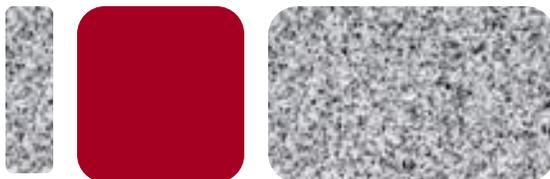


Rent Reduction Negotiations



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A Guide for Landlords

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Rent reduction discussions are commonplace in the current Irish Property market particularly in the retail area but they need to be seen for what they are; A Re-negotiation of Existing Lease Terms.

If you are in the business of re-negotiating lease terms then why stop at the rent? It is important that landlord's asset managers and their funders are live to the opportunity to exchange potentially lucrative improvements in their overall lease profile for any rental concessions made to a tenant. We have set out some examples below.

Turnover

No rental concession should be granted in the retail arena without a clear explanation of the tenant's business model including turnover figures going back at least three years. If possible we prefer to see numbers going back to 2007, so we can track the business performance from peak to trough. All recipients of a rent reduction should be reporting their turnover on a weekly basis to their landlords, allowing them to monitor the health of the operation. This information will be essential in valuing the landlord's interest in the future.

Duration

How long is the rent concession for? It is rarely logical to concede a permanent concession in the lease rent and to do so, in the middle of the deepest recession in living memory, could only be unfair to the landlord.

How long will it take the business to recover? Are there external events that will contribute to the bottom line, such as the cessation of leasing payment for tenant's fit out? Are there peak trading periods that should be taken into account? The duration of the concession needs to be tailored to the circumstances.



Landlord Control

Typically, we would recommend that for the duration of the rent reduction, the landlord has the right to terminate the lease. The reduction is being given on the basis that the market rent is lower than the abated rent. If the market rent moves above the abated rent, then the landlord should preserve the right to take the property back and lease it to another tenant at the higher rent.

Termination

All rental concessions should be contingent upon the tenant keeping to their side of the bargain. If during the concession period, rental payments cease, or turnover information is not forthcoming, then all bets are off and the original rent as per the lease is due.

Despite the concession if the tenant's business runs into difficulty the landlord's position as a creditor should not be disadvantaged because they tried to help the tenant survive.

Remember the Lease

The rent reduction is always without prejudice to all the other terms of the lease and any other supplemental agreements and this should be explicitly stated.



What happens when the abatement expires?

This needs to be explicit, it could be a simple reversion to the main lease as if the abatement arrangement never existed, it could be to a fixed rent or a base rent and turnover top up but don't leave it open to debate, make it explicit on the face of the abatement agreement.

Personal

Any concession granted is personal to the parties involved. It would be unfair for the tenant to be able to sell on their interest for a capital sum if part of the value had been created by the concession in rent.

What about Pre-existing Arrears?

Sometimes pre-existing arrears are parked for the term of the abatement, i.e. they are still there but do not accrue interest. In some cases there may be a forgiveness of arrears but we would recommend that any write off is not formalised until all the terms of the abatement have been complied with for the term.

Reviews

One of the concessions a landlord should consider in return for an abatement is pre-settlement of future rent reviews. For instance it might be agreed that the reviews will be to open market or CPI at the landlord's election.



Lease Re-gearing

It can make sense for a landlord and especially a landlord's funder to allow for a rental concession now in return for a longer term of lease certainty. Giving a 20% rent reduction now for pushing out a break clause or extending a term may make a lot of sense in terms of capital value. A property let at €80,000 per annum for 10 years at a sustainable rent could be worth more than one let at €100,000 per annum for 5 years.



In summary it sometimes makes very good business sense for a Landlord to reduce their tenants rent not just to keep them in business and avoid the costs and implications of a vacant property but also as a platform for

negotiation to try and improve both parties position relative to the market at large. Rent reduction should not be taken casually but should be well thought out, well documented and well advised.

*If you want any further advice on the issue feel free to contact **Neil Bannon** of **Bannon's Asset Management & Recovery team** at nbannon@bannon.ie or **01-6477900***

