

Covid-19 and Commercial Lease Payments: Time for a Discount?



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As the world continues to battle the Covid-19 pandemic, small businesses are struggling to survive, affected by successive lockdowns. Despite significant government support, many are finding it hard to cover their fixed costs, including rent.

While some property owners have voluntarily lowered lease payments (Luxembourg City granted its tenants a rent-free period of a few months), others have been forced to accept significant discounts during the lockdown period.

In two recent decisions, the Luxembourg Small Claims Court upheld (i) a lowering of the lease payment (case of 13 January 2021)¹ and (ii) a full release from the obligation to pay rent under a commercial lease (case of 14 January 2021)². In both cases, the court found that the tenant's inability to meet its payment obligation was due to the government-mandated lockdowns. Indeed, while the tenant is obliged to pay rent on time, the landlord is obliged to ensure that the tenant can use the leased premises in accordance with the purpose of the lease.

Consequently, when an event of force majeure renders it impossible to achieve or impedes the intended purpose of the lease, the obligation to pay rent should be suspended, in whole or in part. The court applied risk allocation principles and determined that the landlord (property owner) bears the risk in this context.

Furthermore, the court rejected the landlords' argument that the tenants, in these cases a bar and a clothing shop, should be compelled to develop and use alternative means of running their business, for example by establishing an online shop or a "click and collect" or takeaway service.

These decisions place the risk squarely on landlords. It remains to be seen if these cases should be viewed as isolated incidents³ or indicative of a new trend.

Please do not hesitate to reach out to us if you require assistance renegotiating the terms of your

lease agreement or negotiating a discount on your lease payment or a full release from your obligation to pay rent for the period during which your business was required to close.

1 Small Claims Court Luxembourg, 13 January 2021, n°94/21;

2 Small Claims Court Luxembourg, 14 January 2021, n°124/2021;

3 Not even six months ago, the Small Claims Court decided in favour of a landlord who claimed that even though the tenant suffered a legal loss of the leased premises due to the Corona pandemic, the administrative measures in this regard can be defined as a case of force majeure. Thus, the landlord himself cannot be held responsible and the tenants obligation to pay rent was upheld. (Small Claims Court Luxembourg, 29 July 2020, n° 2051/20).