

CEF Guide to Lease Payment Negotiations During COVID-19

power has shifted

Let's face it. Small business tenants historically have limited bargaining power when negotiating with landlords. This resource is to prepare you for a difficult discussion with your landlord. With some strategy and planning, your discussion may go better than expected.

This guide will help you to lead a positive discussion in which you say:

1. You intend to keep your business going. Maybe that will be to a limited degree right now, but back to usual after this period of required social distancing is over.
2. You will pay some amount (even if small) each month on your lease.

When your business started, it probably had no ownership of property and a great need for cash. Landlords, on the other hand, being more established over a longer period of time, have some dollars of ownership, or equity. And they may have a loan on the property, and the lease payments of the tenants probably more than cover the landlord's payments and other expenses.

In the great recovery after 2008, landlords have been holding high ground when a business tenant could not make payments. You could be evicted and quickly replaced with another small business vying for the same space.

But, here comes the novel Coronavirus pandemic of 2020. It has changed everything between your landlord and you. Now, when your landlord contemplates about a late or missed payment, there is no clear sight of another tenant waiting in line to take your place. Your missed payment may be accompanied by several missed payments. And your landlord may be worried right now about his/her own mortgage payments for the building you are renting space in.

count your position's strengths

Have you taken all possible pains to retain your customers? Maybe you have done steps in [CEF Guide to Business Continuity during COVID-19](#). You have made your space and products as safe as possible for your customers and employees. You have publicized on social media your measures to prevent the transmittal of disease.

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On the other hand, city or state authorities may have ordered your business—thriving just a month ago—to close your doors, to keep customers from passing COVID-19 while enjoying your service.

Considering both your efforts to stay open and the forces working against you, the landlord may see you as **the best tenant that can't pay**.

know your lease

Read it! The truth behind the difficult legal language is already on the mind of your landlord. Your first challenge is to understand your landlord's point of view.

Rights are Slanted in favor of your Landlord: Realize most powers and the rights are not yours. Find the sections that say:

1. What happens when your payment is late.
2. How long you have to make up a late payment.
3. When the landlord has a right to evict you.
4. What happens to your equipment and furniture if you are evicted.

Find the section labeled “force majeure.” This term means forces beyond anyone's ability to control, like a flood or earthquake. “Act of God” is a synonym. Much debate is happening right now whether a pandemic qualifies as a **“force majeure.”** The common sense answer is that it may very well qualify as such.

Most leases excuse the landlord for not performing their side of the bargain if there is a “force majeure” but say little about excusing the tenant. Most say a “force majeure” does not ever excuse the tenant from making a lease payment on time. Find out exactly what rights, if any, you have under a “force majeure” as outlined in the terms and conditions of your lease agreement. Consult also with a real estate attorney.

Find the section about “abandonment” or “vacation” of the leased space. It probably says if you don't keep your doors open, the landlord can evict you. Of course, this section will not speak to being forced to close your doors because of an order from the city or state. Regardless, realize your landlord's interest is that their property doesn't look like it has been abandoned.

negotiate not from weakness but parity

Plan to talk with your landlord over Facetime or Skype. The less distant and more personal the communication, the easier to take down walls preventing agreement.

Realize when you plan this talk you do have some power. Besides the points about your bargaining power above, your plans to keep your business going, after the pandemic, speaks volumes about your good character.

Plan your words:

1. Recognize the humanity of your landlord, who has been going through a lot, just like you. Say so.
2. Explain your limited business activity right now and over the next month or so, even if it's not much. If no activity, say so. Be as specific as you can.
3. If no business activity (e.g. the city has closed down your bar) make the commitment that you or a member of your management team will go into the premises each day, to make sure the heat and air are still working and that the space is secure and safe.
4. Explain that you plan to resume normal business activities after conditions improve. Be emphatic about that.
5. State that you recognize the pandemic is a "force majeure," as discussed in the lease. If it's what your lease states, say you understand the lease requires you to pay anyway.
6. If you can, say you will be making partial lease payments. Even if you can pay only \$100, partial payments show your commitment. State an exact amount even if you realize the figure may change later.
7. Say you will make up any missed dollars after conditions improve.

NOTE: Do not say you are in default of your lease. Those words could be used against you.

One way people make up missed payments is with higher payments starting at some future time. Another way is large cash payments later on, although it's usually hard for small businesses to generate this kind of cash. If your landlord wants interest on dollars not paid, agree with any reasonable proposal.

Follow up in writing: You take control when you send a carefully worded email recounting the discussion. Remember, do not say you are default of your lease.

Immediately afterwards, put the words of the email in a letter. Print it and send it by registered mail so you get a receipt that your landlord has received it. Remember to use words fairly representing your landlord's point of view. Be fair to yourself as well.

Engage a real estate attorney to write an addendum to the lease, expressing the informal agreement in a formal fashion. This needs to happen, but it doesn't have to happen today.