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Tenants and Landlords: We Are All In This Together

Landlord and Tenant Relationships During COVID-19

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> INTRODUCTION

Since March 16, 2020 when the COVID 19 Shelter in Place rules were set in place by our governor, Counties and cities, many companies and storefronts have been unable to be open for business, in any form or another (and those who have been able to open somewhat have been operating in less than optimal conditions—i.e. 20% of normal). Most businesses lease vs. own their Premises, and they have leases in place that are legal documents that dictate rental obligations such as monthly rent, lease term, when payments are due, etc. These payments are normally a lesser part of a business owner's overhead, but they also represent fixed, reoccurring monthly costs that must be paid with the threat of shutdown and eviction if the tenant is unable to do so. Many of the smaller, often retail oriented tenants also were required by their landlord to sign personal guarantees to secure the rental obligation, thus increasing the risk beyond eviction to risk of loss of personal assets.

> THE TENANT'S POSITION

Many tenants have tried to continue to make these monthly payments since March 16, despite the loss of revenue and income, given this obligation in place and/or their ability to generate enough income to pay rent. Others have illegally stopped paying rent, thinking that non eviction governmental edicts that are currently in place will protect them until they are able to do so. Still others have sought open communication with their landlords to negotiate an amendment to their lease, in order to maintain their status as a "good tenant" who is eligible to exercise their option (if they have one) and can negotiate a favorable rent if they decide to renew their lease (or pursue another landlord using the current landlord as a positive referral). It is the latter group that I wish to highlight, given both parties desire to avoid ongoing conflict and come to a win-win solution for both parties.

> THE LANDLORD'S POSITION

The tenant must remember that the property owner also has fixed, ongoing obligations. Besides a mortgage payment (and not all landlords have received relief from their mortgage holders), they also pay common area expenses (water, sewer, PGE, trash, etc.), property management, taxes, insurance, etc. The risk of having a vacant space because of having to eventually evict a non paying tenant is difficult, in that finding and procuring a new tenant, having to repay fees, offer rent concessions, etc. is never as favorable as having a tenant remain in the premises. The landlord should be just as motivated as the tenant to come to some agreement that suits both parties regarding the inability of the tenant to make timely rent during these COVID times.

> PREPARING FOR THE MEETING

It is the tenant's responsibility to communicate their situation and circumstances as early as possible to the landlord (or to their property manager). Besides requesting a meeting or conference call, the tenant should be well prepared in advance of the meeting to present their position. This should include monthly financials (comparing this year vs last), relevant statistics (number of customers served), etc. to show the landlord that revenues are significantly impacted and paying monthly rent would be an additional burden. Any Applications for loans that are pending or have been received by a lender or government entity can also be shown as doing all that is necessary to responsibly keep their business going. Finally the tenant should review their lease to understand the lease term, NNN rent, operating expenses, and any other landlord related expenses and potential penalties for not paying the rent on time before the meeting.



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> THE SOLUTION

The remedies for both parties given the tenant's inability to pay rent are as follows:

FULL OR PARTIAL RENT DEFERMENT: This is perhaps the best solution for both parties. The hope and expectation is that this business interruption is short term in nature and as the economy opens up, and the lease allows it (i.e., there is remaining term in the lease to do so), the tenant can pay back, over time, the months of rent that are due. Most of the city and other government mandates do not allow the landlord to pay interest or charge a fee (i.e., penalty) for rent deferment. For example, if the monthly rent due was \$12,000.00 including NNN rent and operating expenses, and the landlord agreed to defer the rent payment for two months, the parties could agree to defer the \$24,000.00 rent payments to be paid back the following (next) 12 months at \$2,000.00 per month, on top of the normal rent due. The landlord would issue a lease amendment to this effect that would be executed by both parties.

FULL OR PARTIAL RENT ABATEMENT: While this solution is to the sole benefit of the tenant, if the tenant has a long term lease, or has been a performing tenant for a long period of years, or if the premises may be difficult to release quickly or at a great, future expense and the tenant shows they are in dire financial circumstances, sometimes this solution is the best one to pursue. If the lease is coming due and both parties want each other to continue at the Premises, sometimes this can be looked at as an inducement to keep the tenants both in business and operating there longer term. A landlord could also extend the lease and add the payments at the end of the lease term. These decisions need to be made by the landlord, after pursuing the rental deferment solution above. The landlord would record this agreement with a lease amendment signed by both parties.

SECURITY DEPOSIT REDUCTION: While this only benefits the landlord, it is another, short term solution to keep the tenant's lease intact and in place. Oftentimes a landlord will take the last month's rent or more to provide security in a lease agreement. If there cannot be a meeting of the minds on rental deferment or abatement, they can agree for the landlord to deplete the deposit to complete the lease payment and the tenant can refund the deposit amount in the future. Again, an amendment to the lease would need to be signed by both parties.

> IN SUMMARY

In summary, when a business is unable to fully operate in their premises through no fault of their own and cannot rightfully make their monthly rent payment due to something like COVID 19, it is in both the Tenant's and Landlord's best interests to amend their lease to accommodate a solution that keeps both parties in "good standing" and allows them to continue to maintain their relationship in the future. When it comes to leasing commercial space, both parties have fiduciary responsibilities to each other's well being beyond the signing of the lease. To say "We are all in this together" is a true statement that should encourage open and honest dialogue between both parties to respect each other's position and come to an agreement sooner.

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