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INTELLIGENCE

What To Do About Rent

BY CATHALEEN CHEN

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As the coronavirus pandemic continues, tenants and landlords are on a collision course over rent. But retailers may have the market advantage, real estate experts say.



NEW YORK, United States — For millions of small business owners across the country, April's rent is officially past due.

Karina Lopez, whose Portland, Ore. lifestyle boutique, Darling Distraction, closed two weeks ago along with countless other businesses [in response to the Covid-19 pandemic](#), said she's one of the lucky ones. Her landlord has offered to defer April's rent until the fall.

But she's worried even that won't be enough. Some Darling Distraction customers placed orders with the boutique's online store after it closed, but e-commerce sales have stalled. Business is down more than 70 percent.

"Right now, I'm relieved I don't have to pay for April," she said. "But if our sales continue to drop, I'll have to see if [my landlord] could let me pay in instalments... Everything is coming from my savings right now."

Thousands of small, independently-owned fashion vendors and retailers, and even some international chains, will have trouble paying the bills in upcoming months as Covid-19 continues to keep consumers on lockdown and the world economy in freefall. Under government mandate, non-essential stores across the world remain closed in order to curb the spread of the virus.

As the crisis unfolds, apparel and luxury retailers will take a massive economic hit. Already retail traffic in the US is down about 80 percent in the third week of March, compared with a year earlier, according to Morgan Stanley, and will likely drop further.

Fashion businesses are cutting expenses anywhere they can, from canceling factory orders to [laying off staff](#). While payroll tends to be the biggest cost, rent can amount up to 20 percent of what a retailer makes in sales. The [\\$2 trillion stimulus package](#) passed last week will allow small businesses to apply for loans that would go toward these expenses, and a portion of those loans can be forgiven. Cities like New York and Los Angeles imposed a moratorium on evictions, which means retailers are safe staying put for now.

But many businesses will almost certainly require additional rent relief. Around the world, landlords and tenants are headed toward a tense set of negotiations, where both sides will claim they face financial ruin if they give ground.

Tenants have the edge, real estate experts say, as there was already too much retail space on the market even before the pandemic, and vacant storefronts will only grow more common as major economies plunge into recession. This means that retailers should reach out to their landlords, be honest about their financial situation and ask for help.

“My advice is to shoot for the moon and take it from there — it’s an open negotiation,” said Danielle Garno, the head of the fashion, beauty and luxury goods practice at law firm Cozen O’Connor. “Now is not the time to back down. You have to ask for what you want, because if you can’t pay your rent, there’s a chance you’ll lose your business.”

Some are taking a brazen stance from the get-go, telling their landlords, point blank, that they won’t be paying full rent. Urban Outfitters, for instance, announced Tuesday that it will be suspending rent payments “temporarily.”

Plenty of landlords are taking a firm line as well. Mall operator Taubman Centers told their tenants in an email this week that they are expected to pay April’s rent. In an email statement to BoF, a Taubman spokesperson said its memo “does not replace our willingness to talk to each tenant about their respective challenges and help them chart an appropriate course for the future.”

Taubman is in the minority, as most landlords are offering to at least defer rent until later this year, or even into 2021, said Jay Luchs, a retail broker for Newmark Knight Frank. With properties in Los Angeles and New York City, Luchs represents both tenants and landlords.

But tenants should remember that landlords have their own financial obligations, including mortgage payments. Even those that own their properties outright need to pay upkeep and property taxes. They may not be able to agree to all of a retailer’s terms even if they genuinely want to help.

“What I’m telling my tenants is to reach out, give a heads up, and structure some sort of compromise,” Luchs said. “But handle with care. If they threaten a landlord, it could backfire.”

Ask for a Waiver

[Nanushka](#), the Budapest-based contemporary label, has a store in New York and a flagship in its hometown. As the pandemic worsened, the brand reached out to both of its landlords seeking a rent reduction. So far, it’s yet to hear back.

“It all depends on the goodwill of the landlord,” said Peter Baldaszi, Nanushka’s chief executive. “Cash flow is super tight for us but they have to figure out their position too — they’re a business like us, with bills to pay.”

Baldaszi’s approach is exactly how retail tenants should go about the rent negotiation process, brokers and tenant attorneys say.

“Most tenants are asking landlords to waive for rent for the period they’re shuttered, starting with April 1 and until when they can reopen again,” said Robin Abrams, a retail broker at Compass who works with both landlords and tenants.

