

Limited protection of tenants' dismissal as a result of the coronavirus crisis in Germany

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The German lawmaker has decided to impose a moratorium on rents following the coronavirus crisis. Thereafter, both private and commercial leases may **not be terminated until June 30, 2022 due to any rent arrears in the period from April 1, 2020 to June 30, 2020**. It is not necessary for landlords and tenants to agree this in an addendum to the rental agreement. Landlords and tenants are not allowed to lift or restrict the moratorium on rents in the rental contract.

This **means there is no unrestricted coronavirus termination protection** for the tenants. Tenants are only protected against contract termination if they demonstrate the arrears in payment are due to the impact of the coronavirus pandemic. A sufficient proof could be provided, if necessary, by reference to official orders or by means of an affidavit. It is to be expected that the courts will not place high requirements for proof of liquidity shortage because of the pandemic.

Despite the rental moratorium, the landlords still have the right to terminate:

- If a tenant does not compensate for their default of rent, which occurred between April 1, 2020 and June 30, 2020, then the lease agreement may be terminated by the landlord from July 1, 2022.
- The lease agreement of a non-payment tenant or a tenant who is in arrears by two months' rent, which does not result from the coronavirus pandemic, may be terminated.
- If a tenant is already in arrears by two monthly payments prior to April 1, 2020, the landlord still has the right to terminate the lease.
- Terminations for other reasons (e.g. due to written rules, unauthorised subletting or due to own use) remain possible.
- Commercial lease agreements concluded for an indefinite time period may continue to be terminated in good order. For example, an industrial lease agreement that can be terminated with a three month notice period can still be terminated within this period.

Even if a landlord is not allowed to terminate the lease agreement due to an arrear in payment, the tenant will still be liable for the payment of the rent, as well **as statutory default interest**, which currently stands at 8,12%. The landlord shall continue to be free to file a claim for payment due to rental arrears, or to claim a rental security provided by the tenant and to demand replenishment. However, each landlord should consider whether this makes sense in each case.

The period for arrears can be extended by a further three months, i.e., until September 30, 2020, by resolution of the Federal Government.

It has been discussed, but did not pass the parliament, to also impose a moratorium on debt services for commercial borrowers. Only for consumer credits, loan agreements may under certain circumstances not be terminated because of a shortfall in debt service in the time period between April 1, 2020 and June 30, 2020.

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