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Not Every Tenant Needs Rent Relief



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Real Estate

I write about commercial real estate negotiations, deals and legal issues.

It began with a form letter that a large company sent to all its landlords. In that letter, the company said the coronavirus closures had decimated its revenues, so the company asked the landlord to defer all rent for April through July 2020, a total of four months, with repayment to start at some undefined future date.

After reading the letter, the landlord opened a conversation with the tenant, which was actually just a single-location subsidiary of the large company that sent the letter.



It doesn't necessarily make sense for a landlord to provide a free loan to its tenant. RANJAN SAMARAKONE

The tenant fine-tuned its proposal a bit. It still wanted to defer four months of rent. But the tenant wouldn't start to repay the deferred amount until far in the future. First, the tenant would wait until its industry was fully back in business, based on criteria that might not be satisfied for months, perhaps even years. Then the repayment would start nine months later. It would continue for 16 months after that.

The landlord didn't think that was a very good plan. The landlord proposed to have repayment of the deferred amount start on September 1, 2020, in 24 equal monthly installments – a more generous repayment period than the tenant's proposal for 16 months, but starting much sooner. Even with the much shorter deferral, the landlord proposed that the deferral should bear interest, suggesting a very modest 4%. The tenant said none of its other landlords required payment of interest on deferred rent. After some back and forth, the parties agreed on a 3% interest rate.

The landlord also stepped back a bit, and asked what the landlord might appropriately request from the tenant as part of a quid pro quo. Deals are supposed to benefit both parties.

The landlord asked to see financial information to show historically how well the tenant had done at this location over the years. The tenant declined.

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The landlord asked to see any appraisal the tenant might have performed to measure the value of this particular lease if the tenant were to sell it. The tenant declined.

The landlord asked that the tenant's parent company guarantee repayment of the deferred rent. The tenant declined.

The landlord noticed that its lease didn't provide for a late charge or default interest, and asked to amend the lease to add those. The tenant declined.

The landlord asked the tenant to make certain future required payments a few months in advance of their due dates. The tenant declined.

The tenant reminded the landlord of the great working relationship between the parties over the years. Eventually the landlord decided to be nice, drop the five great ideas above, and go along with a simple deferral of four months of rent, with a 3% interest rate, as agreed, on the deferred amount. Repayment would start in September. The tenant grudgingly agreed that if it ever received any governmental relief or loan that could legally be used to pay deferred rent, the tenant would use it for that.

The landlord prepared a draft lease amendment to reflect the limited agreement between the parties. The tenant took nearly three weeks to respond.

After several phone calls, the tenant finally responded. The tenant decided not to proceed with the deal. The 3% interest rate was too high, the tenant said. It could borrow for less from another source. So the tenant would simply pay all the unpaid rent by borrowing it from someone who would charge the tenant a lower interest rate.

Not every tenant really needs rent relief. Of course, many do. But landlords shouldn't necessarily treat today's pandemic as a justification, in and of itself, to make a free loan. Landlords should ask questions. And they should give some thought to what they should get from any deferral or forbearance transaction.

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