How Does the Measure Impact Tenants?

The purpose of the measure is to provide special protection to tenants in the form of a temporary suspension of the landlord's right to terminate the lease for this specific reason. However, it does not exclude other reasons that entitle the landlord to terminate the lease, such as defaults in the payment of rent before 1 April 2020 or after 30 June 2020.

In addition, the measure does not affect the landlord's right to rent and the liability for default rent. The suspension of rent payments is, therefore, associated with a number of adverse consequences that each tenant should assess before deciding not to pay their rent.

#### • Rent is due and payable

The tenant is obliged to pay the rent. Failure to do so would cause the tenant's default and a breach of the contract.

#### • Default interest

As the measure does not delay the due date of the rent, the landlord is entitled to claim the default rent, including the default interest agreed in the contract or in the statutory amount. The statutory interest according to the Commercial Code is currently at 8% per annum.

#### • Contractual penalty

By failing to pay the rent, the tenant breaches the contractual obligation to pay at the agreed time and amount. If a contractual penalty is agreed in the lease agreement for this particular breach, the landlord may, together with the default rent due and default interest, demand payment of the contractual penalty, as well.

#### • Securing the rent

A number of lease agreements include the tenant's obligation to pay a security deposit to secure the rent payments. If the tenant decides not to pay the rent, the landlord will have the right to set off the deposit against the unpaid rent. If the lease agreement stipulates the obligation of the tenant to replenish the deposit within the contractually agreed time and failure of such obligation is a reason for the termination of the lease by the landlord, the landlord will have the right to terminate the lease agreement for such a reason.

Another way of securing the rent is a statutory pledge over the tenant's movable assets located in the leased premises. This pledge can only be used to secure the rent. Therefore, if the tenant fails to pay the rent in the agreed amount and at the agreed time, the landlord can be satisfied by enforcing this pledge. However, there are some temporary restrictions for pledge enforcement in place until 31 May 2020 and due to the temporary protection, as well. In addition, if the tenant is moving out or their assets are being removed from the leased premises even though the rent has not been paid or secured, the landlord is *de facto* legally entitled to retain the tenant's assets (but only at their own risk, including its accidental destruction or accidental damage).

- **Rent is enforceable**

The rent is due and, therefore, enforceable, meaning the landlord can sue the tenant for unpaid rent. Save for other reasons, it would be difficult for the tenant to defend against such a claim. Following a binding and final decision of the court, the landlord could enforce the rent through the enforcement of the decision. However, there are some temporary restrictions for enforcement in place due to the temporary protection.

## Temporary Protection

From 12 May 2020, entrepreneurs will be able to apply for temporary protection with the competent court. The purpose of this protection is to provide a solution for entrepreneurs operating a business that, due to the COVID-19 pandemic, has started accumulating unpaid and due debt or has significantly reduced its sales compared to last year, which significantly jeopardises the continued operation of the businesses.

After meeting all conditions, entrepreneurs will be granted protection the following day after the particular protection has been published in the Commercial Gazette (*Obchodný vestník*). Some of the most important effects of the temporary protection are (i) protection against creditors' bankruptcy petitions; (ii) suspension of creditors' initiated bankruptcy proceedings; (iii) suspension of the obligation to file a debtor's petition for bankruptcy; (iv) suspension of certain executions and distraintments connected with the enterprise; (v) provision of temporary protection against the enforcement of pledge; and (vi) adjustment of rules on terminating contracts concluded with the entrepreneur under temporary protection, and rules on withdrawal for defaults in performance.<sup>1</sup> The protection is granted until 1 October 2020, unless it ceases otherwise. The Slovak government could extend the temporary protection period, possibly until the end of December 2020.

<sup>1</sup> <http://www.justice.gov.sk/Stranky/aktualitadetail.aspx?announcementID=2739>.

## Conclusion

Although the aim of the suspension of rent termination was to provide special protection to tenants, it is necessary for the tenant to give due consideration to all related aspects. Given that many major landlords had no intention to terminate leases, we do not think that the measure is of much benefit for tenants. On the other hand, tenants may mistakenly think that they can postpone their obligation to pay rent, which could cause other adverse consequences. We believe that the suspension of the landlord's right to terminate a lease will not be the only governmental measure to mitigate the consequences of the COVID-19 pandemic. The Slovak government noted that it will continue to discuss financial rent compensation.



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