**Commercial Facts and Questions**

**COMMERCIAL & RETAIL PROPERTY MANAGEMENT**

***Updated 22 July 2022***

Matters relating to commercial and retail tenancies are covered by the *Retail and Other Commercial Leases (COVID-19) Regulation 2021* (NSW) (**Regulation**) available [here](https://legislation.nsw.gov.au/view/pdf/asmade/sl-2021-379).

1. **Which leases are covered by the Regulation?**

* *Commercial and retail leases entered into before 26 June 2021 or options, renewals or extensions of a lease on the same terms on or after this date.*

1. **How long does the moratorium go for?**

* *The prescribed period for commercial and retail properties began on 13 July 2021 and will end at the end of 20 August 2021, unless extended further by the Government.*

1. **A tenant has advised that they cannot pay their rent. What should I do next?**

* *Ask the tenant to complete REINSW’s Rent Relief Request Form so the landlord/agent can determine whether the tenant is an “impacted lessee” as defined in the Retail and Other Commercial Leases (COVID-19) Regulation 2021 (NSW).*

1. **How do I determine if a tenant is an “impacted lessee”?**

* *A tenant will be an “impacted lessee” if they are eligible for the Micro-business COVID-19 Support Grant, the COVID-19 NSW Business Grant, or Job Saver Grant AND if their turnover (including internet sales) from 2020-2021 financial year was less than $50 million.*
* *For franchisees this amount is based on the premises’ or land’s turnover and for members of a corporate group – the group’s turnover.*

1. **I have a tenant stating that they are an “impacted lessee”, however, they are refusing to provide proof to support this claim. What do I do?**

* *You should send them a letter requesting the supporting documents using REINSW’s template letter addressed to the tenant who has not provided supporting documents.*
* *An impacted lessee must give the lessor a statement to the effect that the lessee is an impacted lessee and evidence that the lessee is an impacted lessee as soon as practicable after the breach or within a reasonable time of this information being requested by the lessor.*

1. **What steps do I take if an “impacted lessee” and has stopped paying rent or is paying a reduced amount of rent without the landlord’s consent?**

* *You should send the tenant a letter reminding them that there has been no change to their obligation to pay rent under the lease and that they are still required to pay the full amount of rent in accordance with the terms of the lease until such time as the parties otherwise agree.*
* *You should use REINSW’s template letter that has been prepared for this scenario, which can be found on REINSW’s website* [*here (for commercial tenants)*](https://www.dropbox.com/s/36ff6p4y96nh8gb/Letter%20from%20Agent%20to%20Commercial%20Tenant%20who%20has%20not%20provided%20supporting%20documents%20and%20has%20either%20stopped%20paying%20rent%20or%20is%20paying%20a%20reduced%20amount%20of%20rent%20without%20the%20landlord%E2%80%99s%20consent.docx?dl=0)[*.*](https://www.dropbox.com/s/q5hxum7oq34x7vv/Letter%20from%20Agent%20to%20Residential%20Tenant%20who%20has%20not%20provided%20supporting%20documents%20and%20has%20either%20stopped%20paying%20rent%20or%20is%20paying%20a%20reduced%20amount%20of%20rent%20without%20the%20landlord%E2%80%99s%20consent%20%20.docx?dl=0)
* *You should attempt to negotiate a rent reduction, deferral or waiver with the impacted lessee and document in writing any agreement that you reach.*
* *If the parties are unable to reach an agreement you should follow the mediation process in Part 8, Division 2 of the Retail Leases Act 1994 (NSW).*
* *Unless the parties agree otherwise, during the prescribed period, you cannot take “prescribed action” (ie. eviction, right of re-entry, recovery of premises or land, distraint of goods, forfeiture, damages, payment of interest, recovery of the security bond, performance, possession, termination or another remedy at common law or NSW State law) against the impacted lessee unless the Registrar of Retail Tenancy Disputes has given you a written certificate stating that the mediation did not resolve.*

1. **What action can I take against an “impacted lessee” for breaches other than a failure to pay rent?**

* *This prescribed period only applies to breaches arising from a failure to pay rent or outgoings or where a breach was caused by a business being closed for the hours stated in the lease.*
* *You can still take action against a tenant for other breaches of the lease.*

1. **In accordance with the legislation, a landlord and impacted lessee have agreed to a rent reduction and waver. How do I best document this new arrangement?**

* *The landlord should seek instruction from their solicitor in drawing up a deed of variation. If the fixed term agreement plus options exceed 3 years, the landlord should also make enquiries as to registering that deed on title annexed to the lease agreement.*

1. **I have a tenant who is not an “impacted lessee” who has stopped paying rent or is paying a reduced amount of rent without the landlord’s consent. What do I do?**

* If the tenant is not an “impacted lessee” you can follow the usual process for a breach of a commercial or retail lease for rental arrears.