

Do you have to pay your rent? No and Yes

Mar 26, 2020



Executive Summary

If you don't pay during the next three months a landlord's power to take back the premises is suspended for that period.

However, the rent doesn't go away – it will remain payable.

If you decide not to pay tell your landlord why and if possible, put the money aside. It is early days yet – this may be short or long. Diarise to have a discussion with your landlord at the beginning of June.

Unless the government takes very radical action, market forces will prevail. If open market rents are falling landlord's will not want to lose good tenants. Big chains are negotiating rent holidays and reductions.

In the meantime, check your lease for: –

- Any break clauses, and more importantly the date by when a break notice has to be served, and how.
- When the next rent review is due, is it “upwards only” and is it RPI or open market rent.
- When the contractual term expires.
- Who is the Tenant, and is there a Guarantor who will be pursued if the Tenant doesn't pay or a Rent Deposit from which the rent can be taken, but which you may be expected to top up?

This announcement was made today – as with much else the devil will be in the detail.

Background (from DLA Piper)

The Coronavirus Act 2020, which became law on 25 March, has suspended a landlord's ability to take forfeiture action for business tenancies (as defined by the Landlord and Tenant Act 1954) in England and Wales, so that business tenants who cannot pay their rent (which is defined to include all sums payable under a lease) will

be protected from forfeiture. These measures, effective from 26 March 2020, mean no business tenant can be forced from their premises if they miss a payment in the next three months (ending on 30 June 2020 – a date capable of being extended by the government). Equally, during this period, no action by a landlord (other than giving an express waiver in writing) will be regarded as waiving a right of re-entry or forfeiture for non-payment of rent.

The UK government says it's actively monitoring the impact on commercial landlords' cashflow and will continue to be in dialogue with them. This "suspension" period can also be extended, so landlords and tenants must monitor the situation.

These suspension provisions are not thought to give protection to those occupying premises pursuant to licences, commercial contracts or other arrangements – whether or not this was intended by the government. However, the title given to a document is not necessarily how it will be construed in legal terms, and licences often constitute business tenancies if (in simple terms) they afford an occupier exclusive possession of a space for a term at a rent (or something akin to rent, however expressed). This issue can often be the subject of complex argument and each arrangement has to be considered in accordance with its terms and how the terms are in reality applied, as between the parties to any arrangement.