

CERTAIN ASPECTS OF THE COVID-19 PANDEMIC IN TENANT-LANDLORD RELATIONSHIPS

On 12 March 2020 the Czech government declared a state of emergency (in Czech “nouzový stav”) in line with its powers under the Czech Constitutional Act. Additional measures such as limiting most types of retailer are in effect as of 16 March 2020.

As a result of this state of emergency, business activities of tenants (especially those that have to stay closed to the public) will be seriously affected, which may also have a negative impact on their landlords. Please find below brief answers to the questions many are asking at the moment.

I. Are tenants entitled to claim rent reductions due to restrictions imposed by the government in recent days?

Generally, if accessibility of premises by the general public is limited as a result of temporary governmental restrictions, the tenant’s payment obligations towards the landlord under the lease agreement are not affected, unless the respective lease agreement provides otherwise. Typically, commercial lease agreements exclude the application of change of circumstances which otherwise could be used as a legal instrument opening the commercial discussions regarding the reasonable rent reduction (and reduction of other payments under the lease).

Mandatory total closure of all premises in a building to the public (in practice closure of the entire area / municipality district to the public where the building is located) could also be associated with the landlord’s (partial) non-performance (at least with respect to its obligation to provide certain services) under the respective lease agreement, and therefore we cannot exclude that this non-performance would trigger the tenant’s claim for reasonable rent reduction.

In practice, however, we expect that the parties will negotiate and find a mutually acceptable solution for minimizing the commercial impacts of this crisis for both parties.

II. Is the tenant entitled to terminate the lease in light of the above?

In standard commercial leases, general provisions of the Civil Code governing termination of the lease are explicitly excluded and the lease agreement itself provides specific commercial arrangements in this regard, so the respective Civil Code provisions will not apply.

However, if a lease agreement remains silent, a tenant could theoretically claim termination of the lease either referring to (i) the general provisions of the Civil Code such as change of circumstances or (ii) the landlord’s substantial breach of the lease agreement (e.g. due to severe and long term non-performance as described above).

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III. Is the landlord entitled to claim any damage or contractual penalty due to breach of the tenant's obligation to operate the retail premises?

We are of the opinion that in the given situation, a landlord cannot successfully claim any damage (liberation reasons will apply to the tenant's obligation due to force majeure) or contractual penalty from the tenant due to the tenant's non-operation of the retail premises in line with the lease agreement (although standard commercial leases especially in shopping centers usually penalize the tenant for non-operation during the stipulated hours).

IV. What are the landlord's duties toward the Czech state authorities and tenants, if any of the tenants' employees is confirmed to be infected?

The current Czech law does not provide a detailed list of duties for tenants and landlords. Under the state of emergency, all acts of the entities involved should aim at preventing any third-party damage under the provisions of the Civil Code governing liability for damage (as well as harm to health).

Everyone (including landlords and tenants) has a duty to inform in order to prevent unreasonable harm to life and property of another. In light of current events, a tenant's employee is obliged to inform the tenant if the employee has been confirmed to be infected (and all other relevant information) and the tenant must adopt appropriate measures (e.g. instruct the other employees to work from home) as well as to inform the landlord of the situation in order to fulfill its statutory duties pursuant to the Civil Code. All further actions should be coordinated with the Hygiene Authority.

It is essential to provide the necessary cooperation (providing proper information, allowing entry into affected premises, etc.) to the concerned state authorities, particularly to the Hygiene Authority and the potentially endangered tenants, in order to minimize damage. It is important to mention that all information from the landlord shall be provided obeying applicable GDPR and personal data protection laws.

V. Are Czech state authorities entitled to enter the Landlord's building in order to disinfect the tenant's premises?

The current legislation assumes that if the premises are assessed by the Hygiene Authority as a source from which the disease spreads further, the Hygiene Authority would be entitled to immediately seal the premises and thoroughly disinfect them in order to stop the coronavirus from spreading. This thorough disinfection would be carried out at the expense of the state. The landlord and tenant are obliged to provide necessary cooperation to the Hygiene Authority.

The Hygiene Authority is also authorized, as a last resort, to order identifiable marking of the premises or the whole building indicating the presence of the disease.

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VI. Is the landlord or tenant entitled to appeal against the imposed restrictions by the government or claim any damages for the limitation of their business activities in recent days?

Since the state of emergency has been declared, prohibitions imposed by the government (and other authorized state authorities) under the state of emergency cannot be appealed. The legislation on the state of emergency potentially entitles affected persons to claim damages related to harm suffered due to regulations issued under the state of emergency. Nevertheless the right to claim damages is formulated in a general way and therefore there is no general consensus among legal experts as to whether and to what extent the respective legislation can also be applied to the current situation. We assume legal opinions on this will continue to develop in the future on these quite unprecedented measures.

In this connection, the Ministry of Finance has also presented several tax relief measures (e.g. later submission of the tax return, mass exemption from administrative fees). For more please see (available in Czech only): <https://www.mfcr.cz/cs/aktualne/tiskove-zpravy/2020/vlada-schvalila-liberacni-danovy-balicek-37844>

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