



CORONAVIRUS

Guidance for Landlords & Tenants - FAQs

INTRODUCTION

This is a guidance note for various issues that landlords and tenants may encounter as a result of the Coronavirus pandemic and emergency measures that have affected commercial and residential arrangements.

This update forms part of TSN's series of notes relating to the Covid-19 crisis. Please visit <https://www.tsnlaw.com/covid-19/> to view all of our guides relating to Gibraltar Covid-19 matters.

These notes are current as of the 20 May 2020 and may be subject to changes.

and disputes may arise in relation to agreements over property.

This note looks to set out various points for consideration by landlords and tenants in commercial situations as well as residential situations which may apply in Gibraltar. This note should be considered alongside our guide on 'Coronavirus: Landlord & Tenant; Rates; Utility Charges' that can be found on www.tsnlaw.com/covid-19/.

SUMMARY

The Covid-19 pandemic has caused disruption to various sectors of business and day to day living for many. Undoubtedly affected are matters relating to residential and commercial property and the relationships between landlords and tenants.

The Covid-19 pandemic and/or Government imposed measures may directly affect the way landlords and tenants are able to abide by the covenants set out in their lease. As a result, leases and rental agreements may need to be reviewed

COMMERCIAL PROPERTY ARRANGEMENTS

As set out in our related note 'Coronavirus: Landlord & Tenant; Rates; Utility Charges' that can be found on www.tsnlaw.com/covid-19/, the Government of Gibraltar on the 24th March 2020 announced a number of related policy measures that include the following for tenants who are businesses in the 'Relevant Sector' (relevant sector businesses are defined in our BEAT Covid guidance note that may be found at www.tsnlaw.com/covid-19/):

- Where the Government is the direct landlord of a business within the Relevant Sector, a waiver of commercial rents of the second quarter of 2020 has been applied;
- Private landlords will be encouraged to provide a waiver equal to either an amount

of up to 50% of the rent due for the second quarter of 2020 or a full waiver of the rent for that quarter and a lease extension of 3 months added on at the end of the term;

- If private landlords do not agree a reduction of commercial rents for the second quarter of 2020, the Government will be introducing a special tax on landlords;
- Business rates will be waived for Q2 2020 for all businesses in Gibraltar.

How will these measures be implemented?

At present these measures have not been implemented in law. It is understood that the measures in relation to incentivising private landlords to reduce commercial rents for relevant businesses may be introduced by way of levying a special tax on landlords who do not agree to a reduction of commercial rents for the second quarter of 2020 and we anticipate that such tax is likely to be equivalent to the concession which landlords are encouraged to give their Relevant Sector business tenants. However, information on this is yet to be provided.

How can such concessions or waivers of rent best be formalised legally?

As the law relating to the manner in which rent reductions will be applied has not yet been introduced, it is difficult to advise in anticipation of such provisions. However, landlords and tenants who have agreed to implement such concessions or deferral of rent payments should consider formalising and documenting such arrangements in writing either with a formal deed of variation or a side letter.

Who will be able to take the benefit from the relief of rates – the Landlord or the Tenant?

As legislation has not yet been provided on this point, it is not yet known how the benefit of this

rates relief will take shape. At present, under the Public Health Act 1950 where rates are not paid by the occupier, the owner of the property shall be liable for the payment of the rates. As a result, the issue of who may take the benefit of the relief is likely to depend on the interpretation of the terms of the lease or rental agreement in each case.

Will rates be waived on vacant properties?

No express guidance or policy has been given in respect of rate relief beyond the second quarter of 2020 where properties may be vacant as a result of Covid-19 restrictions or similar. Under the existing provisions of the Public Health Act 1950, rates may be waived for a period of 3 months where repairing and alteration works have been appropriately sanctioned so unless additional relief is introduced by Government, it is unlikely that further rates relief will be available beyond 30th June 2020.

Renegotiating existing leases

With businesses having been closed for six weeks with little to no ability to trade and given the continuing need to implement social distancing and reduced visitor numbers due to continuing travel restrictions worldwide which will inevitably continue to affect profitability and consequently the ability to pay rents, staff etc, commercial tenants may have been reviewing the terms of their leases looking for ways to surrender the premises without penalty in the event of financial hardship.

Tenants may also wish to review and/or renegotiate existing leases or rental agreements.

However, a pandemic is a “force majeure” or “Act of God”, that is to say, an unanticipated extreme occurrence which will not generally be catered for in a typical commercial lease and, even if your lease does provide for relief as a result of force majeure, these provisions are very strictly applied and highly fact dependent. Therefore, the enforcement of such provisions could result in extended litigation and high legal costs.

Best practice should therefore be to enter into discussions with your landlord and, given the large number of tenants whose businesses may be

impacted by the current climate it may be the case that landlords may be well advised to take the more pragmatic approach and realise that it is better to be flexible and retain existing tenants rather than forcing the tenant into liquidation or bankruptcy with the prospect of then having to find new tenants in a market where demand may be significantly reduced from the pre-Covid days. The key therefore is to find workable solutions for both parties.

Landlords and tenants should be mindful to consider that in order for particular changes to be made to existing agreements or leases, these need to be in writing and probably in the form of a deed which would have to be registered if the lease term is for a period in excess of 3 years..

