

IMPLICATIONS OF THE CREDIT CRUNCH ON LEASES – WHAT DOES IT MEAN FOR YOU?

Scenario	Landlord's considerations	Tenant's considerations
Tenant's application to pay rent monthly	> How important is the tenant to you? > Can rent be paid by standing order or direct debit? > Can you obtain a further rent deposit? > Revert to quarterly rent on tenant default > Temporary and personal to the tenant > You may need your bank's consent	> How important are the premises to you? > The landlord may try to charge you a premium (for example, 5% of the yearly rent)
Tenant's application for consent to charge the lease	> Demonstrates that the tenant needs to raise capital > You may need your bank's consent > If the lease states that you cannot withhold consent unreasonably, you may have no choice but to permit this	> The landlord may not have to grant consent - check the terms of your lease
Tenant's application to underlet at less than passing rent	> The tenant may be in financial trouble – how will it fund the shortfall between passing rent and that reserved by the underlease? > What happens between you and the under tenant if the tenant becomes insolvent? > Possibly enter into a confidentiality agreement	> Can dispose of most of your rental liability without having to give the landlord an authorised guarantee agreement as you would if you assigned the lease > Try to obtain a guarantor from the undertenant and/or a rent deposit
Tenant goes into administration	> Contact the administrator to establish what it wants to do with the lease > Contact your bank – you may need bank's consent to any assignment or variations > Act quickly before the administrator puts the tenant into liquidation	> Any assignee of the tenant (in administration) could use this opportunity to force the landlord to re-gear the lease in its favour > May have SDLT benefits if the lease is simply varied rather than entering into a new lease
Tenant's application for a rent reduction	> What can you get from the tenant in return for reducing the rent? > Disregard the rent reduction on review to preserve the base rent > Consider the effect of the rent reduction concession as a potential comparable on other rent reviews	> The landlord is not obliged to permit this so you may be forced to give a rent deposit or provide a guarantee.
Tenant exercises its break option	> Check the lease terms and break notice carefully > Has the tenant paid all rent and complied with its covenants? Take legal advice	> You could threaten to exercise the break option in order to re-gear the lease in your favour > Make sure you exercise the break option validly

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Other things to think about:

1. If there is no formal documentation setting out what you have agreed you may become bound by any verbal agreements you have made.
2. If you document the concessions in a side letter and there is no consideration then the concessions may be personal to the parties.
3. It is best to record the concessions in a formal deed of variation as it will bind successors in title and enhance the certainty of your agreement.
4. Request “VAT” element on any rent deposits at 17.5% not 15% - the reduced VAT liability is only temporary.
5. Tenants should look carefully at any potential cost-saving opportunities available to them such as service charge and insurance contributions.
6. On any lease renewal the yearly rent may go up as well as down.
7. You may need your bank’s consent on any re-gearing of the lease.
8. As a landlord, seek to terminate any concessions if the tenant defaults.
9. Seek legal and valuation advice at an early stage.
10. Ultimately it’s a balancing exercise between greater occupancy rates now and possible future negative rent review implications.



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