

What is a Landlord to do When Their Tenants Can't Pay Rent?

Amundsen Davis Real Estate Alert
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Landlords have found themselves in a real quandary as a result of the forced closure of many of their tenants in the face of the COVID-19 crisis. On April 1, many tenants did not pay their rent and/or requested rent relief.

Much of the funding from the CARES Act will go to the tenants and not to the landlords. Yet, landlords are being asked to bear the immediate brunt of the shut down by giving rent abatements, deferrals and even to terminate leases. At the same time, some local governments are issuing eviction moratoriums and the courts are not taking action on any claims, effectively leaving landlords with no remedies at this time. As a result, many tenants are going to hold off as long as possible to pay rent. And, even if the landlord could exercise remedies, that is not the result that most landlords desire under the circumstances. These were good tenants before this crisis and they will likely be good tenants again. So, what is a landlord to do?

The first consideration is the debt service on the property. A landlord's first call should be to its lender to see if they can work out a forbearance agreement. Otherwise, the landlord will be obligated to continue to make rent payments with a shortage of income from their tenants. Some lenders, particularly relationship based local and regional banks, are being proactive and working out forbearance agreements with landlords. Some banks are agreeing to interest only payments for a period of time. Other lenders are not being as cooperative. One thing that is imperative for landlords is to continue making their loan payments if at all possible so that they are not in default under their loan agreement. Lenders are much more likely to work with a landlord who is not in default.

Whether or not the landlord is receiving rent, they are also faced with the continued payment of the property's operating expenses such as taxes, insurance and maintenance costs. Again, payment of these expenses is usually required to remain in good standing under loan agreements.

As a result, landlords and tenants are getting creative with a variety of solutions such as:

- Granting rent reductions/deferrals and extending the term of the lease.

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- Granting rent reductions/deferrals and increasing subsequent lease payments.
- Granting rent deferrals that are conditioned upon the tenant applying for and paying to the landlord funds received by the tenant through the CARES Act.
- Granting rent reduction s/deferrals conditioned on the continued payment of operating expenses.

With the uncertainty as to how long the shut downs will continue, it is likely that many landlords will find themselves in a precarious position towards the end of April as rent and mortgage payments become due. It is important that the lines of communication remain open between lenders, landlords and tenants to facilitate solutions to get everyone through this challenging time.

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