

The Entrepreneurship Law Clinic at Texas A&M University School of Law has collected some frequently asked questions that commercial tenants have about how the COVID-19 pandemic and social distancing guidelines affect their lease obligations.

I left my suite/unit and no longer use it as a result of COVID-19. Am I still required to pay my rent?

Yes, you are still bound by the terms of your rental agreement until your lease terminates. Always review your lease to determine what you and your landlord agreed to before making a decision about how to proceed.

I left my suite/unit and no longer use it as a result of COVID-19. I am unable to continue paying rent. What are my options?

Your obligation to pay rent may not change but ask your landlord for an accommodation or attempt to reach an agreement. It is best to document your communications with your landlord or property manager in writing, through a letter or an email. Even if you talk with your landlord in person or by phone, it is important to follow up in an email to document your understanding of any agreements or representations made during the conversation.

I am unable to continue paying rent, but my lease will expire soon. Can I use my security deposit to offset some of my balance owed?

Texas law forbids a tenant from withholding the last month's rent on the grounds that the security deposit will cover the balance owed.¹ Texas considers withholding the last month's rent as a "bad faith" move. However, your landlord may work with you to accept the security deposit if you return the property in good condition with no need to offset any part of the existing security deposit for repairs.

I did not pay rent and my landlord locked me out. Is this legal?

Yes. A landlord can lock you out for not paying rent or abandoning the property. A landlord may also lock you out if they have reason to believe you abandoned your unit or suite. Unless the lease states otherwise, Tenants are presumed abandon their suites if they remove a substantial portion of the goods, equipment, or other items in the suite and removing those items is not a part of the tenant's typical course of business.² Your landlord has the legal obligation to notify you of the intent to lock you out, and must provide the name, number, address, and times that someone can provide you a key to enter the dwelling and remove your belongings.

My landlord locked me out but I paid rent. What are my rights?

¹ Tex. Prop. Code § 93.010 (2019).

² Tex. Prop. Code § 93.002(d) (2019).

If your landlord does not follow the proper procedure set forth by Texas law, you may be able to recover damages or possession of your suite/unit.

I want to vacate my suite/unit and I don't know how to go about it. What steps should I take?

Letting your landlord know that you would like to terminate your lease is the best possible route to take. Your landlord has every right to expect rental payments for the entire lease term, but the landlord can also choose to reach an agreement with you and permit early termination. Your landlord has the right to accelerate all expected rental payments if you default on your lease, so take care in approaching the situation. Review your lease carefully to understand your landlord's expectations and rights.

I moved out of my suite/unit as a result of the quarantine, but I found someone who is willing to take over my lease. Is that allowed given the circumstances, and if so, what steps should I take?

Texas law states that it is illegal to sublet your dwelling without prior consent from your landlord, typically done so in writing. However, if a lease says something to the effect of you waiving your ability to sublet (even with landlord consent), you can still attempt to negotiate with your landlord to sublease the unit/suite.³ A sublease creates a relationship between you, your landlord, and your sublessee, or the replacement tenant. You will still be liable for rent under the terms of a sublease.

If you wish to not be liable for rental payments, then you should consider a assigning your lease to a third party. A lease assignment is an option for you if you do not want to, or are unable to, continue paying your rent. If your landlord can agree to release you of liability or agree only if you guarantee the assignee or replacement tenant. As always, maintaining an open and honest dialog with your landlord is key.

I moved out of my suite/unit as a result of the quarantine and do not plan to pay my landlord any more rent, past or present. Does my landlord still have any obligations to me?

Your landlord has a legal duty to mitigate damages if you are no longer paying rent and you are no longer occupying the unit/suite. Any lease provision that waives this duty is void under Texas law.⁴ If your landlord is able to lease your suite after you vacate and is receiving the same or more rent than you paid, then amount you have due to the landlord should be reduced. Essentially, Texas law does not permit your landlord to be "unjustly enriched" by still charging you for rent on your lease while also collecting rent from a new tenant who replaced you.

I am unable to pay rent, but my landlord has not locked me out yet. What are my options?

In many situations, the landlord's actions do not operate like clockwork. If your landlord has not "noticed" or taken action against you yet, you may want to reach out to your landlord to see if you can work out an agreement. In the meantime, you could consider

³ Tex. Prop. Code § 91.005 (2019).

applying for unemployment benefits and applying for a loan with the federal government's Small Business Administration to try and acquire some funding to help with expenses. Some cities, counties, and states also have special loan programs for small businesses that may be available.

I run a restaurant/bar that has suffered because of COVID-19 restrictions. I am worried that, even when the state starts to reopen, that I won't be able to make rent for quite some time. What should I do?

You should let your landlord and property manager know that you foresee difficulties in paying rent. Letting your landlord know that you may have a hard time paying your bills sooner rather than later is important because your landlord may be willing to work out a payment plan with you now, as opposed to a few weeks from now. If your landlord is not willing to reach an agreement, it is possible that you will soon get a notice for a forcible detainer action (a.k.a. eviction). Again, it is best to document all your communications in a writing.

Is my landlord obligated to make rent concessions for me during the pandemic?

As of now, your landlord is under no obligation to make rent concessions or work with tenants who are unable to pay rent. However, each landlord is different and can choose to work with you if they are interested in keeping you as a tenant.

