

Q&A: Covid-19 and its impact on leases in Dubai

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The COVID-19 pandemic has upended nearly every aspect of how companies and individuals do business. While the restrictions are slowly being lifted, we have prepared this Q&A to address key questions that landlords and tenants in Dubai are asking, with the hope of shedding more light on the leasing landscape in Dubai in the wake of the pandemic.

1. Has there been any rental laws issued for the purposes of specifically dealing with the impact of the pandemic on landlords and tenants in Dubai?

No. The Dubai Tenancy Law (Law 26 of 2007 as amended) and the Civil Code remain the principle legislations governing tenancy relationships in Dubai.

2. Has the Rental Disputes Settlement Centre of Dubai implemented any special measures with respect to legal proceedings related to COVID-19?

During the period extending from March 2020 and until March 2021, the Rental Disputes Settlement Centre (**RDSC**) suspended all court judgments that were issued *ex parte* and the subject matter of which was the payment of monies. At the time of writing, the suspension has been lifted and payment orders are active again.

In addition, specific committees within the RDSC were assigned the task of reviewing tenant and landlord disputes that relate to COVID-19 with a view to ensuring consistency in the judgments that were rendered by the RDSC

The parties to a COVID-19 related dispute were asked to first submit such dispute to mediation by a mediator that is appointed by the RDSC to verify if an amicable settlement can be reached between the parties. The RDSC would consider the dispute only if the mediation process failed in achieving the desired outcome. At the time of writing, these measures have been lifted and a litigating party can directly file a lawsuit relating to COVID-19 before all committees that operate within the RDSC without the need to submit the dispute for mediation.

3. What are the conditions of Force Majeure and what is the legal implication of the same on leases?

The Dubai Tenancy Law does not contain provisions relating to force majeure. The concept of force majeure is recognized in Article 273 of the UAE Civil Code.

For an event to be considered as a force majeure under Article 273 of the UAE Civil Code, it must satisfy the following conditions as set out by the jurisprudence of the UAE Courts:

- the event must be unforeseeable on the date of conclusion of the contract;
- the event must be unavoidable, meaning that the parties could not have avoided its consequences; and
- the event must be external to the parties, meaning that the parties should not have caused the event to occur or in any way participated in its occurrence.

The occurrence of a force majeure event under Article 273, when leading to the impossibility in the performance of the obligations under a lease, can result in the termination of that lease.

4. What are the conditions of Exceptional Circumstances and what is the legal implication of the same on leases?

Article 249 of the UAE Civil Code recognises the concept of “exceptional circumstances”, which applies where the performance of a contract would involve extreme hardship on an obligor (rather than performance being impossible as in the case of a force majeure event).

For the RDSC to apply the above article, it must verify that the following conditions have been met:

- an event of a public nature must have occurred;
- the event must have been unforeseen by the parties at the time of conclusion of the contract;
- the obligation must become onerous to a level that threatens the obligee with a grave loss; and
- there must be a causal link between the exceptional event and the obligation that has become onerous.

If a claimant is able to successfully establish the occurrence of exceptional circumstances, we would expect the RDSC to reduce the rent to a reasonable level. This authority to reduce the rent could be exercised by the RDSC with a fair margin of discretion. The net effect is not necessarily a full waiver of rent as the RDSC needs to re-balance the lease, taking into account the interests of both the landlord and the tenant, in such a way as to provide an equitable remedy.

5. What are the conditions of Personal Unforeseeable Circumstances and what is the legal implication of the same on leases?

The concept of “Personal Unforeseeable Circumstances” is recognised in Article 794 of the UAE Civil Code. A party to a lease may rely on Article 794 of the UAE Civil Code to request the termination of the lease as a result of the occurrence of an unforeseeable event that relates to such party.

If the RDSC issues an order for the termination of the lease at the request of a party who successfully establishes the occurrence of Personal Unforeseeable Circumstances, the RDSC may request that such party pays damages to the other contracting party which damages shall be assessed by the RDSC in accordance with applicable custom. The RDSC has applied this construct in a case where an employee unexpectedly lost her job after signing a fresh lease. The RDSC allowed the termination of the lease by the employee on the condition that she pays the landlord the equivalent of one month of rent.

6. Are the precedents of the RDSC unified in relation to COVID-19 related lawsuits?

The precedents of the RDSC are not unified. Termination judgments that have been issued by the RDSC often refer to “exceptional circumstances” but the concept, as adopted by the RDSC, seems to be very broad, with the RDSC retaining a wide margin of discretion in terms of terminating leases.

