



Corona virus - issues related to leases



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The corona virus has resulted in issues for property owners and tenants. At this point there is no doubt that Covid-19 is affecting the day-to-day business operations of tenants and landlords alike, where demands for rent reductions and rent payments are being demanded.

This newsletter will provide information on certain legal aspects for Swedish tenancies, based on mandatory tenancy law in conjunction with the most commonly used standard lease forms on the Swedish tenancy market, which are good to be aware of due to the outbreak of Covid-19. The following information is based on the assumption that the agreement and conditions of the lease do not contradict the twelfth section of the Swedish land code (Jordabalken (1970:994), which is commonly and hereinafter referred to as "the Tenancy Act", and therefore is legally enforceable. The information will be concrete, and every situation will need to be assessed on its own particular circumstances.

We recommend that any inquiries that are raised about possible consequences on the landlord/tenant relationship, which don't need to be responded to immediately, are answered with the following: "We understand the situation that has arisen, but we will need to assess the consequences of these more carefully and deal with these when we can. Notwithstanding this, we recommend that you look into what kind of insurance cover you have in the event of an interruption to your business."

Tenant and landlord obligations

The main obligation for the landlord is to provide the premises to the tenant and to maintain the premises in an acceptable or agreed (only applicable for commercial premises) condition during the lease term. The main obligation for the tenant is to pay rent, maintain and use the premises in accordance with the agreed use. Other obligations may be agreed upon between the parties as long as the agreements or conditions do not contradict the statutes of the Tenancy Act, or are specifically allowed for in the Tenancy Act.

Force majeure in connection to main obligations

Most standard lease forms contain a Force Majeure clause for benefit of the landlord.

The standard Force Majeure clause does not specifically address the situation of a pandemic outbreak such as the Covid-19. It is unlikely that a Force Majeure situation arise in connection with the landlord's primary obligation to provide the premises, since most tenants' already have independent access to the premises and the Swedish authority at this point has not implemented any physical restrictions due to the outbreak of Covid-19. If the Swedish authorities decide to block of a limited area based on e.g. the Communicable Diseases Act (1988:1472), a Force Majeure event according to the standard clause could arguably be at hand, since the interventions from public authorities is specifically mentioned in the standard Force Majeure clause. Please note however that an individual assessment should be made to evaluate if the event constitutes Force Majeure on the basis of the specific situation and wording of the Force Majeure clause.

Since most standard Force Majeure clauses are one-sided to the benefit of the landlord, the tenant is normally obliged to fulfill its main obligations in the lease, unless Force Majeure according to general Swedish contractual law is at hand, or the Tenancy Act offers a remedy for the tenant.

Other relevant obligations

According to the standard lease forms a tenant is obliged to have sufficient insurance cover for its operations in the premises.

If a tenant has provided security (e.g. bank guarantees, PCG:s) for the lease, the tenant is obliged to uphold the security for the duration of the lease. If it is deemed that the security has deteriorated, the tenant may be requested to restore the security or replace it with an acceptable security. If the security is not restored or replaced, the landlord is entitled to terminate the lease.

Premises' condition

If an event causes a deficiency to the premises (e.g. supply of utilities, cleaning services or maintenance services are cut of) a tenant could be entitled to a number of remedies according to the Tenancy Act. Please note that most commercial premises are leased in "as-is" condition, meaning that available remedies are limited to situations where the premises due to the deficiency is not fully usable for its purpose, or if the tenant, when the lease was entered into, was not aware of the deficiency or could have discovered it.

According to the Tenancy Act the landlord has to provide the premises in an acceptable or agreed condition. If the landlord does not fulfill this requirement, the tenant is entitled to rent reduction or damages and can take remedial actions and ultimately terminate the lease if the deficiency is not rectified.

Rent reductions are claimable for the duration of the deficiency and up to an amount corresponding to the degree the deficiency affects the tenancy. Rent reduction is only claimable from the time the tenant either requests that the landlord rectifies the deficiency or requests a rent reduction, unless it can be showed that the landlord was already aware of the deficiency. Please note that the concept of rent reduction is based on the idea that a party is not obliged to perform according to the agreement if, and to the extent, the other party fails to fulfil its part of the agreement regardless of fault of either party.

The tenant could also remedy the deficiency in the premises at the landlord expense if the landlord does not remedy the deficiency within a reasonable time, after a request from the tenant. The remedial costs are either claimed as damages or requested as a rent reduction.

Ultimately, if the deficiency cannot be remedied without undue delay or if the landlord, after the request from the tenant, does not remedy the deficiency in the premises, the tenant may terminate the lease prematurely. Please note that the deficiency has to be essential and urgent in order to qualify as a ground for termination.

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