

Tenants and Landlords amidst the COVID-19 Lockdown

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With the Corona (COVID-19) Pandemic on the rise daily, most trade has been prohibited save for trade by those providing essential services. It is inevitable that some businesses may have difficulty in pay rent as a result of a lack of income and individuals will face financial distress during this time resulting in their inability to meet their rental payments, which makes the tenant and landlord relationship an issue of concern.

It is vital for both Landlords and tenants to revisit the terms of their lease agreement in order to understand their rights and obligations during this period and where necessary, to seek legal advice from a legal professional. Lease agreements generally contain a clause regarding the tenants liability to pay or have rental reduced where there has been disturbance of tenants use and enjoyment of the premises. Should there be no such clause/s, our common law states that where the tenants right have been disturbed by a superior force (legally known as a vis major) of which both the landlord and tenant had no control, the tenant may be entitled to a remission of the rent for that period that the tenants use and enjoyment has been disturbed. This could apply to certain business leases

With regards to residential leases it may difficult to prove that a tenants use and enjoyment had been disturbed, taking into account that that Lockdown regulations require you to be stationed at your residence. This is not a hard and fast rule and must always be determined on a case by case basis according the facts of each matter.

It is noteworthy that a Tenant may not unilaterally withhold payment of rent as this contrary to its obligation to pay rent and to the Landlords right to receive rent. It is therefore advisable that should you anticipate any difficulty in paying rent during this period, you contact your landlord and propose alternative arrangements such as deferred rental payment and /or adding the arrear rental to the end of the lease period.

In this uncertain period, communication and solution based negotiations are the key to sustainable and healthy Landlord and Tenant relationships.



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