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Business and Residential Tenancies and Coronavirus

Business Tenancies

Many farmers have a non-agricultural diversified element to their farming business. This could either be where they have business units on their holding which they rent to individual commercial tenants or where the farmer themselves is the tenant and the diversification is separated out from the main agricultural tenancy.

Following Government announcements, the Coronavirus Act 2020 has introduced protection from eviction and/ or possession proceedings up until at least 30th June 2020 for business tenants unable to pay rent due to coronavirus.

Business tenancies covered by the Coronavirus Act are those falling within the scope of Part II of the Landlord and Tenant Act 1954. This means that most business tenancies of a fixed period longer than 6 months will be covered as well as those which are periodic. Even where there is no written agreement it is likely that these tenancies will be classed as business tenancies.

The definition of business tenancies does not include agricultural tenancies under the Agricultural Holdings Act 1986 or the Agricultural Tenancies Act 1995.

Guidance for landlords

Landlords will not be able to evict tenants by using forfeiture and re-entry for non-payment of rent until at least 30th June 2020. Rent however will still be due to be paid by the tenant unless there is a specific clause in the tenancy agreement to the contrary. If a rent payment is missed, the tenant will have to pay the rent at the end of the protected period.

Firstly a landlord will need to check the tenancy agreement for any clause in it creating an obligation which affects the level of rent to be paid. Such clauses could be a rent free period, a suspended rental period or a reduction in rent. Such clauses are however unusual.

In the absence of any clause affecting rent, landlords can:

- Insist the rent be paid whether this be throughout the protected period or once the protected period comes to an end on 30th June or later if extended.
- Agree a repayment plan that activates once the period ends for any rent payable during the period.
- Negotiate a rent reduction with a tenant for the period.
- Waive rent liability for the period.

Most importantly any agreement that is come to should be fully documented in writing.

In many circumstances it will be in the landlord's best interest to support and keep tenants in occupation of premises as it may be difficult to find new tenants certainly within the period of protection and perhaps afterwards due to economic hardship. In addition there could be other financial

consequences for landlords such as liabilities for business rates and utilities on an unoccupied property.

Guidance for tenants

Although landlords will not be able to evict tenants during the protected period which will run to at least 30th June 2020, unless the tenancy agreement contains a clause which allows for some variation of rent payable, a tenant will still be liable to pay the rent for this period. The rent will be payable in full either throughout the protected period or at the end of this period.

Should a tenant feel that they are unable to pay rent through the protected period, even though they can't be evicted at this time, it is advisable they discuss their situation and concerns with their landlord. Taking such an approach will allow early discussions as to a repayment plan or the tenant's future plans for their business and tenancy. Some landlords may wish to time limit any rent concessions made so tenants need to ensure that they will be in a position to pay once the time limit is reached.

Any agreement that is reached that varies the rent should be documented in writing.

Tenants of smaller units in receipt of Small Business Rates Relief should be eligible for a cash grant of £10,000 from their local authority. Tenants with Rateable Values between £15,000 and £51,000 will be eligible for cash grants of up to £25,000. Government's intention for these grants was to assist businesses affected by coronavirus in paying continuing business outgoings.

Agricultural Tenancies

Tenancies under the Agricultural Holdings Act 1986 and Agricultural Tenancies Act 1995 do not fall within the scope of the protective measures. The NFU have been discussing this position with Defra who have recognised potential difficulties this may pose to tenants. Defra have asked the NFU monitor the situation and report back any negative behaviour displayed by landlords at this time.

Agricultural tenants who do foresee or begin to face difficulty in paying rent need to approach their landlords as early as possible with a view to negotiating a mutually satisfactory management plan going forwards thus avoiding situations which escalate to levels which are beyond control and difficult to salvage.

A separate briefing on agricultural tenancies will soon be available.

Residential Tenancies

The Coronavirus Act 2020 has introduced measures to protect residential tenants from eviction up until 30th September 2020. Up until this date notices requiring possession can still be served on a tenant but the length of notice has been extended. Landlord's wishing to serve a Section 21 notice on an Assured Shorthold Tenant during this period will have provide not less than three months' notice instead of the usual two months. In addition if a landlord wishes to serve a Section 8 notice on a tenant under the Housing Act 1988 for a specific reason the minimum notice period will be three months. This will apply to agricultural workers on Assured Agricultural Occupancies.

It is important to note that whilst a landlord can serve notice, court proceedings for possession cannot be commenced until expiry of the three month notice. A tenant cannot be evicted from a property without a court order. All court proceedings have been suspended for 90 days from 27th March 2020.

Rent Options

Rent is still payable by tenants during the coronavirus pandemic whether a landlord has given three months' notice or not. Tenants, especially those who have not been given notice but who are struggling with rental payments, should speak to their landlords in the first instance.

A landlord may choose to allow a tenant a rent free period without the need to pay back the arrears. Likewise a landlord could consider reducing rent for this period again without the need for the tenant to have to pay back the balance.

Rent repayment plans of the full amount of rent arrears or a lesser agreed amount is most likely to be agreed over a specified period of time. The plan should aim to be affordable taking into consideration other Government measures which have been put in place to support employees and the self-employed. Any agreement between parties in relation to rent must be documented in writing.

It is important for tenants to remember that landlords are not under an obligation to agree to any variation of rent and may insist that rent at the full amount be repaid throughout the relevant periods or repaid in full immediately at the end of the relevant period. Government has stated however that landlords should refrain from serving notice during this time as a tenant may be ill or subject to financial hardship for a number of reasons.

Landlord Mortgages

Government has agreed with mortgage lenders that a three months' holiday from mortgage repayments can be applied for. It will also apply to landlords whose tenants are experiencing financial difficulties during this time. People with mortgages including buy to let landlords will have to repay the amount accrued during the three month period either by higher monthly repayments or by extending the period over which the repayments are made. This should enable landlords with mortgages the ability to agree a sensible repayment plan with tenants.



