



COVID-19: Commercial Lease Rent Disputes

With many businesses forced to shut due to the COVID-19 lockdown, many tenants are questioning whether they are required to pay rent under commercial lease agreements when they cannot use the leased premises.

Since the Christchurch earthquakes, the Auckland District Law Society (**ADLS**) form of lease has contained a 'no access in emergency' clause whereby tenants who are unable to gain access to the leased premises can seek 'fair' rent and outgoings abatement for the period of the lockdown. Some other forms of commercial leases contain similar 'no access in emergency' clauses.

The ADLS lease 'rent abatement clause' 27.5 deals with the situation of an emergency when the premises are unavailable for a short period of time and is particularly relevant right now.

The ADLS clause is triggered when there is an *emergency* and the tenant is *unable to gain access to the premises to fully conduct the Tenant's business*. That inability must be linked to *reasons of safety... or the need to prevent reduce or overcome any...harm or loss*.

An *emergency* is defined in the ADLS lease as being a situation that *is a result of any event, whether natural or otherwise, including...plague, epidemic that causes or may cause loss of life, illness or in any way seriously endangers the safety of the public*. The COVID-19 Alert Level 4 and possibly Alert Level 3 requires most businesses to cease using their premises.

If the rent abatement clause is activated, then *a fair proportion of the rent and outgoings shall cease to be payable* for the period during which the tenant is unable to *gain access to the premises to fully conduct the Tenant's business*.

Accordingly, a tenant that operates a non-essential business may seek a rent reduction under the rent abatement clause.

The issue which then arises is how much rent and outgoings should be payable by tenants during the lockdown period? It's only natural that landlords and tenants will have differing views and sometimes they cannot reach agreement.

To best assist parties who find themselves in this type of dispute, the New Zealand Dispute Resolution Centre is offering reduced cost fixed fee arbitration and mediation services. These services provide parties with access to a time and cost-efficient process to resolve their rent abatement dispute.

This special service is in addition to our existing offerings including arbitration, mediation, and expert determination for disputes arising under, out of, or in connection with, commercial leases.

Details are on our website (<https://www.nzdrc.co.nz/property-disputes/covid-19-lease-disputes/>).

For further information, please contact our Registry staff (<https://www.nzdrc.co.nz/contact-us/>).