

Economic Woe is Me: The Landlord and Tenant Relationship in the Slowing Economy

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*(*This release is based on an article published in The Shopping Newsletter.)*

The economic slowdown has quickly become a concern for landlords and tenants alike. In some cases, this concern can be eased through a cooperative effort between the parties to renegotiate the provisions of their lease.

One popular way for tenants to make use of the improved leverage they possess in a softened economy is to negotiate a rent reduction. Although it may seem unpalatable to landlords at first glance, if a tenant is truly struggling, there are several reasons to consider granting such a concession. Finding a new tenant in a slowing economy may prove challenging, and there are no guarantees that a more advantageous deal will be available. As well, landlords would be wise not to gain the reputation of driving tenants out of their premises or forcing them into bankruptcy; on the flip side, it is always beneficial to have the reputation of a reasonable landlord. Finally, if the tenant does go into bankruptcy, the landlord may be left fighting creditors for what is owed to them under the lease.

Of course, landlords will need to satisfy themselves that their tenant's financial plight is legitimate, and not merely a tactic to reduce rent. Prudent landlords will request financial statements from the tenant setting out the change in its business, and if they are then satisfied that the tenant's request is reasonable, the negotiations may commence.

The first consideration is the duration. Although a permanent rent reduction would heavily favour the tenant, a one-time rent reduction would conversely favour the landlord. Taking into consideration the other terms of the lease, the landlord and tenant should aim to negotiate a fair middle ground in terms of both duration and amount.

Parties should also discuss the consequences of a tenant default under the reduced rent. It should go without saying that a failure to pay the reduced rent will be a default. A non-negotiable for the landlord should be that the tenant remains liable for the original amount owed under the lease in the event of such a default.

Confidentiality is another consideration that will be important to both parties, and particularly to landlords. It is crucial to the landlord that other tenants are not informed of the rent reduction and therefore expecting similar concessions. Parties should expect to sign a confidentiality agreement, wherein the rent concession may be revoked by the landlord if confidentiality is breached. Other penalties or restrictions of interest to the parties may also be negotiated.

Tenants should also think about any incentives they may be able to offer their landlords to induce the landlord into agreeing to a concession. For example, the tenant may offer to remove one or more provisions in the lease which are unfavorable to the landlord, or which are solely for the benefit of the tenant, such as an exclusivity clause or an option to renew or expand the premises. The tenant may also help alleviate the landlord's concerns by agreeing to add an indemnifier to the lease, and by providing the landlord with an estoppel certificate which would clarify the status of the lease at a time when an important amendment is being made. Finally, the tenant may have to accept a provision whereby during the reduced rent period, if the landlord receives a third party offer to lease the tenant's premises, the tenant must choose to either return to the original rent rate or terminate the lease.

Although a rent reduction will not be an appropriate solution to a tenant's economic woes in every instance, it is certainly worth a discussion. If both parties can come to the negotiating table in good faith and aware of each other's bargaining positions, the result can be a short-term solution that solidifies a long-term relationship.