Like Luchs at Newmark, Abrams has observed that landlords are largely amenable and open to negotiation so far. A couple of months without rent is better than an empty storefront, after all.

Use Commitment as Leverage

For tenants on short-term leases, Abrams said agreeing to commit longer term can help kick-start negotiations.

“Landlords in many cases are saying, ‘I’m going to give you a month or two months free, but I want you to extend your six-month lease or 12-month lease after your term ends,’” she said.

Eric Orenstein, an attorney at Rosenberg & Estis who represents landlords and developers, agrees.

“If your lease is coming to an end soon, this may be an opportunity to get an extension and rent forgiveness,” he said.

Without a commitment opportunity, however, it may be tough to get free rent from landlords, Orenstein added. “Even my most generous clients are not giving free rent.”

Landlords and their agents, nonetheless, have an interest in keeping the terms of ongoing negotiations private. Concessions toward one tenant doesn't mean another tenant will receive the same.

Apply for State Aid

For small businesses in the US, the \$2 trillion stimulus package Congress passed last week is a source of financial relief. Through the Small Business Administration, brands and retailers with 500 employees or fewer can apply for up to \$10 million in loans that would go toward payroll, rent, mortgage and utilities. These loans can be fully forgiven if used correctly and the employer keeps all staff on payroll.

Orenstein said businesses that can show they're exhausting their means for financial help are more likely to receive help from their landlords.

"This way, you'll be armed with the fact that you're trying to solve this problem," he said. "At least you'll have something to give to landlords, and maybe they'll give you 90 days of grace. Not free rent but rent that you can pay back in the last 60 days of the lease."

It's unlikely that a SBA loan could be the only solution, said Garno, who represents mostly tenants. "Every small business should apply for these loans but there are many uncertainties" — including when the money will actually roll in.

Landlords are using the SBA loans as a way to push the rent burden back onto the tenant, she said. "The loans might be a viable option, but yesterday was April 1. Rent's due, and people need some sort of relief right now."

Get It in Writing

Experts on both the tenant and landlord sides agree that simply refusing to pay rent is not the best approach — especially for small retailers that don't have the leverage of national chains with hundreds, if not thousands, of locations.

Adidas, for instance, said last week that it would defer rent payments but [apologised Wednesday](#) and said it would pay April's rent after it was criticised on social media.

"I can't say it enough that now is a time to start an open dialogue between landlords and tenants," Garno said. "I can see a ton of litigation come out of this once everything returns to normal and it's not going to be a good look."

For some, not paying rent is the only option.

Ross Fraser, founder of LA-based boutique Kitson, said he won't be paying rent for his two permanent store locations as his business was 80 percent down in March and will likely be worse in April.

He told BoF that the landlord for his main storefront, a 5,000-square-foot space on Robertson Boulevard, in fact, has yet to respond to his requests for working out a deal. So far, the landlord's position is that tenants can defer payment for April until June 30 — but Fraser is doubtful that his store will reopen by then. (When approached for comment, a spokesperson for the brokerage representing Ross' landlord said he had no knowledge of dealings between agents and tenants.)

"I've been there for 12 years, paying \$36,000 a month, and I've never even talked to him," Fraser said. "These landlords don't want to do anything and it's disgusting."

Fraser is hoping that if this conflict escalates legally, he'll be protected by the "force majeure" clause in his contracts, which state that the terms of the agreement may be relieved under unforeseeable circumstances, such as disease or disaster.

But the force majeure clause isn't foolproof, Garno said. "You'd need to look for words in your contract like 'pandemic,' 'epidemic,' or 'disease.' Depending on how the clause is written, it may relieve the obligation but that doesn't mean [the obligation] goes away entirely."

There Are No Guarantees

Still, given the unprecedented nature of the pandemic, much about the process remains up in the air. Governments may provide additional rounds of stimulus, or even rewrite laws covering rental agreements to prevent waves of evictions and lapsed mortgage payments.

"The rules are being made as this progresses so we're still waiting to see legislatively if there will be specific rulings that come out of tenants going default," said Abrams, of Compass.

In certain cities, evictions are suspended for the time being. But even if tenants can stay put for now without paying rent, they could go into default after quarantine ends.

“It’s so important that tenants understand the terms of their lease ... Even if there is a moratorium on evictions, failure to pay rent may trigger the tenant’s liability,” Garno said.

“It’s too uncertain on both sides and it would be foolish to not negotiate some sort of concession.”

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