



COVID-19 Update: Temporary Ban on Eviction of Commercial Leases



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The *Coronavirus Act 2020*, which received Royal Assent on 25 March 2020, has introduced a temporary ban on eviction of commercial property tenants with respect to non-payment. The legislation was announced on 23 March and passed through parliament in two days, as part of the rollout of numerous emergency measures to address immediate economic effects resulting from this pandemic. The mandate is simple and serves to be temporary and overarching as an emergency measure and, for this same reason, it doesn't provide much detail nor address the surrounding issues and consequences.

The legislation

Section 82 of the *Coronavirus Act 2020* simply provides that:

'A right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent, may not be enforced, by action or otherwise, during the relevant period.'

Breaking it down:

- relevant business tenancy refers to all business tenancies within Part 2 of the Landlord and Tenant Act 1954, which effectively covers most tenancies, including headleases. There are exceptions, which include licence to occupy, tenancy at will, tenancies not exceeding 6 months and certain farm business tenancies;
- relevant period is 26 March 2020 to 30 June 2020, which may be extended;
- the right of re-entry/forfeiture ban only applies to non-payment default. There are no restrictions on landlords exercising right of forfeiture for other types of default, although we query how practical this will be in the current

circumstances;

- “rent” is defined as “any sum a tenant is liable to pay under a relevant business tenancy” so any non-payment of any other amounts such as tenant contributions, service charges, etc. will be subject to the same rule (*i.e.*, no eviction if any of these amounts are unpaid); and
- note that there is no requirement for justification for the non-payment – that is, whether the tenant remains financially able to pay the rent is not relevant. Landlords simply cannot forfeit the lease for this default during this period.

Implications

The legislation simply provides that any action of forfeiture may not occur during the period up to 30 June 2020 (this date may be revised) if the grounds for forfeiture is due to non-payment under the terms of the relevant lease. It is silent with respect to the rights of the tenant and the landlord post this period.

Non-payment of rent by tenants will still constitute a breach of the lease, and although landlords are unable to forfeit a lease during this period, it does not mean that the landlord cannot take other actions with respect to a payment default. For example, landlords will continue to be able to exercise other rights available to it under the relevant lease, such as drawing down on the rent deposit (to the extent this is available), serving a statutory demand on the tenant which, upon the 21-day expiry, will provide grounds for winding up petition, or enforcing any rental guarantees, as applicable.

The tenant’s liability to pay rent remains. The legislation also provides in section 82(2) that: *“During the relevant period, no conduct by or on behalf of a landlord, other than giving an express waiver in writing, is to be regarded as waiving a right of re-entry or forfeiture, under a relevant business tenancy, for non-payment of rent.”* Therefore, unless the landlord has waived its forfeiture rights in writing, once the relevant period expires, the landlord may forfeit the lease straight away (subject to complying with any applicable notice provisions in the lease) unless this breach is cured.

In practice, a tenant who is struggling financially to meet the rent may not simply stop paying rent and ride out the non-forfeiture period, as this is simply a temporary measure and the ban on forfeiture will lift eventually and the fact that other remedies remain at the landlord’s disposal. Furthermore, non-payment breach (even not enforced in this period) will give rise to additional rights/liabilities depending on the terms of the lease (for example, any interest) and so it will be prudent to regularise any variation/agreement with respect to rent rather than simply stop paying. However, with this legislation in place, it places a ceiling as to the enforcement actions landlords may take. What this is likely to result in is tenants approaching landlords to negotiate rent reductions or other variations to the lease during the duration of the lock-down period. For landlords, it is important to make sure that any variation or suspension of rights/liabilities are documented properly. In addition, where properties are leveraged and subject to financial covenants, suffice to say reduced rental collections will have an impact on compliance with financial covenants or potentially debt service, which may affect compliance with the debt facility.