

Miami Herald

Retail tenants are seeking rent relief. Some landlords take a long view; others say no.

[BY REBECCA SAN JUAN](#)

MARCH 30, 2020 07:00 AM, UPDATED MARCH 30, 2020 03:50 PM

With tourism at a standstill and nonessential businesses closed, local commercial tenants are looking for rent breaks as the coronavirus crisis heads into April.

They're finding mixed results.

Among those retailers are Nick Sharp, co-owner of Threefold Cafe, with six locations, and Ricky Patel, president of The Spot Classic Barbershop, with 15 locations. Some landlords immediately agreed to some form of rent relief, they said, while others declined to negotiate.

But as the weeks move on, many attorneys and landlords are advising abatements.

Jason Kellogg, partner at the downtown Miami-based law firm Levine, Kellogg, Lehman, Schneider and Grossman, is advising clients including shopping center owners to renegotiate leases for the next two months.

"Everyone is going to feel pain right now," Kellogg said. "It's a matter of alleviating that pain.

"You can't get blood from a stone," he said.

But most landlords will want to see restaurant and retail owners make an effort before agreeing to rent changes, said Javier Lopez, managing partner of the Coral Gables-based

law firm Kozyak Tropin & Throckmorton. “Businesses have the responsibility to take proactive steps to meet contractual obligations.”

That may include laying off employees to preserve the cash flow needed to pay rent, Lopez said.

LEGAL POSITION

Legally, landlords can demand tenants pay rent, Kellogg said.

The exception would be tenants with *force majeure* lease clauses that protect tenants who cannot fulfill their obligations due to an unforeseen event such as an earthquake, hurricane or tornado — or pandemic.

Tenants may also argue frustration of purpose, arguing that an unforeseen event undermined their intent for having entered into an agreement with their landlord, Lopez said.

But whether COVID-19 is legally considered a natural disaster, and whether it was an unforeseen event, may be disputed by some landlords and insurers, Lopez said — and may ultimately end up in litigation.

For now, lease practices vary by the property owner and by tenant. Some landlords are offering rent relief, no questions asked. Others are dealing with tenants on a case-by-case basis. Yet others are declining to offer any relief — at least for now.

Tricera Capital, a Brickell-based commercial real estate property owner and management firm, wrote an email two weeks ago informing all of its 30 tenants that it would defer rent payments for April and allow them to make up the amount owed over the following six months, said co-founders Ben Mandell and Scott Sherman.

“We are playing the long game,” Mandell said. “Tenants are the lifeblood of our assets.”

The company is well capitalized, Sherman said, and took 50% to 60% financing for each of their commercial spaces. “Other property owners may need 75% financing,” Sherman said. “You may pay less up front but you have less breathing room.”

CASE-BY-CASE

The luxury-oriented Bal Harbour Shops are looking at hardships on a case-by-case basis, said Matthew Whitman Lazenby, president and chief executive officer of Whitman Family Development, which owns and manages the shops. “Our tenants know we stand with them through this and we are currently in discussions with our tenants to determine the best strategy for each moving forward,” he wrote via email.

Regardless of the landlord, tenants with a history of late payments may well be at a loss, said Lopez, of Kozyak Tropin & Throckmorton.

“I’ve seen some tenants that were hanging on by the skin of their teeth. They had already spoken about rent abatement and being short on rent since November. This may be the nail in the coffin but the coffin was already built. The landlord, in that case, would likely have a winning argument.”

Some landlords are refusing any relief.

Threefold’s Sharp said he reached out a month ago to his six landlords. Four said “‘don’t worry about it,’” Sharp said. He is talking with them about lease extensions. Another landlord has yet to give a definite answer, wanting to first explore options.

But one, Sharp said, “gave a hard ‘no.’”

“We never missed a rent payment,” Sharp said. “We wrote back saying vacancies are going to be everywhere and your best option would be to work with us.”

In the interim, his cafes [have become grocery stores](#).

The Spot Barbershops closed its 15 South Florida locations more than two weeks ago, Patel said, to ensure safety.

His landlords have given mixed responses. Three told him they would work with him, proposing a lease extension of 60 days and suggesting they take “one month at a time,” he said.

But the majority, 12 landlords, told Patel he has to pay rent.

“It felt like a knife to the heart because we always pay on time,” Patel said.

He is considering federal loans and incentives to pay bills, including insurance and utilities.

And he's looking for ways to help his barbers, who live off commission. His barbers average \$60,000 per year, or \$5,000 per month. For now, they're earning nothing.