

Landlords and tenants must live happily together



[St Stephen's Green shopping centre, Dublin 2, in which Irish Life has a 50 per cent interest. IPD has warned that institutions could see the value of their investments fall by up to 20 per cent if current leases are scrapped.](#) Photograph: [Matt Kavanagh](#)

OPINION: Some tenants are struggling and it is time landlords listened to them – but we need to ensure that landlords are protected from tenants making spurious hardship claims, writes **BILL NOWLAN**

A PRAGMATIC solution must be found to the commercial rent problems following criticism of the Fine Gael proposal for upward and downward rent reviews for all commercial tenants.

This would cause Armageddon in the property and banking industries by writing off up to 20 per cent of the remaining value of investment portfolios. It would require an infusion of an extra €3/€4 billion into Nama and possible compensation claims of multiples of this.

Analysis by IPD implies that values could fall by as much as 19.4 per cent, or just under €500 million, if immediate rent reviews were permitted in their

representative €2.4 billion portfolio of institutionally-owned properties. The impact of this overseas would be huge. It will cut off inward investment.

We have already seen one major sale – that of the Liffey Valley shopping centre – collapse as a result of Fine Gael and Labour's proposals.

My suggested criteria for a solution would be:

That it saves jobs in the many hairdressing and similar businesses now under rent duress around the country.

That it emulates as far as possible the practice of responsible landlords.

That it does not unduly upset property portfolio values of Nama and other investors.

That it is workable and quick.

That tenants who have the financial resources to pay do so and don't get off their contractual commitments due to technicalities.

The problems seem to be mainly but not exclusively in the retail sector. Traditionally retailers pay up to 10 per cent of their turnover in rent whereas in other businesses the rent as a proportion of turnover would normally be as low as 1 per cent and rarely exceeds 5 per cent. I have never seen a business going bust because its overheads were 2 or 3 per cent too high but when rent gets to 50 per cent of turnover that will be terminal.

We need a system focused on hardship and that does not exploit landlords unjustly – a burden-sharing approach.

Landlords should not be expected to suffer cuts simply to put extra cash into a retailer's pocket. That rent is a mortgage payment or the income of some pensioner.

Many of the tenants will recover and thrive in time if helped through the recession. So we need a temporary survival mechanism to get over this crisis. I suggest that any legislation be limited to three years.

Most professional landlords have already given rent abatements to enable distressed tenants to survive – nearly always retail. Some have not.

Professional investors realise that it is better to have active tenants working with them than to have an empty shop. If a landlord won't listen to a tenant who is having difficulty in paying rent he is living in cloud cuckoo land – or under similar duress to the tenant, possibly from his bank.

Whatever solution is proposed should not interfere with the well tried and tested procedures and market practices which apply to non-distressed landlord and tenant relationships.

Shopping centres are a big problem area due to high rents. While many professional investors own such centres, some of the new “amateur” investors don’t realise that a shopping centre is a franchised form of department store.

Many new investors and their banks think they merely have to collect the rents and are not responsible for the overall business in a centre.

Any intervention must be practical and workable and must not encourage chancers to submit spurious claims. If all the tenants in Ireland submitted claims seeking relief then any assessment system would be overwhelmed. It has to be done selectively on a case-by-case basis.

It appears that the best way to solve this problem lies in the insolvency approach. Under existing insolvency law a company liquidator or examiner can terminate a lease with the approval of the court. But if the lease is in the name of an individual the liability is personal and our ancient bankruptcy rules apply, and all assets are on the line.

Maybe the solution is to treat distressed business leases that are in individuals’ names, or have personal guarantees attached, as if there were limited companies.

If the solution is in insolvency law, we will soon have big changes coming up in our bankruptcy procedure, as required by the IMF, and the following type of formula might be incorporated in that law: an insolvent tenant or a tenant pleading inability to pay his rent must prove with certified supporting material, including accounts to an independent insolvency expert (or ombudsman or other tribunal), that he will go bust unless he gets temporary rent abatement.

There should be a full disclosure of all personal assets and a certificate of rental value of the relevant property and other properties in the business.

The independent insolvency expert then, if satisfied with the evidence, may award at their discretion, if they feel it fair and just, a rent abatement (or reduction to the current market rental value) for a specific time with a maximum relief of two years or, alternatively, give the right to surrender the lease.

The expert must take care to look at the total asset and trading situation of the tenant to ensure that a trader does not use this mechanism to cherry pick his trading base or to exploit a landlord.

The relief procedure must be quick and efficient and should only be available to tenants who certify, under oath, that their rent would be more than 10 per cent (or maybe 15 per cent) of their projected business turnover. This threshold would be the primary way of separating the genuine cases from the try-ons.

Alternatively, taking the landlord and tenant approach, the solution might be based on the residential tenancy system. It could be similar to the Residential Rent Tribunal in which a property expert settles the rent at the then current fair market rental for up to two years.

The same 10 to 15 per cent of turnover threshold should be the entry point to getting this sort of relief.

I would prefer the insolvency procedure. There would be nothing to stop the tenant from returning for reconsideration if he still has a problem three years later, although it may be questionable if the tenant has a realistic chance of survival at that stage.

Whoever has to adjudicate on the granting of relief should be capable of understanding all the issues and making judgments which are fair to both landlord and tenant. This will probably require input from both property and accountancy experts.

This is a very delicate area. A skilful path must be found between upsetting fundamental tenets of the property investment industry, not precipitating unfairness or undermining the rights of landlords to manage their property in accordance with a signed lease and not involving the State in the risk of compensation for interfering with constitutionally based property rights or high administration costs.

Professional property investors need to sit down with the new government and come up with practical solutions to the really hard cases where intransigent landlords are not sorting out the problems voluntarily and their tenants can't meet their rental obligations.

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