

# WEATHERING AN UNANTICIPATED CRISIS AS A TENANT

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Over the past month, we have watched as businesses are forced to deal with an unprecedented crisis. If you have ever done a SWOT analysis of your business, you run different models and analyze different threats and results. What if sales fell to 50%, what if the competition cut their prices, or your biggest competitor moved next door or developed a new technology, how would you pivot? What if you lost critical staff or salespeople? Very rarely does one contemplate or plan for a forced long term shut down due to a required government order.

## What options are available to you and what can you learn from a crisis?

Operating a business is a challenge, and managing cashflows is critical. How do you pay critical staff and overhead in the event of a crisis? Does it mean securing an operating line of credit to have on tap, or making sure that you have cash reserves of a certain level to maintain operations for a reasonable time? Is that three months, six months or a year? It all depends on your business.

In our most recent crisis, the effect in British Columbia was drastic. The timeline was such that the first reported local COVID-19 case was on January 28<sup>th</sup>, 2020. At that time, many British Columbians still viewed COVID-19 as another country's problem; it was a television crisis. It was not until March 5<sup>th</sup>, 2020 that the first local case of community transmission was reported. And shortly after that, it was recommended not to travel, and things escalated so quickly that on March 17<sup>th</sup> the Province declared a State of Emergency and the calls for social distancing were issued and the population slowly started to understand the seriousness of the transmission of COVID-19. On March 20<sup>th</sup>, the order for personal establishments to close became a reality and it was then that businesses, especially retail businesses, were hamstrung.

In early March, we started to see requests for rent relief and discuss plans with our clients. Many corporate stores and franchisers issued template letters for their operators to send to their Landlords. Many of these letters simply cited the crisis and demanded rent abatement, with the offer in some cases of simply adding those same months on to the end of the Lease. Such letters, no matter how politely written, were generally not met with any success. In many cases, these letters arrived before the effects of the crisis were even felt in operations. Landlords viewed such requests as predatory. As such, these Tenants may have inadvertently hampered their ability to have an open discussion with the Landlord to find a solution. When considering an "ask," it is prudent to look at who your Landlord is, what their tenant mix may be, and their capacity to even give consideration to rent relief, and then act prudently.

Before asking for rent relief, you need to consider the value of your lease to your operations and the market in which you are asking for relief. If you have a lease that is critical to your operations, in terms of it being a strategic location that is profitable or perhaps at below market rents, you need to be very careful in your request and approach to the landlord. If you default on your lease without agreement from your landlord, you may risk the landlord terminating your lease, or you may accidentally void renewal options that you have negotiated. The best practice that we have witnessed is a phased approach. The first letter or approach to your landlord should be one of concern and empathy. State that the crisis has impacted your business, mention that sales or revenue has dropped to a fraction of what was anticipated. You let them know that you are taking all reasonable steps to reduce expenses. If you have laid off staff, let them know that and share what other expenses you already cut. Then talk openly about your cash position and reserves. Also mention that you have inquired with your insurer, (I note that the *Globe and Mail* reported that *Aviva Canada*, stands by its pandemic coverage for dentists who followed provincial orders), and your financial institution for assistance and are exploring all programs offered through the Federal Government and the *BDC* as an example.

Finish with a note that you appreciate your ongoing relationship with them and that you will be able to pay the next month's rent, but you are closely monitoring your cashflows and options and will keep them informed as to changes in your position.

Now at this point, hopefully, things stabilize and you ideally can afford your rent and the world returns to normal. However, if you are still in crisis your next approach is critical.

Your next letter is your "ask" and you should send it before the end of the month and at least 10 days before your rent is due. This letter refers to the first letter, speak of the avenues where you have failed to secure financings, confirm the additional measures you have taken, such as layoffs, and other cost cutting measures. You then make an ask, given your situation, and propose a solution that you believe will allow you to remain viable when the crisis subsides. The requests that seem to get the least response are from tenants who simply ask the landlord to forgive their rent outright and allow the lease to remain in

good standing. Such requests have even come from tenants who continue to fully operate from their premises, and in general, these requests have not been met with a cooperative mindset. In some cases, tenants have requested relief and asked that their lease term simply be extended for the same number of months at the same rental rate. Our experience shows that these requests are not helpful in negotiating a timely and satisfactory resolution and damages the Landlord-Tenant relationship. Instead, propose something of a rent deferral. For example, ask for the rent to be reduced by 50% over the next three months, and then make a commitment to repay that rent in the following months in addition to your then due rent. Or request that the shortfall be amortized over the next year's rent. Another strategy is to offer to extend the lease or renew it early for a new term of five years if that is your intent. Depending on your market, the landlord may view this as a win, and it may serve your purposes as well. It is also essential to have the landlord confirm that an agreement of any terms outside of the lease will not be deemed a default, and both the rights of the landlord and the tenant under the lease will be preserved. Our experience shows that a well documented and sensible approach generally gets a faster and more realistic response from the landlord while maintaining the Landlord-Tenant relationship.

No two cases and no two leases are ever the same, and we encourage you to fully understand your lease and the risks associated with any agreement or strategy you take with your landlord. We also always encourage you to seek legal advice before taking any action that may amend or constitute a default of your lease.

We remain available to assist whenever possible to provide general advice and share our comments and experience as it may relate to your particular commercial lease.



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