I heard that evictions are not moving forward until May 18, 2020, but my commercial landlord still wants to evict me from my unit or suite. Why is that?

Commercial leases and residential leases treated differently under Texas law, and the law provides each lease type with different protections in some situations. Commercial lease eviction proceedings may still be scheduled with individual courts, but county courts have the option to delay commercial evictions beyond what the Supreme Court of Texas has mandated in its most recent emergency order.⁵ As of May 7, 2020, commercial eviction suits in Tarrant County will be held on Zoom only until further notice. It is important to note that commercial evictions are generally not considered essential by local courts so they may be given lower priority.

I work in a multi-tenant commercial building, like a mall or a shopping center. Several of the businesses around me are completely emptying out their units. What does that mean?

Every commercial landlord and tenant relationship is different. In some cases, tenants removing their property is done to prevent the landlord from placing a lien on the tenant's property. In situations like this, a landlord may interpret a tenant's removal of property as abandonment of the space. Under most leases, if a tenant abandons the space, a landlord is allowed to lock out the tenant, initiate an eviction proceeding to recover possession, and place a landlord lien on the business property, to mitigate their losses, particularly if that tenant was already in default for not paying rent.⁶

⁵ *Twelfth Emergency Order Regarding the COVID-19 State of Disaster*, SUP. CT. TEX (Misc. Docket No. 20-9059) (Apr. 27, 2020), <https://www.txcourts.gov/media/1446470/209059.pdf>.

⁶ Tex. Prop. Code §§ 91.004, 93.002(e)-(f) (2019).

What are some things a landlord can do to the property in my unit or suite after I am in default for not paying rent?

If your lease allows for it, your landlord may place a landlord's lien on the property you left in your unit. A lien allows the landlord to sell your equipment and merchandise in an attempt to secure some of the money owed to the landlord under the lease.⁷

I removed most of the property in my unit or suite but I want to know what could happen to the rest of my property.

If your landlord has reason to believe that you abandoned your unit/suite, meaning that you removed most of your belongings and property, then the landlord has the ability to remove and store any remaining property for 60 days.⁸ Your landlord is supposed to notify you, in writing, stating that they are holding onto your property and let you know where you can retrieve it. After 60 days, the landlord may dispose of your property. If you removed your property because you are operating your business online or out of your home, you should communicate that to your landlord as well as your intention to continue to pay rent.

My landlord bills me for common-area expenses (i.e., CAM, property insurance, property taxes) each month, even though we cannot fully operate as a business because of COVID-19. Can they do that?

Typically, common-area or operating expenses in a triple-net lease are estimates for the year. Paying a flat marketing or parking fee outlined in your lease is different. Although your landlord is typically not required to, if your lease allows for it, you can ask that the landlord reconcile these common-area expenses to include any reductions in operating costs that occurred as a result of government orders to close your business and/or the shopping center.

As a result of COVID-19, my landlord has asked that I pay my next month's rent earlier than the first. Are they allowed to do that?

A lease may permit a landlord to ask that you pay rent earlier than the beginning of the month for that month, but they cannot charge you late fees if you fail to do so unless your lease allows them to. Unless you sign a lease amendment that changes rent/late fee provisions, the landlord shouldn't be able to penalize you for not paying rent earlier than the lease has outlined.

Where can I get more legal information or advice?

There are a number of websites that contain general information about legal rights and responsibilities. These websites provide information based on Texas law and legal practice. Please note that your lease or other rental agreement may contain provisions that are contrary to Texas law and therefore an attorney will need to review your lease to properly advise you.

⁷ Tex. Prop. Code § 91.004 (2019).

⁸ Tex. Prop. Code § 93.002(e) (2019).

LegalLine is a free legal advice hotline that operates on Tuesday between 5:30 PM and 7:30 PM to answer basic legal questions. Call 512-472-8303 during that time period for more information. Here are some additional resources:

Tarrant County Eviction Resources

- Tarrant County Eviction Self-Help Packet (English):
<https://www.tarrantcounty.com/content/dam/main/justices-of-the-peace/IP1/SelfHelpLegalInfoPktEvDefn.pdf>
- Tarrant County Eviction Self-Help Packet (Spanish):
https://www.tarrantcounty.com/content/dam/main/justices-of-the-peace/IP1/SRLPaquetedeautoayuda_casodedesalojoensucontra_final_WhenanEvictionCaseHasBeenFiledAgainstYou.pdf

Local Legal Assistance:

- Texas A&M Legal Clinics
<https://law.tamu.edu/legal-assistance>
- Texas C-BAR
<https://www.trla.org/nonprofits>
- Tarrant County Bar Association Lawyer Referral Service
<https://texaslawhelp.org/directory/legal-resource/tarrant-county-bar-association-lawyer-referral-service>

Texas Law Help:

- Texas Law Help:
<https://texaslawhelp.org/house-apartment/eviction-other-landlord-issues>
- Texas State Law Library:
<https://guides.sll.texas.gov/disaster-emergency/landlord-tenant>
- Attorney General of Texas:
<https://www.texasattorneygeneral.gov/consumer-protection/home-real-estate-and-travel/renters-rights>
- Texas Young Lawyers' Association:
<https://www.housing.af.mil/portals/79/documents/AFD-160628-021.pdf>