

COMMERCIAL LEASING

Many organizations have commercially leased space for program and administrative activities and may be facing challenges in fulfilling the usual contractual obligations contained in their lease agreements. It is important to make decisions regarding lease payments with a full understanding of all conditions and provisions outlined in the agreement.

PROTECTION OPTIONS



- Review the lease to see if there are specific provisions which apply to the impacts of the pandemic. Some leases specifically address emergency situations with a force majeure clause. (See [Force Majeure](#).)
- If the lease does contain a force majeure clause, determine whether it excuses payments under the lease.
 - Governmental orders and other requirements may also impact the terms of the lease that address the tenant's ability to use the property.

FINANCIAL OPTIONS



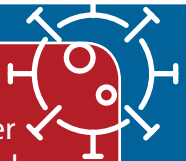
- Consider whether post-dated cheques or PADs have already been provided to the landlord.
- Consider if there is any ability under the lease to obtain a rent abatement. Such rights are often tied to physical property damage. If no such right exists, tenants may need to continue to pay rent.
- Take a close look at existing insurance coverage which may provide some help.
- Landlords may request financial statements before offering rental payment supports.
- Is there government assistance that either the landlord or renter is eligible to access? If so, when will this assistance be available?
- In Alberta The Commercial Tenancies Protection Act and regulation protects eligible commercial tenants experiencing financial challenges as a result of the COVID-19 pandemic. See <https://www.alberta.ca/protecting-commercial-tenants.aspx>

Landlord Rights and Communication

Landlords generally have the right to establish rules and regulations with respect to the property, as long as the rules are reasonable and applied generally to all tenants. These rules may include access limitations. Tenants should review their lease to understand how this may impact their business. Much will depend on whether the tenant is still operating its business within the premises and requires access for staff or suppliers. Communication between landlords and tenants is critical.

PREVENTING THE SPREAD

Both landlords and tenants may want to cooperate to establish a screening process for anyone entering the premises (although it is important to consider privacy rights). It may also be necessary to discuss access to hand sanitizer and which signage must be posted regarding social distancing and health regulations.



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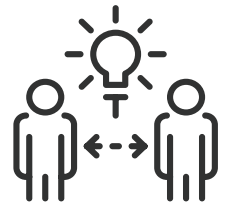
Legal Considerations Series:

Legal Considerations for Nonprofits of Changes to Work and Workplace Related to COVID-19

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Rental Negotiations

- One area for negotiation may be around operating costs. Many municipalities are deferring taxes, and the costs of operating the property should diminish considerably — this may allow the parties to negotiate a temporary reduction in additional rent.
- Landlords could also suggest using their tenants' last month's rent or security deposits to pay current rent, with the condition that the funds will be replaced in the future.
- The parties can also agree to defer rent, perhaps by blending the amount into future payments.
- The parties could agree to waive rent for several months and add those same number of months to the end of the term.
- For retail tenants, it might make sense to look to replacing base rent with percentage rent, subject to a minimum amount.
- Landlords will want to ensure that any waiver or deferral of rent is for a specific time, such as the earlier of a set date or the date the state of emergency comes to an end. Landlords may also want to negotiate certain concessions in return for rent relief (such as the removal of a tenant's co-tenancy or termination right) but should expect resistance from tenants.
- Landlords will want to ensure that they keep the right to take action if there are other defaults under the lease, or if the tenant becomes bankrupt or insolvent.
- Landlords may want to charge interest on deferred rent. Tenants may want to request that such interest not be payable as long as the tenant is not in default under its rent deferral agreement. Landlords may also want to request an additional indemnifier or protection in return for rent deferral.



Considerations for an Amended Lease Agreement

- Ensure that any adjustments to the lease are documented in writing and that the terms of the deal are kept confidential.
- Original indemnifiers should be parties to the new arrangements.
- Any paperwork should allow the deal to be signed electronically.
- Both parties should be prepared to agree that neither party is in default under the lease.
- Tenants should consider asking the landlord to waive fees related to any additional paperwork.
- Landlords should also speak to their lenders to confirm whether lender consent is required for any concessions to tenants.
- Both parties should check the terms of their business operations insurance. Many policies exclude losses resulting from viruses. However, some policies may cover losses caused by a governmental order to shut down.
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