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## COMMERCIAL LANDLORD & TENANT - BACK TO BUSINESS?

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Covid-19 has presented an array of challenges for the commercial landlord and tenant sector. The Coronavirus Act 2020 introduced emergency measures to prevent landlords from re-entering and taking back their premises based on non-payment of rent. For certain sectors that were particularly impacted by the pandemic, this brought significant relief for business tenants.

The government was keen to protect UK industry. With UK manufacturing estimated to output around £191 billion worth of goods and providing 2.7 million jobs (according to a study undertaken by MAKE UK in September 2020), manufacturing was no exception.

The benefit of this protection has been clearly recognised by government and, as a result, the protection has been extended no less than five times. The latest extension was announced on 16th June 2021, proposing a new end date of 25 March 2022. By this point, commercial tenants will have had the benefit of around two years of protection.

This latest extension, however, does differ from previous protections that were in place for business tenants.

Previous protections, which will remain in force, include:

- Landlords are prohibited from re-entering (forfeiting) a business tenancy on the grounds of non-payment of rent;
- When a protected business tenant comes to renew the tenancy one of the grounds on which the landlord can normally oppose renewal is if the tenant has persistently failed to pay the rent. However, a failure to pay rent which was due during the pandemic protected period will be disregarded by the court and will not count for this purpose.
- The temporary rise in minimum net unpaid rent due before Commercial Rent Arrears Recovery (CRAR) can be actionable will remain at 554 days. CRAR enables a landlord to instruct enforcement agents to take control of tenants' goods and sell them to recover the unpaid rent.
- Restrictions on the circumstances where a Winding-Up Petition can be presented (although this protection will not remain in place until March 2022 – see our insolvency section); and,
- Protection for tenants, preventing the enforcement of possession under court orders handed down before COVID-19, will remain in place as it stands.

In addition to the above the Government has announced that legislation will shortly be introduced to cover the following:

- Rent arrears accrued over the pandemic will be 'ring-fenced' and landlords and tenants will be expected to work together to come to an agreement on proposed repayment plans regarding the ring fenced amounts (this includes long term repayment plans and waiving part of the total sum due).
- Where an agreement cannot be reached between the landlord and tenant, the parties will be required to undertake binding arbitration to establish a fair sum due.

## **What does this mean for manufacturing tenants?**

For manufacturing tenants who may have seen a downturn in the last 18 months or so, resulting in difficulty in paying rent, they may consider utilising the latest addition mentioned above and negotiate to have the arrears reduced as much as possible.

On the basis that arrears accrued during the pandemic will be 'ring-fenced' tenants should be mindful to continue to meet their rent, if they are able to, going forward for the following reasons:

- In the process of negotiating a waiver of a proportion of the arrears or a long-term repayment plan, it will understandably assist tenants where they are able to demonstrate that (where possible) rent has been paid, on time, the moment the tenant could afford to do so;

- The protections are temporary and are not an excuse to simply not pay at all. Tenants will be eventually expected to pay it back (albeit over time or perhaps a smaller sum). Tenants are advised to keep their rent debts to a minimum to avoid future issues when the tenants protections come to an end; and
- Looking ahead, the position after March 2022 (at present) is expected to revert back to pre-protection. Tenants should seek to rely on these protections where absolutely necessary and not treat this as the new normal.

### **What should manufacturing tenants continue to remember?**

Tenants must also bear in mind that the restrictions above only apply to the non-payment of rent and landlord's rights to forfeit the lease for other reasons (such as breach of covenant or use) are still available. There is, therefore, no automatic protection in the event that you breach your lease in any other way.

Whilst the above protections prevent the landlord from taking back the property for non-payment of rent, it does not prevent a landlord from taking enforcement action in other ways. There is, currently, no restriction on a landlord seeking to obtain a County Court Judgement (CCJ) against business tenants for the non-payment of rent or service charge arrears. CCJs will undoubtedly have a significantly negative impact on the business, any directors, and credit rating going forward.

Tenants should also check their leases. Most standard modern leases allow for landlord's to recover legal costs from tenants should steps to recover the amounts due be taken simply increasing the sum that becomes payable by you.

Communication with your landlord early on could avoid this.



**Should manufacturing tenants find themselves in situations of rental arrears, or with their landlord taking steps to forfeit, our Property Litigation Team is on hand to assist. For further advice on the issues raised, or general lease dispute advice, please contact Samantha Ball on [samantha.ball@machins.co.uk](mailto:samantha.ball@machins.co.uk)**