NEGOTIATING TERMS ON NEW COMMERCIAL LEASES

The lockdown conditions experienced since March may have delayed negotiations in relation to new leases and could now see parties, particularly tenants, re-evaluating their actual needs, for example, Covid has shown many businesses that it is possible for staff to effectively work remotely in many instances and this could result in a desire for businesses to take on smaller commercial units in future.

Additionally, some potential tenants may be worried about entering into long term leases given the uncertainty on the effect which the pandemic may have on open market rental values as tenants will not want to be tied down to a long lease at high rents if there is a real prospect that open market rental values are likely to drop over the coming months.

With commercial leases normally requiring the tenant to pay a deposit (typically equivalent to 3 months' rent) at the commencement of the lease, some tenants may presently also feel wary of having to make such cash payments prior to actually commencing trade or business and tenants may seek alternatives to the traditional cash deposit. Two possible alternatives which could be explored are the provision of a Letter of Credit or a Bond. These are briefly explained hereunder.

(a) Letter of Credit

This is a letter issued by the tenant's bank which is a guarantee that the tenant will be able to pay the security deposit should it be required by the landlord to do so at a future date. In the event that the tenant is unable to make the said payment the bank would then step in to pay the same. Letters of Credit are available subject to successful application and subject also to the payment to the bank of a percentage of the amount of the deposit by way of fee for issuing the letter and assuming the liability,

(b) Bond

If a bond is an acceptable form of security for a landlord it will involve the tenant making an application to a bond company and, if the application is approved the tenant would then pay a monthly premium to the bond company which would in turn pay funds to the landlord from the bond should the landlord require funds from the security deposit.

RESIDENTIAL PROPERTIES & ISSUES

As a tenant, should I stop paying rent during the Covid-19 outbreak?

If you are in privately owned rented residential accommodation you will in all likelihood have signed a rental agreement with your landlord which obliges you to make monthly rental payments. Tenants should continue to pay rent and observe their obligations and covenants set out in their tenancy agreement. Tenants who may have issues in paying rent on time or abiding by the obligations and covenants under the tenancy should seek to speak with their landlord at the earliest opportunity.

Can residential tenants be evicted for non-payment of rent?

The Government of Gibraltar in their press statement of the 24th March 2020 provided that they are to seek to put in place measures to ensure that *'no evictions can be carried out or sought in law in cases where the tenant of residential*

property has been unable to pay rent in the period of the Covid emergency.'

As at the date of publication of this guidance, there are no known amendments to Landlord & Tenant legislation or temporary civil contingency measures that have been introduced to address this point specifically.

If you are a landlord that is having severe issues with non-payment of rent for residential properties that may have started prior to the Covid-19 pandemic and are continuing, you may wish to seek advice.

Should tenants be required to continue to pay service charges?

As set out in this note, landlords' and tenants' obligations under rental agreements have not changed. In normal circumstances the non-payment of service charges could result in the forfeiture of your lease, that is to say, that the lessor or management company may commence proceedings against the home owner to recover possession of the property.

However, the Government of Gibraltar has urged management companies not to take any action against any property owners in an estate for failure to pay estate service charges for the second quarter of 2020 where hardship has arisen as a result of the Covid-19 emergency. Therefore, service charges should continue to be paid although alternative measures may be sought in situations where there may be genuine hardship.

Are repairs to a residential property affected?

In summary, landlords' and tenants' obligations to repair have not changed. However, there may be more unique positions where the repairs to be undertaken require some form of substantive works and as a result a temporary certificate for construction may need to be sought from the Chief Technical Officer under regulation 7 of the Civil Contingencies Emergency (Coronavirus) (Catering and Other Establishments) Construction and Shipbuilding and Repair) (No.3) Regulations 2020.

In instances of urgent repair, such as boilers, leaks and similar the Government of Gibraltar has indicated that such works may be carried out. However, each situation may be fact specific and certain works may require a temporary certificate for construction from the Chief Technical Officer. Landlords and tenants should also consider any risk of infection and whether the occupiers of a property may be more vulnerable to contracting Covid-19.

I am having issues making my mortgage payments for my residential property as a result of Covid-19. What can be done?

No mandatory measures have been announced to require lenders to waive or defer mortgage payments. However, Gibraltar based lenders (including banks) have already confirmed publicly that they will seek to assist individuals in genuine situations of hardship. As a result, if you are having true difficulty on meeting your mortgage repayments as a mortgagor you should urgently contact your lender to discuss alternatives repayment options which may be available to you.

What if a landlord or their agent want to access a residential property to conduct viewings for sale or letting?

Access to a property should only be proposed for serious and urgent issues as allowed under a lease or rental agreement. This is particularly the case now where there may be a risk of infection. However, there has been no guidance provided by the Government of Gibraltar on this specific point.

As a result should there be particular issues of concern, for example, where existing tenants may be classed as high risk and where particular landlords or agents require entry for viewings or reasons other than urgent repair, then you may wish to consider taking advice.

CONTACTS

Colleene Wink
Philip Vasquez

cwink@tsnlaw.com
pv@tsnlaw.com

DISCLAIMER

This information sheet was produced on 20 May 2020 and is intended as general guidance on your rights and responsibilities. Nothing in this information sheet constitutes legal advice or gives rise to a solicitor/client relationship. Specialist legal advice should be taken in relation to specific circumstances.

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