

TENANTS IN DIFFICULTIES

As the full effects of the recession bite and companies try to reduce their overheads, one major issue is the status of leases. Both landlords and tenants need to be aware of their options and also the potential pitfalls which may arise.

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CURRENT DIFFICULTIES

If a tenant is in financial difficulties, they may request to pay rent monthly to ease cashflow or may request a temporary rent reduction from the landlord. It is better for both the landlord and tenant to address the issue rather than have the tenant slip into rent arrears.

One tactic adopted by tenants in recent years is to attempt to surrender their lease by simply handing back the keys and vacating the premises. The landlord should be watchful of any attempt to do this. If the landlord (or their agent) accepts the keys in those circumstances, the lease may be deemed to be at an end by operation of law and all future liabilities owed to the landlord cease.

INSOLVENCY

If no agreement can be found to vary the terms of the lease or if the tenant's other liabilities become too much for them, there are two main outcomes:

(a) Administration -

The main aims of administration are to rescue the tenant company as a going concern or to achieve a better result for creditors than would otherwise be possible. During the administration, there is a freeze on creditors taking action against the company. Obligations under the lease, including payment of rent, continue during the administration period.

(b) Liquidation -

This is the step beyond administration where the tenant company is being wound up. Unlike an administrator, the liquidator has the ability to disclaim the lease which means that all liabilities of the tenant under the lease are terminated from the disclaimer.

OPTIONS

The landlord should open the lines of communication as early as possible with the administrator or the liquidator. There is always a possibility that a new company could be carved out of the existing tenant company which is profitable and which may wish to continue with the lease.

The landlord should examine the lease to see whether anyone else could take over the tenant's obligations, such as a guarantor. There may also have been a rent deposit paid by the tenant which could be forfeited to help the landlord mitigate any loss.

Almost all leases will have a provision that the landlord can forfeit the lease when the tenant becomes insolvent. The landlord should however consider whether forfeiture is in their best interests. Given the current market, it is likely to be difficult to re-let the premises and until it is re-let the landlord will be faced with paying the rates. There are also security issues and costs with a vacant property. The landlord may consider it better to let the lease continue, even if it is unlikely it will recover 100% of the rent owed.

CONCLUSION

Both the landlord and the tenant should attempt to make the best of a bad situation. A tenant in financial difficulties may find a landlord much more amenable to a change in the terms of the lease than would have been the case in the past. Similarly the landlord should consider whether insisting upon its full legal rights is better in the long run or whether a more flexible approach would be more prudent.

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