

My business is in shutdown, what does this mean for my lease?

Government Imposed Business Closures - Tenant Position

*In the current global climate an increasing number of queries are arising as a result of landlord and tenant relationships and the impact Covid-19 will have. We have summarised key queries below with general information detailing Redchip's view. **Please note that each situation is different and specific advice must be sought with regard to the particular facts at hand.***

Key Point	Summary
Can a tenant terminate the lease or avoid performance in reliance of 'Force Majeure'?	<p>A tenant <i>may</i> be entitled to terminate the lease or avoid performance if the lease contains a force majeure (or equivalent) clause, however this type of provision is <u>not</u> contained in most commercial leases.</p> <p>Force majeure is a legal concept whereby an unforeseen circumstance prevents you completing your obligations under the lease (i.e. paying the rent). A force majeure clause permits you to either terminate or suspend your obligations under the lease, provided that the trigger event is out of your control (e.g. a natural disaster or in this case a pandemic).</p> <p>However this concept does not exist under general law – that is, it only applies if there is a specific force majeure clause in your lease. As noted above, most leases do not have a force majeure clause.</p> <p>Therefore, in a typical lease it will be very difficult for you as a tenant to have the ability to suspend your obligations because of the Covid-19 pandemic.</p>
Can a tenant cease making payments under the lease?	<p>As a general concept, Government imposed business closures do not strictly entitle you to stop payments under your lease, nor give you a right to terminate the lease.</p> <p>There may be underlying issues that you could seek to rely upon (e.g. existing premises issues or disputes with the landlord), however these need to be assessed on a case by case basis.</p>
Can a tenant be compelled to trade?	<p>No, you cannot be compelled to trade from the Premises, dependant on the lease terms, if you're business is subject to a Government imposed business closure direction.</p>
Can insurance cover loss of profit?	<p>Insurance policies may provide for certain claims to be made. Seek advice from your insurance broker for clarification.</p>

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<p>Can a landlord close areas of a building/centre as a result of a pandemic?</p>	<p>A landlord <i>may</i> be entitled to close parts of a building or centre (such as common areas), however compensation provisions could apply. Such closures could technically breach the landlord's obligations to give you quiet enjoyment of the premises, however most leases contain clauses that allow the landlord to do so if directed or required by law.</p> <p>By the same reasoning, you are <u>not</u> required to carry on trade from the premises in the event of a Government imposed business closure.</p> <p>The <i>Retail Shop Leases Act 1994</i> (Qld) provides for payment of compensation to tenants in the event of restricted access (and alike), however emergency and statutory compliance situations are excluded from these compensation requirements. These exclusions are likely to apply to the current Covid-19 pandemic.</p>
<p>What are the consequences of liquidation/administration /bankruptcy?</p>	<p>Liquidation and administration apply to companies. Bankruptcy applies to individual persons.</p> <p>If you enter into administration, liquidation or bankruptcy during the lease, this can have significant consequences for the lease and the premises including the lease being terminated early.</p> <p>Liquidation, administration or bankruptcy can also be the end result of the default process, if you have not paid rent or other monies under the lease. The landlord may call upon any personal guarantee that you have given under the lease, making you personally liable for any amounts owing.</p> <p>The Government has additionally announced changes to increase bankruptcy and insolvency thresholds and also extended timeframes to assist landlords throughout this period.</p>
<p>Can landlords call upon security bond to replenish unpaid rent?</p>	<p>Yes, security bonds can be called upon by landlords if you do not make payments under the lease.</p>
<p>If a tenant has a loan facility, can payment relief be sought from the bank?</p>	<p>Banks may permit relief under your loan facility. If this occurs, the bank may allow for continued rental payment or partial continued rental payments. This could be utilised as a bargaining chip when making relief requests to landlords.</p>
<p>Does a landlord have to grant rent relief?</p>	<p>A landlord is <u>not</u> required to grant you any form of rent relief.</p> <p>Practically, however, rent relief may be in the interest of maintaining an ongoing relationship between the parties once business is back to normal.</p>
<p>What type of rent relief proposal can be considered?</p>	<p>The majority of tenants are likely to make rent relief based requests. There is room to negotiate the exact terms of any relief granted.</p> <p>You should consider the following when speaking with landlords around relief:</p> <ul style="list-style-type: none"> (a) defining set relief periods; (b) relieving outgoing payment obligations; (c) permitting the landlord to call upon on security bonds in lieu of default procedures taking place and allowing you time to replenish the security bond following Government imposed business closures being lifted;

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	(d) allowing rent relief and apportioning the relieved amount over the balance of the lease following the end of the relief period; and (e) extending the lease for the same period of time that rent relief is granted.
How should rent relief proposals be documented?	Letters signed by both parties could be utilised, however, the best course of action is for a short deed to be drafted, especially where a more complex rent relief option is contemplated. Please contact us if you need us to assist in this regard.

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