7. Is it possible for a tenant to terminate the lease in respect of a residential property as a result of COVID-19?

In general, the occupation of a residential property would not be interrupted as a result of a COVID-19 related event. For this reason, the RDSC is reluctant to terminate leases of residential properties. However,

there have been a limited number of exceptions to the rule where tenants have successfully obtained a court order for the termination of their lease in particular cases where they have been made redundant as a result of, or in connection with, a COVID-19 related event. For example in a judgement issued by the RDSC on 8 April 2020, the RDSC found that the dismissal of an employee from his job due to the impact of COVID-19 qualifies as an “Exceptional Circumstance” event and therefore, justifies the termination of the relevant lease. In its judgment, the RDSC stated the following: “*The RDSC is of the view that the termination of the Claimant is an event of emergency circumstances, which the Claimant cannot mitigate nor predict. The lease has become burdensome to the tenant to the extent that it is impossible to continue with the lease agreement.*” Whether exceptional circumstances exist is a matter of fact that is decided by the RDSC on a case-by-case basis.

8. Can tenants leave the premises without paying rent?

No. If a tenant leaves the premises without paying the outstanding rent, the landlord may file a lawsuit or a payment order application (*ex-parte*) to request from the RDSC the specific performance of the terms of the relevant lease (i.e. payment of rent) in addition to interest and damages. The landlord may also request the RDSC to implement a travel ban against the tenant depending on the amount which is due by the tenant.

9. Has there been any concessions given by major mall operators to their tenants?

Concessions have been granted by major mall operators, but these have been based on purely commercial considerations and the law does not provide the tenant with a right to such concessions. The most common types of concession that we come across are as follows:

Deferred payments. A rent deferment agreement allows a tenant to defer rent payment for a specific period of time that is mutually agreed between the landlord and the tenant. Typically, only a portion of the rent is deferred and the tenant must continue to make minimum payments under the lease. At the end of the period, the tenant would have to resume the payment of rent in addition to paying the deferred rent in periodic instalments. It is important for the tenant to recognize that, under a rent deferral scheme, the rent must still be paid and is not forgiven by the landlord.

Rent free periods. Under a rent free period, the tenant is forgiven from paying the rent for a specific period of time. Market standard rent free periods generally range between 1 to 3 months.

Suspension of Basic Rent. In commercial leases, tenants are generally expected to pay a basic rent in addition to a turnover that is calculated as a percentage of the tenant’s sales that are generated from its activities in the premises. During the initial months of the pandemic, a number of landlords have granted a concession to their tenant by way of applying the turnover rent only.

10. Can tenants request a reduction of rent in connection with a COVID-19 related circumstance and what is the guiding principle of the RDSC?

Under the Tenancy Law, there is no right for the tenant to request a reduction in the rent prior to the expiry of the lease for any reason, including, without limitation, COVID 19. However, for the purpose of renewing a lease, the landlord and the tenant may, prior to the expiry of the lease, amend any of its terms or reconsider increasing or reducing the rent (Article 13). If the landlord and tenant fail to reach an agreement in this regard, the RDSC may determine the fair rent. Where a tenant wishes to seek a reduction in rent for the purposes of renewing the lease, it must notify the landlord of this intent no less than 3 months prior to the expiry of the lease (Article 14) (unless the lease states otherwise).

As mentioned at question 4 above, a tenant could in theory rely on Article 249 of the UAE Civil Code to request a reduction in the rent on the basis of exceptional circumstances.

11. How has the RDSC dealt with termination of commercial leases due to the negative impact of COVID-19?

Based on our understanding of the precedents of the RDSC to date, the guiding principle is that commercial leases can be terminated by the RDSC in instances where the tenant has been severely impacted by COVID-19 and has suffered quantifiable losses that are so significant that the tenant is unable to continue in operating the premises in accordance with the terms of the lease. We would expect that the termination would take effect from the date of the judgment rather from the date on which the tenant suffered the COVID-19 related event. Accordingly, the tenant would not be entitled to a refund of the rent that it would have paid to the Landlord in respect of the period preceding the date of the termination judgment. This guiding principle, which is hybrid in nature and borrows from the doctrine of force majeure and that of exceptional circumstances at the same time, although not entirely consistent with the letter of the law, appears to be based on a sense of fairness, and has now become established precedent at the RDSC.

For further information, please contact [Malek Al Rifai](#)