

Lex Covid - A brief overview of new Acts prohibiting lease termination for non-payment of rent

Dentons Prague Newsletter

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On April 22, 2020, the Chamber of Deputies of the Czech Republic rejected changes suggested by the Senate and adopted two Acts, one Act regulating residential leases and one Act regulating commercial leases, as originally adopted by the Chamber of Deputies two weeks earlier. The Acts will become effective in a few days, following signature by the President and publication in the Collection of Laws.

The goal of both Acts is to protect tenants in financial difficulties because of the COVID-19 pandemic by restraining landlords from terminating the lease due to non-payment of rent during the decisive period. The tenant must pay the deferred rent including all additional payments (e.g. interest) before the end of this year, otherwise the landlord is then entitled to terminate the lease.

Below we provide a brief summary of both Acts.

Proposed Measures

Decisive and protective periods

Both Acts provide tenants with protection from a lease termination solely due to non-payment of rent, which has become due during the decisive period.

The decisive period is different in both Acts. For a lease of residential premises, the decisive period is from March 12, 2020, until the day following the end of the current emergency measures, but no later than July 31, 2020. For a lease of commercial premises it is from March 12, 2020, to June 30, 2020, regardless of the end of the current emergency measures. The protective period during which landlords cannot terminate a lease for non-payment of rent during the decisive period will last until the end of this year for both residential and commercial leases. However there is no limitation on landlords terminating for payment or other defaults occurring before or after the decisive period.

It is important to emphasize that the Acts do not apply to service payments. Failure to pay fees or advance payments for services during the decisive period might still be a reason for termination of the lease. Also, neither Act addresses the issue of VAT payment, so landlords are obliged to pay VAT from the deferred rent on the due date (even if they did not receive payment). This was widely criticized and the government has promised the Financial Authorities will postpone the due date of such VAT payments if requested. However, no systematic solution has been adopted yet.

Proof of non-payment because of the emergency measures

The Acts only apply if the delay in payment of rent is (predominantly) caused by a restriction resulting from the emergency measures, which prevented or made it almost impossible for the tenant to pay rent (in the case of residential premises), or which prevented or made it almost impossible for the tenant to conduct its business (in the case of commercial premises). The Act on the lease of residential premises, in comparison with the Act on the lease of commercial premises, adds inconsistency by the use of the word "*predominantly*".

However, both Acts differ significantly in the way a tenant should prove compliance with the above condition. In the case of commercial premises, the Act provides a 15-day period from the first delay in rent payment, during which the tenant must submit documents proving compliance with the conditions. These documents are not specified in any detail. By contrast, the Act on the lease of residential premises explicitly stipulates that the delay should be proved by a confirmation from the Labor Office. Such a confirmation must be shown to the landlord without undue delay. The

requisites of such confirmation and the procedure for obtaining it are not known yet; the Act refers to instructions which will be issued later.

Termination of the lease after the protective period

Both Acts permit the landlord to terminate the lease if the tenant declares at any time that they will not pay the outstanding debt during the protective period. In the case of residential premises, the landlord can immediately terminate the lease even if the tenant does not declare anything about the payment, but the future non-payment of deferred rent by the tenant becomes “*otherwise unquestionable*”. This option is missing with respect to a lease of commercial premises.

Lastly, both Acts allow the landlord to ask the court to terminate the lease if the landlord cannot be reasonably required to tolerate the inability to terminate the lease during the protective period. In the Acts, the wording of the provision differs without a clear reason. However, considering the speed of the Czech courts, we consider the practical application of this provision to be very limited. This is even more the case given that such a proposal cannot be filed before the restriction, which caused the tenant’s delay, has ended.

Practical aspects

We consider one provision to be essential for the application of both Acts. According to the provision, the landlord’s rights to terminate the lease for other reasons, or other rights arising as a result of the tenant’s payment delay, are not affected.

It follows from the aforementioned provision and from the general wording of the Acts that the deferred rent will be due with all related rights and claims. Therefore, the landlord will be entitled to take other steps foreseen by the lease agreement or respective statutory provisions, such as the application of contractual penalties, interest on late payments, offsetting of the deferred rent against security provided by the tenant, or even filing an action for performance of the rent and its additional payments. This is confirmed by the explanatory memorandum to the Act on the lease of commercial premises, which explicitly mentions the obligation of the tenant to pay interest and contractual penalties. By contrast, the explanatory memorandum to the Act on the lease of residential premises (which is not legally binding, but only provides guidelines for the interpretation of the law) creates uncertainty by mentioning the “*extension of the maturity of due receivables during the pandemic emergency measures until the end of the protective period*”, although no such principle is implied in the Act itself. In our opinion, this is either an error of formulation in the preparation of the explanatory memorandum or a remnant of a previously considered different concept.

Conclusion

The aforementioned Acts will allow tenants of residential premises to postpone payment of rent due for less than five months, and will allow tenants of commercial premises to postpone payment of rent due for less than four months, in both cases until the end of this year, without triggering a reason for the landlord to terminate the lease.

However, unpaid rent will be subject to interest, either at the statutory rate or at the rate agreed in the contract. At the same time, the landlord retains all other rights agreed in the contract or arising from the statutory provisions.

According to the government representatives, the anticipated cash-flow problems for landlords should be balanced by the possibility to ask for a three- or six-month deferral on loan payments. The act allowing for such postponement is already effective and our colleagues from the Banking and Finance practice have described it in a newsletter available [here](#).

According to the Minister of Industry and Trade, the government is considering adopting an adjustment that would spread the burden to all parties and allow partial reimbursement of rent for commercial premises by the state, provided that the landlord provides a rent discount to the tenant (a model of 1/3 state, 1/3 tenant and 1/3 landlord is being discussed). However, the wording and form of this amendment has not been presented to the public yet.

The Newsletter was prepared by our Real Estate team in Prague. If you have any additional inquiries related to this issue, please do not hesitate to contact us.

Contacts

Michal Hink

Czech Republic Managing Partner
M +420 606 790 836
michal.hink@dentons.com



Jiří Stržínek

Partner
M +420 606 790 837
jiri.strzinek@dentons.com



Markéta Tvrdá

Partner
M +420 733 130 301
marketa.tvrda@dentons.com

