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When Tenants Won't Help Themselves during the Covid-19 Pandemic

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The COVID-19 pandemic and subsequent widespread orders to close theaters, retailers and restaurants – or severely restrict their operations – are forcing landlords and tenants to the negotiating table to figure out a way to survive. In many cases, the parties are striking agreements that generally provide a period of rent reduction and then spread repayment out over time in the future. In return, shopping center owners typically want tenants to seek additional support, whether it's a paycheck protection program (PPP) loan or some other type of funding or financial solution, such as reducing payments tied to business debt.

Yet some tenants see the pandemic as a prime opportunity to break their lease and are displaying little interest in working with landlords to find financial aid, says David Greensfelder, founder of Greensfelder Real Estate Strategy, an Albany, Calif.-based provider of strategic planning, market analytics and development services for owners, occupiers and communities nationally.

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“If the landlord is being asked to help, it seems completely reasonable that the tenant would be doing what it can to help itself,” says Greensfelder, who also owns retail property. “Tenants trying to hammer a landlord for rent relief but who are unwilling to help themselves, to me that throws up a red flag. That’s somebody who just wants to try to leverage the situation to get out of a long-term contingent liability.”



Negotiating rent relief mid-lease amid a pandemic is a situation that few if any tenants or property owners ever thought they would face. Without the benefit of precedent –

or clairvoyance – most landlords are moving cautiously. NewMark Merrill Cos, an owner of more than 80 shopping centers containing 1,600 tenants primarily in California, has reached accommodations with more than 600 of the roughly 850 tenants that sought rent relief, says Sanford D. Sigal, president and CEO of the Woodland Hills, Calif.-based group.

NewMark Merrill helped tenants apply for PPP loans and seek other financial help. But it also has provided relief in “bite-size” tranches, he adds, so that it can maintain flexibility as the virus plays out.

“At the beginning of this pandemic, it was unknown whether this would be a two or three-month situation, or a two-year situation, so

our key objective has been to buy time,” Sigal says. “We’ve been able to do that for most, but clearly there is a group of tenants that want to blame someone else for whatever is going on, and that’s not productive.”

Such recalcitrant tenants heighten an already stressful environment. So what can landlords do? While options are limited, the size and financial wherewithal of the tenant and landlord, the value of the tenant to the property, the amount of time left on the lease, and a tenant’s history are among variables that influence decisions. Just as tenants may try to leverage the circumstances to break a lease, for example, property owners may seize the opportunity to cut loose a problematic business.

The best course of action is to work out a solution – within reason – and establishing good communication can help avoid untenable situations, advises Greg Maloney, CEO and president of Retail at JLL Americas in Atlanta. “Tenants sign a binding lease,” he adds, “and landlords expect them to honor their commitment.”

Still, tenants that request rent relief but then balk at providing sales, balance sheet and profit-and-loss data are usually trying to take advantage of the crisis, Greensfelder says. One tenant he worked with took the position that the lease simply didn’t exist after the pandemic took root. But Greensfelder discovered that the tenant was planning to move the business online and planned to use PPP funds to help pay for related salaries.

“The tenant was just trying to get out of its lease and were setting up a negotiation of how much of the remainder of the rent it would pay,” he states.

For tenants that simply refuse to pay rent, lawsuits are one response. Mall owner Simon Property Group took just such an action against The Gap, for example, which held back \$115 million in rent payments from Simon and other property owners in April alone.



Image from Mike Mozart.

But determining whether to take matters to court might be more difficult for smaller landlords dealing with regional or local tenants, says Nick Egelanian, president of Baltimore-based SiteWorks, a consulting and outsourcing company that provides services to shopping center owners and tenants.

“In most cases, landlords are making a tactical decision between how much it costs to chase a tenant and how much they might recover,” Egelanian explains. “If it’s a case where there’s a good, longstanding relationship between the two and going after the tenant may force a family into bankruptcy, then landlords may not want to chase them.”

Some tenants demand more relief than what property owners acting in good faith can offer, Sigal says. On those occasions, landlords aren’t wary about taking legal action, although it is generally considered a last resort.

“We’ve worked with tenants 50 different ways to try to keep them

successful, or at least alive,” he says. “But if they still want x, y and z and tell us that the responsibility is all on us, then we’re going to get rid of them as soon as we can. That’s not to say we’re going to treat them like the enemy or harass them; we just expect them to live up to their lease.”

Until the virus dissipates, negotiations may only get more “gut-wrenching” for tenants barely squeaking by even after receiving rent relief, Greensfelder warns. That’s particularly true for parts of the country experiencing spikes in infections.

California recently ordered the re-shuttering of malls, fitness centers, hair salons and other indoor venues in 30 counties, as well as bars and the indoor operations of restaurants, movie theaters and museums statewide. Additionally, Texas closed bars, rolled back restaurant occupancy and paused the progression of its reopening. Other states could follow suit.

“The solutions being worked out today may not take retailers to the period when the virus is no longer a factor,” Egelanian adds. “We just don’t know when that will be, and in the meantime, the extent to which consumers venture out will be based on the perceived risks.”

Despite the current struggles and less-than-rosy outlook, retail leasing continues, Greensfelder and Sigal report. NewMark Merrill recently signed a tenant to a 25,000-square-foot formerly vacant space as well as a restaurant.

“I’m not going to lie and say our leasing isn't killing it, but we’re still seeing activity,” Sigal says. “I think the logic is that the pandemic

has a finite period, and tenants see an opportunity to finally get into space that they normally wouldn't be able to."

"There are definitely retailers looking for space," Greensfelder declares. "That's always the case in an environment like this where tenants think they have all kinds of leverage."

While the current leasing environment is far from optimal, landlords seeking tenants can use Retailsphere to enhance their chances for success. The Retailsphere platform provides access to robust tenant profiles, allowing users to benchmark and compare performance. Its search function also makes it easy to find exactly the right tenant by enabling users to filter and analyze numerous variables, from retail category to a tenant's preferred demographics. [Sign up today for a demo](#) and see how easy the platform can make your tenant search.

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