

# Guideline for lease discussion & landlord letter template – COVID-19

**20 MARCH 2020**

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**This guideline provides some general advice on leasing arrangements, as well as a sample letter template (on page 4) that members may adapt for use if approaching your landlord to discuss relief under the current lease arrangements.**

## **Covid-19 and leasing arrangements**

Leases come in many shapes and sizes. The below is general advice only – the terms of each lease need to be carefully reviewed and considered. The general advice is aimed at tenants but it is also applicable to landlords.

### **General**

The starting point is the tenant has signed a contract and the tenant is liable for the performance of the terms of the contract. That includes the payment of rent and outgoings, and maintenance and repair obligations.

There is no right to terminate the lease early unless the lease wording permits it, meaning the tenant must perform its obligations for the duration of the lease term. The lease term will end the day before the next lease renewal date, or if no renewal is exercised/available, on the expiry date. If a tenant is staying in the premises after a the lease has expired or after a lease renewal date and the renewal was not exercised, the tenant is likely to be "holding over" which means the either the landlord or the tenant may cancel the lease on giving 1 month or 20 working days notice.

If the tenant walks away from the lease/premises without any right to do so, the tenant remains fully liable, and potentially any person who has guaranteed the lease. The landlord is not required to do anything. The landlord can sit and expect that the rent and outgoings and other provisions of the lease will be performed for the duration of the term.

If the landlord chooses to cancel the lease because the tenant has not performed its obligations, the landlord would then be under an obligation to mitigate the damages/losses. To the extent that the landlord is unsuccessful in mitigating loss, then the tenant remains liable for the landlord's losses. The landlord must serve formal notice of its intention to cancel the lease because of a tenant default, and give the tenant at least 10 working days to remedy the default before actually cancelling.

Separately, any guarantor is liable for the performance of the tenant's obligations under the lease, subject to the terms of any guarantee and limited by any limitation expressed in the guarantee.

The landlord cannot come onto the premises and take the tenants property in lieu of rent or other tenant payments that have not been made. The right to do that was abolished years ago.

## **Government Imposed Lock out**

The later ADLS leases contain a clause that applies if due to safety reasons or the need to prevent any hazard the tenant is unable to gain access to the building because of a prohibited or restricted access cordon or prohibition on occupation by any competent authority. If this clause applies a fair proportion of the rent and outgoings cease to be payable for the period the tenant does not have access. If the lock out is longer than the time specified in the lease the tenant may be able to cancel the lease. This clause is only in some leases.

## **Commercial Considerations**

Most landlords will realise the pandemic is a unique and devastating event for everyone. They should also appreciate that chasing a tenant and guarantor for money is expensive and there is no guarantee there will be any money at the end.

There are potentially options other than “walking away”. This is a fairly drastic step, so the decision will depend on individual circumstances, including consideration of what the terms of the lease may or may not allow.

The landlord may agree to a reduced rent or rent holiday for a period as finding a new tenant is likely to be difficult and expensive. Also, not having a tenant may diminish the value of the premises so reaching agreement with the tenant on terms that allows the tenant to survive may be attractive to the landlord.

Where a reasonable proposal can be put forward with evidence to support it, it may be possible to negotiate temporary relief, including the potential for a reduction in rent or opex, to ensure that the term of the lease can be completed. While you may be able to advance this with the landlord in the first instance, we recommend that you seek legal advice and/or representation.

Perhaps unlikely to be useful in a pandemic, consider whether the premises can be assigned or sublet. To achieve an assignment or subleasing you may have to subsidise the rent for the assignee or sub lessee.

You may be able to buy your way out of the lease (a "surrender" of the lease). The landlord may accept a lump sum payment to allow the tenant to get out of the lease earlier than the expiry date.

The landlord will want to avoid uncertainty so talk to the landlord, but we suggest you do so understanding what your rights and obligations are first.

**Use the letter template on the following page to instigate your discussions with your landlord.**

[Your letterhead]

[Landlord]

[Landlord's address]

By email: [landlord's email]

[Date]

### **Request to discuss lease**

Dear Mr/ Mrs [landlord]

We are writing to you about the lease of your property at the [full address – including unit number where applicable].

As you would expect due to the global pandemic of Covid-19/Coronavirus our business has suffered a huge downturn in [customers, sales, turnover, revenue – use whatever is appropriate noting you may be asked for evidence to support this].

The business has been massively affected in the short term, and perhaps for the next few months – it is difficult to say at this point.

The extent of our loss is uncertain but we can say that our average weekly turnover for [earlier period e.g. February 2020, or December 2019 or last 6 months – demonstrate revenue drop] was approximately [amount], and the average weekly turnover for the past two weeks was approximately [amount]. [Add in any other relevant details about change to trading patterns or position]. This is obviously causing us a lot of stress and worry.

We have been a tenant at your property for [period] and we have been reliable with our rent payments to date. [Amend and/or add any other details that show you have been a good tenant.]

We really want to continue in business, support our staff using the Government subsidies as much we can, and trade through this so that we can continue to be a good tenant.

In these extremely tough times, we would like to [pick one option: option 1 – delete if not used: talk with you to ask whether you could agree to an arrangement about the lease until business returns to normal] or [option 2 – delete if not used: request a rent holiday for the next X months] or [option 3 – delete if not used: request a x% reduction in rent for the next y months]. If you require further information, we would be happy to meet with you or talk over the phone.

We know that this will not be an easy time for you either, but we think that if we are all flexible and work together we can get through this in the best possible shape. Just so we know, can you please come back to me by [date – suggest 3 working days]. Thank you for your consideration.

Yours sincerely,

[Name]

[Business name]

[Contact number]