

Suspension of rent because of a lockdown

April 2020

Often business people are somewhat disinterested in the content of a lease of commercial premises, but the lockdown measures resulting from the Coronavirus have prompted varied questions that are likely to leave a long-term print on the wording of leases.

The most common question has been “Do I have to carry on paying my rent?” or conversely “Must my tenant still pay the rent?” Typically, the answer is yes, the rent is still payable, as nobody in the real estate world foresaw the lockdown.

Such has been its severity that lawyers will be expected to address the possibility of a repetition in future lease negotiations.

For many years it has been customary in leases to stipulate that rent will be suspended and not payable if the property is damaged by fire or another insured risk. Note that a precursor to the usual application of the relief is physical damage or destruction of the bricks and mortar, and the virus has not caused such damage.

It is likely that tenants will try to negotiate the inclusion of wording which extends suspension of rent to the period of any lockdown resulting from a future pandemic or similar event. Landlords may or may not resist successfully. The leap in mindset has already been done in respect of what lawyers commonly call ‘uninsured risks’ but this has been relatively easy to concede because of the rarity of its application. Fears in respect of the virus have spilled over into fear of a second pandemic once the current one is over. It is likely to be regarded as a clear and present risk.

Landlords may look to offset the risk against insurance cover, as they do with loss of rent insurance in case of damage by fire (mostly paid for by tenants).

Doubtless insurers are already reflecting on new products and extensions to business interruption policies as a result of the pandemic. Press stories on the reliability of claims on such policies for the current virus leave one with the impression that the endeavours of the insurance industry may continue to exploit the fine line which sells policies but does not necessarily pay out on them.

Insurers have to make profits and the hard truth may be that the effect of the pandemic is so huge that its widest effects are uninsurable and it falls to the government to be an [insurer of last resort](#) (a role that it undertook as a reaction and not by design in respect of COVID-19). It may not be beyond the limits of the insurance industry to develop for the real estate world a loss of rent policy which complements a clause for suspension of rent in case of a pandemic lockdown. Time will tell.

What will become normal practice, in respect of the sharing or bearing of risk between landlord and tenants for payment of rent for properties which are not useable because of pandemic lockdown, is uncertain. It is sure to be the subject of active discussion in future lease negotiations.

If you have a question about the terms of your lease of commercial premises or any future lease, call [John Gillette](#) today.

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