

Demystifying the Covid-19 Act for Landlords and Tenants

1. This article explains the Covid-19 (Temporary Measures) Act 2020 (“Covid-19 Act”) in relation to landlords and tenants and what the available reliefs to help both parties during these challenging times are.
2. Prior to Covid-19, the legal recourse for landlords with tenants failing to pay rent and to return possession of the premises would be for the landlord to file a case in Court through their lawyers. Once the Court grants an order of court, the landlord would then be able to enforce the order and apply for a Writ of Possession to recover possession of the premises if need be. However, in light of the “Circuit-breaker to minimize further spread of Covid-19” measures, such legal recourse by the landlords has to a large extent been modified by the Covid-19 Act.
3. As a start, law firms are now only allowed to provide essential services (limited) and the Courts will also be hearing only essential and urgent matters. As such, it is unlikely that the Courts will hear matters in relation to rental arrears or recovery of possession of the premises unless we can convince the court that such matters are urgent in nature.
4. On 7 April 2020, the Singapore Parliament passed the Covid-19 Act which offers temporary relief to certain contracting parties who are unable to meet their contractual obligations due to Covid-19.
5. Specifically, in relation to tenants and landlords, the relief measures introduced by the government consists of a three-pronged approach as follows:
 - a. relief for tenants who are unable to perform contractual obligations such as to pay rent;
 - b. remission on property tax; and
 - c. relief for landlords on mortgage or credit facilities obligations.

Relief for tenants who are unable to perform contractual obligations

6. Section 5 of the Covid-19 Act provides for a non-residential tenant who is unable to perform his obligation to serve a notification for relief on the landlord.

7. This is provided that the tenant is unable to perform his obligation after 1 February 2020¹ and that the lease or the license was entered into before 25 March 2020².
8. The onus is on the tenant to serve the notification for relief on the landlord and the tenant must be able to show that his inability to perform their obligation is to a material extent caused by the Covid-19 situation³.
9. Notification for relief can be served on the landlord and/or any guarantor or surety for the tenant's obligation in the contract via the electronic system - <https://www.mlaw.gov.sg/covid19-relief/notification-for-relief>.⁴ Should the tenant, for whatever reason, be unable to send the notification via the electronic system, the tenant can send the landlord the notification via email or any other internet-based messaging service or social media pages⁵. Should all the above methods be unworkable, the tenant would then have to send the document to the tenant's last postal address by prepaid registered post⁶.
10. Upon receipt of the tenant's notification, the landlord would not be allowed to take any action until after the earliest of the following⁷:-
 - a. the expiry of the prescribed period (currently fixed at six months from 20 April 2020 to 19 October 2020);
 - b. the withdrawal by the tenant of his notification for relief;
 - c. on application under section 9(2), the assessor makes a determination that the case in question is not one to which temporary relief would be granted under the Covid-19 Act.
11. Action which the landlord is not allowed to take would include commencement/continuation of action in a Court against the tenant or the tenant's guarantor or surety, enforcement of any security over any immovable property, enforcement of any security over any movable property used for the purpose of a trade, business or professions.

¹ Section 5 (1)(a) Covid-19 Act.

² Section 4(1) Covid-19 Act.

³ Section 5(2)(b) Covid-19 Act.

⁴ Section 5(1)(a) Covid-19 (Temporary Measures) (Temporary Relief for Inability to Perform Contracts) Regulations 2020 (hereinafter "Covid-19 (TM)(TRIPC) Regulations 2020").

⁵ Section 5(1)(b) and (c) Covid-19 (TM)(TRIPC) Regulations 2020.

⁶ Section 5(1)(d) Covid-19 (TM)(TRIPC) Regulations 2020.

⁷ Section 5(2) Covid-19 Act.

⁸ Section 5(c) Covid-19 Act.

12. As such, having received the tenant's notification for relief, the landlord can seek to apply to the Registrar (via the electronic system⁹) to appoint an assessor to determine if the case falls under the section 5 of the Covid-19 Act¹⁰.
13. In making a determination, the assessor may take into account the ability and financial capacity of the tenant and other prescribed factors. The assessor must seek to achieve an outcome that is just and equitable in the circumstances of the case and to this end, an assessor may also make further determinations¹¹.
14. Possible outcomes may include: partial payment of rent, or rent set off against the tenant's security deposit; or the tenant may be allowed to terminate the lease, if other tenants are available to take the space.
15. The determination of an assessor is binding on all parties and no appeal is allowed¹². Parties are to bear their own costs for proceedings before an assessor¹³, and there can be no representations by lawyers at proceedings before the assessors¹⁴.

Remission on property tax

16. In relation to the remission on property tax, the landlord owner has a legal obligation to pass the benefit of the remission in property tax on the property to the tenant¹⁵ and the landlord owner cannot subject the passing of the benefit to any condition¹⁶. IRAS will be sending out the rebate notices to landlord owners by 31 May 2020 and these landlord owners of qualifying properties can expect to receive their refunds by 30 June 2020¹⁷.
17. Thereafter, having received their refunds, the landlord owners can pass the benefit on by either a single method, or a combination of methods, including (but not limited to) the following¹⁸:
 - a. payment of money, whether lump sum or by way of instalments;
 - b. an off-set against or a reduction of the whole or any part of any rent or licence fee payable by the tenant to the owner.

⁹ Section 12(1) Covid-19 (TM)(TRIPC) Regulations 2020.

¹⁰ Section 9(2) Covid-19 Act.

¹¹ Section 13 Covid-19 Act.

¹² Section 13(10) Covid-19 Act.

¹³ Section 15 Covid-19 Act.

¹⁴ Section 14 Covid-19 Act.

¹⁵ Section 29(2) Covid-19 Act.

¹⁶ Section 29(4) Covid-19 Act.

¹⁷ Paragraph 2.4 IRAS e-Tax Guide, Property Tax Rebate for Non-Residential Properties in 2020. published on 26 March 2020.

¹⁸ Section 29(3) Covid-19 Act.

18. Should there be any dispute in relation to the transfer of benefit, then the landlord owner or tenant may apply for the dispute to be heard and determined by a Valuation Review Panel¹⁹.

Relief for landlord to pay secured loans

19. In a situation where a tenant has served a notification for relief on the landlord, the landlord may be affected and therefore would not be able to service his loans with the financial institutions accordingly.

20. In such a situation, should the credit facility be entered into before 25 March 2020, the landlord can also serve a notification for relief on the financial institution if they are unable to meet their obligations after 1 February 2020.

21. Similarly, once a notification is served on the mortgagee, if the conditions are met, the mortgagee cannot take any legal action against the landlord during the prescribed relief period. Effectively, the obligation to service the loan by the landlord will be deferred during the prescribed period.

Conclusion

22. In conclusion, it is clear that the Covid-19 Act offers only temporary measures for who are having cash flow issues and are unable to meet their financial and other contractual obligations. When choosing to serve the notification for relief and to defer such payments, the affected parties, especially the tenants, must take into account the possibilities of owing large sums of monies (the deferred rent) once the prescribed period for relief has ended and also the interest that would have been accumulated during the period for relief. As such, unless absolutely necessary in ensuring the continuity of the business, it is advisable for the parties to be prudent and measured and consider carefully if they really need to defer the payments until the end of the prescribed period.

Contributed by:



¹⁹ Section 30(2) Covid-19 Act.