

The impact of coronavirus and related measures on the real estate lease

A frequent question in dealing with the consequences of a coronavirus pandemic is the question of the real estate lease and possibility of terminating the lease or possibility of reducing rent for reasons related to the spreading of coronavirus or its preventive measures.

In this context, the matter may be divided into two basic areas. The first one is the lease of non-residential premises, i.e. in particular manufactural or administrative premises, which are rented by companies for the purpose of running their business. Typically, in the current situation this type of lease is especially problematic for those companies who had to close their operations (particularly in the gastronomy business, but also in the other retail establishments), but it may also be a problem for other companies in case of restrictions or suspensions of the production due to coronavirus.

However, questions concerning the solution of rental relationships “stricken” by coronavirus also concern the lease of the apartments, i.e. premises intended for housing the natural persons. Tenants are often workers whose performance may be limited or even interrupted for the reasons related to coronavirus. However, companies that rent apartments for their employees are often tenants, so this issue may affect them as well.

A special category is also the lease of family houses. Although the property is intended for housing, the legal regime of such lease relationships is different from the lease of non-residential premises and the lease of the apartments.

What are the possibilities of the lease termination or the possibilities of requesting a rent deduction for particular types of rent? Here is a brief general information about some of the possible solutions in this situation.

Lease of non-residential premises

The tenant is entitled to require deduction of rent only in case the lessor does not fulfill his obligations under the lease agreement or legal obligations (in particular the obligation to keep the subject of the lease in a condition appropriate for the agreed or usual use and to ensure proper performance of services related to the use of the subject of the lease). In case the tenant temporarily does not want or cannot use the subject of the lease for reasons other than violation of the obligation by the lessor, the tenant is not entitled to deduction of rent. **In case business activities of the tenant are restricted due to the government measures to prevent the coronavirus from spreading, there is no entitlement to a rent deduction for tenant.**

The obligation to pay rent in the agreed amount remains valid for the tenant, despite the changes in circumstances, even substantial ones, caused by government measures to prevent

the spreading of coronavirus (as opposed to the possibility of changing contractual conditions as it is in the Czech Republic).

The termination of the lease of non-residential premises is regulated in the Slovak legislation similarly. In principle, there are no legal grounds for terminating the lease in relation to temporary reasons limiting the lessor's business activity.

If the lease is concluded for an indefinite time period, both lessor and tenant shall be entitled to terminate the agreement in the written form with a three-month notice period, even without providing any reason.

In the case of a fixed-term lease agreement, the tenant may terminate it with a three-month notice period solely if:

- the tenant loses authorization to carry out activity for which he has rented the non-residential premise;
- the non-residential premise becomes inappropriate for the agreed use without the fault of the tenant;
- the lessor grossly violates his contractual or legal obligations related to the lease of non-residential premise.

Regarding government measures to prevent the spreading of coronavirus, it must be noted that, in our opinion, the temporary impossibility to carry out an activity does not result in a loss of authorization to carry on that activity to justify the termination of the lease agreement. However, in the event that the tenant loses the license to carry out the business activity for which he rented the non-residential premise (most likely it will be termination of the trade license for a certain activity), in this case the tenant has a reason to terminate the lease agreement. WARNING, the attention should be paid to all activities carried out by the tenant in the rented property, not just the "main activity"; it is necessary to analyze the lease agreement and other aspects.

It is also possible to terminate the contractual relationship for the lease agreement of non-residential premises by a withdrawal from the agreement, however, the legal grounds for this are provided only in the event of a contractual breach by the other party.

Notwithstanding the foregoing, before any action is taken in relation to the change or termination of the lease agreement, it is necessary to take into account particular agreement itself – the reasons for terminating in the agreement may vary, what means that the contractual provisions may override the law and it may also happen that they could offer the lessor a broader spectrum of opportunities to change or terminate the lease relationship.

Apartment lease

The tenant is entitled to deduction of rent or payments for services connected with leasing an apartment in the event of defects in the subject of the lease or deficiencies in the provision of other services. **Therefore, this claim will not arise to the tenant in connection with government measures to prevent the spreading of coronavirus.**

Even in the case of an apartment lease, the change in circumstances caused by government measures to prevent the spreading of coronavirus, what may result in the tenant not needing the apartment anymore, does not relieve the tenant from paying the rent in the agreed amount, as well as does not provide him a reason to terminate the lease of the apartment.

In case of an apartment lease, the tenant is entitled to terminate the agreement in the written form with a three-month notice period, even without providing a reason, both in case of an indefinite lease and a fixed-term lease¹ (the lessor is limited only by certain withdrawal reasons).

The apartment lease may also be concluded by the agreement on short-term lease of an apartment, but this must be expressly stated in the agreement. **In case of a short-term lease of an apartment, it is also possible to terminate the lease by noticing a withdrawal to the lessor on the grounds that the tenant's employment has ended.**

The apartment lease can also be terminated by a withdrawal from the lease agreement, but also only in cases of the contractual breach by the other party.

Although the contractual freedom of the parties by concluding an apartment lease agreement is not as broad as when concluding a lease agreement of non-residential premises, it shall be also paid attention to a specific agreement before any action is taken in relation to the change or termination of the lease agreement (for example, the wording of the agreement may remove doubts about the possibility of terminating a fixed-term agreement).

Lease of a residential premise but other than an apartment

The subject of the lease may also be a real estate intended for housing persons, but at the same time property other than an apartment (typically, a family house).

However, even with such a lease, the tenant is entitled to a rent deduction only in case of defects in the property restricting its proper use.

Termination of the lease agreement of the other real estate intended for housing is possible by the termination of any contracting party (with a three-month notice period) only in case if the lease was concluded for an indefinite period. Unless otherwise agreed in the agreement, the lease agreement of such real estate concluded for a definite time period, **cannot be terminated by a withdrawal.**

Withdrawal from the agreement is also valid in this case only if the other party breaches the agreement.

As in previous types of property leases, when renting a residential premise other than an apartment, the lease cannot be terminated directly on the grounds of the measures to prevent the spreading of coronavirus. **However, in this type of lease the law regulates the relations of the parties least and provides to the parties the greatest contractual freedom. It is**

¹ In the case of termination of a fixed-term lease, the legal opinion on the possibility of termination by the tenant without providing a reason is not unite, therefore it cannot be ruled out that the court could declare such termination invalid, however we do not assume that.

therefore very important to analyze particular agreement before taking any action in relation to such a lease. Frequently, the agreement provides quite a wide range of possibilities for the contracting parties to terminate the agreement.

General measures - planning and communication

Given the above, in the Slovak conditions the tenant has an opportunity to reduce the rental payment in relation to coronavirus only by agreement with the lessor – therefore it is always necessary to communicate with the lessor. **Any agreement to change the rent (even temporary) or other terms of the agreement must be made in written form in the case of the real estate lease agreements.**

When terminating the lease, such a step shall be well timed as the period of a notice, which unless otherwise specified in the agreement, starts to run from the first day of the month following a delivery of termination notice to the other party (i.e. for example, if one makes termination notice on 25.3., but this will be delivered to the other party on 1.4., notice period starts from 1.5.).