

Reopening of retail: the impact on requests for rent suspension

Updated as of 3 June 2020

On 25 May 2020, the Prime Minister announced that the forced closure of non-essential shops will end on 15 June 2020. For retail and commercial tenants that remain affected by the pandemic, it will be more difficult (but not impossible) to request a rent suspension. Below are some key questions you may have and our guidance as things currently stand.

Key questions from tenants

Q: I've looked at our landlord's insuring obligations under the terms of our lease. They don't include notifiable diseases or Covid-19. Does that mean we don't have the option of asking for rent suspension?

A: No, not necessarily. It's unlikely that your lease will mention a notifiable disease such as Covid-19 as an "insured risk" by name (e.g. as they would fire or flood). But most leases will still refer to a general category of insured risk. These are usually defined as anything which the landlord has **actually** decided to insure against. If the landlord has insured your premises against losses caused by the outbreak of a notifiable disease, then it's worth (a) asking for a copy of the policy and (b) checking your lease to find out what effect that may have on your obligation to pay rent.

Q: Our landlord tells us that even though Covid-19 could be covered by their insurance policy, the rent suspension doesn't apply because the premises haven't been physically damaged. Is that right?

A: It's certainly true that most rent suspension clauses are activated in circumstances where it's become impossible for the tenant to use their premises as a result of physical damage caused by an insured risk. But if insurance has been taken against a particular risk, there is also an argument which says that protection of the policy must apply to the particular type of damage that the insured risk is capable of causing. In other words, in the case of a notifiable disease, the term "damage" should be given a wider meaning.

Q: What does this mean for the rent that was due in March 2020 then?

A: If the landlord's insurer agrees that the policy is engaged and your lease contains a suitable rent suspension clause, you may be able to claim a refund of your March 2020 rent.

- The strength of your ability to do this will probably depend on the type of the premises that you have. For example, if you were required to stop trading from your premises as a result of the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020, then your inability to use them will be directly linked to Covid-19.
- If your business was not ordered to close by the Government, but your use of the Premises has been impacted by Covid-19 nonetheless (for example, staff being unable to continue working there) you may still be able to argue that the rent suspension provisions in your lease apply. But the link will not be as obvious.

Q: Do the same points apply for the rent due in June 2020?

A: On 25 May 2020, the Prime Minister announced that the forced closure of non-essential shops will end on 15 June 2020. That will make it more difficult (but not impossible) for the rent suspension to apply. You would need to demonstrate that your ability to use the premises remains severely degraded as a result of Covid-19.