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NEWS

Post-COVID rent relief FAQs

The original and further rent relief periods across all States and Territories have now officially ended giving rise to a range of questions from landlords and tenants. Here, senior associate Helen Wu answers some commonly asked questions about what the expiration of the rent relief period(s) means for landlords and tenants in Queensland. For an overview of the COVID rent relief position for each State and Territory see our article published in the March 2021 edition of *Fundamental*.

WHEN DID THE QUEENSLAND RENT RELIEF PERIOD END?

In Queensland, the original rent relief period ended 30 September 2020 and the extended period ended 31 December 2020.

IF THE RENT RELIEF PERIODS HAVE ENDED, DO I STILL HAVE TO COMPLY WITH THE RENT RELIEF SCHEME?

Although the rent relief periods prescribed by the Retail Shop Leases and Other Commercial Leases (COVID-19 Emergency Response) Regulation (Queensland Regulation) have expired, it does not mean any rent relief and deferred rent arrangement you have agreed with your tenant or that your tenant is entitled to ceases to apply.

The expiry of the rent relief period also does not mean the moratorium on remedies for rental arrears during the rent relief periods cease to have effect. These will continue unless otherwise legislated. So, you are still required to honour any rent relief and deferred rent already granted to your tenant or continue negotiating rent relief with your tenant if you have not yet reached agreement.

WHAT IF MY TENANT OWES RENT FOR THE RENT RELIEF PERIOD?

The Queensland rent relief legislation, like all other States, mandated a moratorium on remedies for rental arrears during the rent relief periods. As noted above, although the Queensland rent relief period has officially expired, you are still prohibited from taking 'prescribed action' if the tenant of an 'affected lease' fails to pay rent and outgoings for the rent relief periods.

WHAT ARE PRESCRIBED ACTIONS?

Under the Queensland Regulation, 'prescribed action' includes actions such as exercising right of re-entry of the premises, terminating the lease, evicting the tenant, charging interest on unpaid rent and outgoings, and claiming on a bank guarantee or security deposit.

However, the above moratorium in the Queensland Regulation is not a complete ban on taking prescribed action in all situations where the tenant has failed to pay rent and outgoings for the rent relief periods. To qualify for this moratorium, the lease must qualify as an affected lease under the Queensland Regulation. You may also take a prescribed action if you have made a genuine attempt to negotiate rent relief with the tenant and the tenant has substantially failed to comply with its obligations under the legislation, such as negotiating in good faith, providing relevant information to facilitate negotiations, and responding in a timely manner.

I HAVE REACHED AN AGREEMENT WITH MY TENANT TO PAY DEFERRED RENT, WHAT NOW?

Under the Queensland Regulation, you can require your tenant to start paying the deferred rent.

If the deferred rent relates to the initial Queensland rent relief period of 29 March 2020 to 30 September 2020, the deferred rent should start being repaid on 1 October 2020. If the deferred rent relates to the extended period of 1 October 2020 to 31 December 2020, then the repayment should start on 1 January 2021.

The repayment period must be for a period of at least two years, but no more than three years, and must not include interest.

WHAT IF MY TENANT FAILS TO PAY THE AGREED DEFERRED RENT?

As JobKeeper has come to an end and businesses are trying to recover from the 2020 economic downturn, you might be wondering what to do if your tenant fails to pay the deferred rent you negotiated. This is especially relevant where your lease expires earlier than the repayment period required under the Queensland Regulation.

The Queensland Regulation does contemplate (to a certain degree) these concerns. The same section in the Regulation that prohibits charging interest on deferred rent provides the prohibition does not apply if the tenant fails to comply with the conditions on which rent is deferred. It also permits the landlord to hold any security deposit paid by the tenant under the lease until the deferred rent is fully paid.

WHAT HAPPENS TO THE DEFERRED RENT IF MY TENANT SELLS ITS BUSINESS?

During the current economic recovery phase, we are seeing plenty of business sale transactions. If your tenant is also looking at selling their business, repayment of deferred rent is probably at the forefront of your concerns particularly given the prescribed repayment period. Unfortunately, the Queensland Regulation does not specify what happens if the tenant assigns its interest in the lease to another party when the deferred rent is fully paid. However, we believe there is scope within the Queensland Regulation to cover this scenario. In particular, the Regulation provides the parties may enter into an agreement that is inconsistent with the deferred rent conditions prescribed by it. So, with the right approach, you may be entitled to a repayment sooner. But remember, agreement is the key.

WE CAN HELP

If you require specific advice and assistance understanding what your State or Territory's requirements are and what you

should do next, please contact a member of our Real Estate team.

Authors



HELEN WU

Senior Associate