

Beyond the guidelines: Why a good relationship between tenant and landlord is key

By [Bradley Jackson](#)

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What happens if a tenant is unable to pay their rent? What if they can pay but choose not to in the interests of "fairness" - because why should only non-essential businesses get a payment holiday?



Image source: www.pexels.com

Commercial rentals have become a sensitive topic during the national lockdown. Unless a business can deliver value remotely over this time, its revenue stream largely depends on whether it is considered an essential service or not. Some essential-service businesses such as pharmacies and supermarkets have seen record sales over this time, much of which is due to general consumer panic-buying of items such as toilet paper, non-perishable goods, hand sanitisers and facemasks. For non-essential businesses, however, revenue has stagnated or halted altogether. Even as government gradually reopens the economy through its five levels, many businesses can only operate at partial capacity, if at all.



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PI Group relief guidance

Just recently, the newly formed Property Industry Group (PI Group), an alliance of retail property landlords in South Africa, issued guidance on how relief should be applied. PI Group's guidance focuses broadly on SMMEs (up to R80m annual turnover) and depends on the severity of the impact of the lockdown. For example, highly impacted retailers such as restaurants and hairdressers qualify for a 35% to 100% relief on April 2020 rental and up to 50% relief on May's rental. Further relief can take the form of deferred, interest-free rental over six to nine months from July 2020. By contrast, retailers that sell some essential, and some non-essential, goods can have their rent pro-rated depending on how these items contribute to revenue.

These guidelines are useful in giving some clarity around the issue. However, they were issued under the assumption that the lockdown would not be extended past 21 days, or that there would be a phased approach to opening up different sectors from May. While a phased re-opening makes sense from an epidemiological perspective, for many businesses it will just feel like a longer process toward business recovery. Already, negotiations between PI Group and some major retailers have deadlocked around rental discounts and who should be responsible for absorbing permanent losses in value and revenue.



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Mutually beneficial contractual agreement

Where guidelines are contested, and each party looks to the other for reasonableness, it's worth coming back to the fact that the contractual agreement between tenants and landlords is mutually beneficial, even if it calls for some leeway in duties and obligations over this time.

Landlords must appreciate that some tenants won't have the liquidity to meet all their obligations right now. A valuable tenant, however, who has consistently met their payment obligations for years is not worth losing, and the only thing worse than deferred rent is no rent at all. Tenants, likewise, must appreciate that landlords have their own financial obligations: they are not financial institutions and have limited ability to carry risk. Tenants should make and honour any agreed deferral arrangements.

After the lockdowns have lifted in full, we're likely to see a spate of litigations for loss of compensation. Let us all be cautious before we go down this path. Some legal experts have already suggested that our courts are more likely to look at whether landlords and tenants demonstrated *ubuntu* towards one another by doing their best to be accommodating and sensitive during the lockdown, rather than relying solely on common law principles. Instead of sending a letter of demand for a month or two of short payments, let us demand humanity and fairness as we all recover from this trying situation.

ABOUT THE AUTHOR

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