Tough Times Call For Tough Measures
By Landlords And Tenants Alike

The economic downturn has claimed many victims on the high street but there are steps that tenants can take to ease their cash flow. There are also options open to landlords faced with tenants who are not paying their rent and/ or not fulfilling their lease obligations:

**TIPS FOR TENANTS**

- **Consider any break clauses in your lease:** A break clause can give you an early exit from a lease but beware – failure to comply with any pre-condition(s) can invalidate your break option, meaning that you remain ‘on the hook’ for the rest of the lease term. Give yourself or your solicitor plenty of time to prepare and serve a break notice in accordance with the Lease; liaise with your landlord well before the break date to check if any monies are owing under the lease (if payment is a pre-condition of the break) and to identify what repairs, re-instatement and re-decoration you must carry out and by when.

- **Consider any bargaining tools you may have:** A tenant who has a break clause in its lease but who does not wish to end its lease could try to trade the removal of the break right for some other concession, such as a rent free period or paying rent monthly instead of quarterly. There are benefits for both the landlord whose interest in the property is likely to be worth more with no tenant break clause as well as for the tenant who can turn a theoretical concession into a practical one.

- **Scrutinise service charges:** Tenants could save hundreds, if not thousands of pounds over the life of their lease by closely comparing service charge bills against the actual recoverable expenditure set out in the lease. Tenants may be surprised to find that service charges which they paid without a second thought in times of plenty are not in fact recoverable by the landlord! If in doubt, instruct a managing agent to carry out an audit.

- **Consider any repayments due to you:** Tenants who paid a rent deposit on entering into their lease should revisit the terms of the Rent Deposit Deed now to check whether they are entitled to repayment of the deposit and any interest earned on it. Often a rent deposit is repayable to the tenant after a set number of ‘well-behaved’ years or where a tenant can now satisfy a profits test.

- **If you don’t ask, you don’t get:** Faced with the prospect of empty properties if their tenants cannot weather the economic storm (and possibly inheriting liability for business rates), many landlords are willing to consider requests for concessions from tenants if it means that their tenant stays solvent and able to pay its rent. Ask for a rent free period, a reduced rent or monthly payments – what have you got to lose?

**TIPS FOR LANDLORDS**

- **Sue for rent:** If a tenant stops paying rent, taking court action to obtain a County Court Judgment against them can be an effective solution – often the knowledge that a CCJ will adversely affect their credit rating is enough to prompt a tenant into paying. The lease usually provides for the tenant to pay the landlord’s costs of this action.

- **Send in the bailiff:** Where you think that court action would give your tenant time to remove their valuable items from the premises (making enforcement of any CCJ difficult) consider sending in a bailiff instead to take possession of items to the value of the debt. This can be particularly successful due to the element of surprise as no Court Order is required. It is best to leave this procedure to a bailiff as the rules (which are due to change this year) are complicated. Speak to a litigation solicitor first to assess if a bailiff is a suitable option.

- **Forfeit the Lease:** In the current economic climate this is an unlikely choice as it ends the lease, leaving the landlord with an empty property and possibly inheriting a liability for business rates. However, a landlord in the fortunate position of having a better tenant lined up should speak to a solicitor about whether forfeiture is an option. The rules on forfeiture are due to change soon.

- **Use that rent deposit:** The Rent Deposit Deed will set out when a landlord can withdraw monies from the deposit. Usually this will cover non-payment of rent and other monies due under the lease as well as material breaches of tenant covenants. Drawing on a rent deposit gives a landlord some breathing space to speak with its tenant and to seek legal advice on the most appropriate long term action to take.

- **Contact the sub-tenant:** If a tenant has sub-let the property a landlord has the right to request that the sub-tenant pays its rent directly to you rather than to your tenant. That way you maintain some income from your property. Legal advice should be sought on the procedure and the options open to you in respect of your defaulting tenant.

- **Look to guarantors both past and present:** It is perhaps not obvious that there may be previous tenants (and possibly their guarantors) who are potentially liable as well as current guarantors. A solicitor can advise you on those who are potentially liable and perhaps most likely to pay up but you must act quickly as there are time-critical notices which must be served before action can be taken.

- **Beware of tenant insolvency:** There are various types of insolvency situations which can inhibit the options available to a landlord. If faced with an insolvent or bankrupt tenant, seek urgent professional advice to assess and protect your position.

It is important to always seek professional advice on your specific circumstances before taking action.

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