

FINANCE



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Pharmacists dealing with Landlords

Landlord and tenant legislation is never more relevant to the pharmacy sector as it is now. Many tenant pharmacists, who are leasing premises are finding that the rent payable on their premises is now becoming prohibitively high and they are struggling to avoid slipping into trading losses. The sector is not as profitable as it once was and this is for a number of reasons, including:

- A significant fall in consumer spending, which has reduced retail sales[1]
- A reduction in the profit margin paid to pharmacies under the Drug Payment Scheme[2]

Rents negotiated at the height of the boom appear very unsustainable now. This issue



is exacerbated by the fact that, for many pharmacies which are operated through a trading company, the landlords have secured personal guarantees from the pharmacist.

The scale of the problem can be best illustrated by an

example:

Assume the tenant is a company and is paying a rent under a building lease of €200,000 per year and the directors of the company (assume a husband and wife pharmacist team) have also given a personal guarantee on the lease.

Assume there was a recent assessment of what the rent should be and that it calculated a figure of €120,000, where does this leave the pharmacists?

The first problem is that the lease was most probably an upward only rental lease so there is not the scope to force the landlord to accept the lower amount.

Secondly, even if the company was to pay only the €120,000, then the landlord could pursue both the company and the directors personally for the other €80,000.

In addition, because both the husband and wife signed the personal guarantee, all their assets (including the family home^[3]) can be pursued by the landlord. So the difficulty some pharmacists find themselves in cannot be overstated.

Yet landlords will in many instances legitimately say they have borrowings that require that level of rent and that they are not in a position to agree to lower rents.

I will return to this issue and give some guidance on appropriate steps further in the article.

Legislation banning upward only rent reviews came into force on the 1st March 2010^[4]. While unquestionably this is good for tenants of new leases, it does little for tenants under existing leases. The legislation is not retrospective and, therefore existing leases are unchanged. The Minister for Justice, Equality and Law Reform has established a working group on rent reviews of existing leases and this group is tasked to report to the Minister by June. We understand that this group is reviewing methodologies around dispute resolution rather than seeking to alter pre-existing lease agreements, which would be a difficult thing to do from a legal viewpoint.

So if you are a pharmacist under pressure of inappropriately high rents what should you do?

Firstly, I believe you should review all your costs and see if there is scope to bring the payroll or other overhead costs down. Establish that it is really a case that the rent levels are unsustainable or perhaps it may be that the other costs are too high.

If the rent remains a problem, then assess



the legal structure of the lease agreement. Who is the lease between and are there personal guarantees? If there are no personal guarantees and the lease is with a company, then the landlord is much more likely to be reasonable. A lesser yielding lease is better than no lease at all and, in a company situation, there is always the threat that the company will be wound up and this usually improves the scope for negotiation.

Where there are personal guarantees, the effectiveness of using this route is lessened. Yet it is, in my opinion, important for the tenant to secure a professionally prepared analysis of what the rent should be and use this as the starting point to seek to secure 'reasonableness' from the landlord. Landlords also take more notice of an independent financial analysis, who can demonstrate that the rent is punitive with a direct negative impact on the company's solvency.

Again, if the business is multi-located and operated through a company, there is the possibility of seeking High Court approval through the examinership process to repudiate onerous leases. If, for instance, there were five leases in total, but one particularly onerous one, then this is an avenue that should be considered. However, if there are personal guarantees an examinership scheme of arrangement cannot remove these.

It is vital to be well prepared in starting a rent review process with your landlord.

Knowing your strengths and weaknesses is the key.

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Brian is one of the leading business rescue and insolvency advisers in the country; he established a dedicated business rescue department within Horwath nearly ten years ago and has held a vast range of insolvency positions, including receiver manager and liquidator. He has dealt with various technical and emerging issues in his preparation and submission of liquidator's reports to the Office of the Director of Corporate Enforcement under Section 56 and S150 declarations. Brian is also an experienced Examiner and has successfully restructured a number of medium-sized enterprises enabling them to trade out of their difficulties

Brian is the 2009/10 President of ACCA Ireland, and is a member of the ACCA's global Council.

Brian is the national adviser to Nursing Homes Ireland and regularly undertakes a variety of assignments on behalf of clients in the Healthcare sector.

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