

# Office rent disputes trickle in as tougher lease negotiations loom

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Office rent disputes between landlords and tenants are trickling into courts and boardrooms even as the sector has largely been spared from the tidal wave of missed payments overwhelming the retail sector, according to a portfolio manager, two lawyers, and two analysts.

“Retail was obviously what we first heard about,” Susan Matejcak, a partner at Quarles & Brady in Chicago, said of the rent battles. “But what my clients are telling me is we might see more on the office side, not specifically from the pandemic but from the economic hardship that is following it.”

Moody’s Investors Service too will be watching how tenants’ office space needs will evolve, and is looking to see if there are changes in space usage either due to more people working from home or more space needed to accommodate social distancing, said Matthew Halpern, vice president–senior credit officer with Moody’s. “Office will be more of a concern as leases roll,” he said.

For now, a number of the larger office REITs such as Boston Properties and SL Green have recently reported office rent collection rates above 90%, according to executives speaking on 1Q20 quarter earnings calls. By contrast, retail landlords have had it tougher to date, with many of their tenants paying just a fraction of the rent owed and others like Bed Bath & Beyond, H&M, The Gap, Old Navy and Footlocker paying nothing in May, as [reported](#).

The tenants may have been able to argue the rent checks were excused on grounds of *force majeure* – a contract clause that discharges performance as a result of an event or condition. But with so many in bankruptcy, a number instead sought and won suspensions of their rent payment obligations under the Bankruptcy Code, as [reported](#) by Debtwire ABS sister publication *Debtwire North America*.

Among the larger office-rent disputes brewing is a lawsuit filed last month by office landlord Heitman seeking to force law firm Jenner & Block to pay what it says is USD 3.7m in unpaid rent for April and May.

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“The defendant’s failure and refusal to pay fully the delinquent rent within such five business days constituted a ‘default’ by the tenant under the lease,” the complaint states. Jenner & Block’s headquarters occupy 416,000 sq ft in a Chicago office tower at 353 North Clark Street.

Attorneys for Jenner & Block called the complaint “meritless,” and said that the firm paid everything it owed under the 2005 lease that contains an explicit rent abatement provision, according to their answer to the complaint. According to the lawyers, the provision requires the landlord to reduce the rent whenever, as a result of any event (*force majeure* or otherwise) that is not the firm’s fault, it is reasonably determined that at least 20% of its space cannot be used as intended.

The provision is not typically included in office leases, a source familiar said.

Due to the determination based on the significant health dangers posed by COVID-19, the firm has not used at least 89% of its space after closing its offices in March and reducing its workforce at the office from 579 people to on average a “skeletal crew” of 12, the 22 June filing made by Jenner & Block states. “There can be no serious dispute that the COVID-19 pandemic is an event that triggers the abatement provisions,” the firm asserted.

The provision was negotiated as part of Jenner & Block’s sponsoring the development of the building, David J. Bradford, a partner at Jenner & Block, said in a statement provided to *Debtwire* ABS. “We negotiated a lease that provides flexibility for circumstances like this one ... We are meeting our obligations under our lease agreement.”

The case is *Hart 353 North Clark LLC vs. Jenner & Block*, 2020-L-005476, in Circuit Court of Cook County, Illinois County Department, Law Division.

by [Maura Webber Sadovi](#)

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